

fmynTHE FORT MCDOWELL YAVAPAI NATION LAW AND ORDER CODE

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Municipal Code Corporation | P.O. Box 2235 Tallahassee, FL 32316
info@municode.com | 800.262.2633
www.municode.com

TRIBAL OFFICIALS

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President

Pansy Thomas

Vice President

Paul Russell

Council Member

Gerald Doka

Council Member

Selena Castaneda

Secretary

Pamela Mott

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PREFACE

This Law and Order Code constitutes a republication of the general and permanent resolutions of the Fort McDowell Yavapai Nation.

Source materials used in the preparation of the Law and Order Code were the 2006 Law and Order Code, as supplemented through April 4, 2006, and resolutions subsequently adopted by the Tribal Council. The source of each section is included in the history note appearing in parentheses at the end thereof. By use of the comparative tables appearing in the back of this Law and Order Code, the reader can locate any section of the 2006 Law and Order Code, as supplemented, and any subsequent resolution included herein.

Chapter and Section Numbering System

The chapters of the Law and Order Code have been conveniently arranged and the various sections within each chapter have been catchlined to facilitate usage. The chapter and section numbering system used in this Law and Order Code is that used in the 2006 Law and Order Code and subsequent resolutions.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of another portion of the Code, the letter immediately to the left of the colon indicates the letter of that portion of the Code. The following are typical parts of codes, which may or may not appear in this Code at this time, and their corresponding prefixes:

CONSTITUTION	CST:1
CONSTITUTION COMPARATIVE TABLE	CSTCT:1
LAW AND ORDER CODE	CD1:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
CONSTITUTION INDEX	CSTi:1
LAW AND ORDER CODE INDEX	CDi:1

Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the instructions attached. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Alyce A. Whitson, Senior Code Attorney, and Kim Ryder, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to the Nation's Law and Order Committee, Diandra Benally, General Counsel, the Office of the General Counsel and other members of the Nation's staff for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Law and Order Code which will make the active law of the Nation readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the Nation's affairs.

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SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code and are considered "Included." Ordinances that are not of a general and permanent nature are not codified in the Code and are considered "Omitted."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

Resolution No.	Date Adopted	Included/Omitted
Supp. No. 1		
2010-71	11- 9-2010	Included
2013-71	11- 4-2013	Included
Supp. No. 2		
2012-62	9-25-2012	Included
Supp. No. 3		
2017-10	1-31-2017	Included

CONSTITUTION OF THE FORT McDOWELL YAVAPAI NATION

PREAMBLE

We, the people of the Fort McDowell Yavapai Nation ("Nation"), formerly known as the Fort McDowell Mohave-Apache Community, pursuant to our inherent sovereignty and in order to improve, promote, and maintain our culture, customs and independence of our people; to provide for the continued self-government of our people, to encourage the economic well-being of our people; to promote the rights of our people and their common welfare; and to preserve, secure and exercise all the inherent rights and powers of a sovereign Indian Nation, do ordain and establish this Constitution for the Fort McDowell Yavapai Nation which shall repeal the Constitution and Bylaws of the Fort McDowell Mohave-Apache Community approved by the Secretary of the Interior on November 24, 1936.

ARTICLE I - TERRITORY

The territory of the Fort McDowell Yavapai Nation shall include all lands within the exterior boundaries of the Fort McDowell Reservation established pursuant to the Executive Order of September 15, 1903 and the Act of August 23, 1904 (28 Stat. 491), any and all lands held by the Nation, and to any additional lands acquired by the Nation, or by the United States for the benefit of the Nation, except where expressly prohibited by Federal law.

ARTICLE II - JURISDICTION

The jurisdiction of the Fort McDowell Yavapai Nation shall extend over all persons, property, lands, water, air space, resources and all activities occurring within the boundaries of the reservation or on other lands within the jurisdiction of the Nation notwithstanding the issuance of any right-of-way, except as the Nation's jurisdiction is limited by Federal law. This Article shall not be construed or interpreted in any way to limit the jurisdiction of the Nation.

ARTICLE III - MEMBERSHIP

ARTICLE IV - TRIBAL GOVERNMENT

ARTICLE V - LEGISLATIVE BRANCH

- A. No member shall hold other employment while serving on the Tribal Council. No member of the Tribal Council shall be an employee of or hold another constitutional office in the Fort McDowell Yavapai Nation government. No member of the Tribal Council shall be employed in any branch of the United States Government nor shall any member of the Tribal Council hold any elective office in any other governmental body. This section shall not prohibit a Council Member from serving as the Council's representative on boards, associations or committees.
- B. Upon written notice by the Tribal Council to a member of the Tribal Council or the Secretary who has violated this Section 8, the affected person shall have 14 days to relinquish such employment or elective office prohibited by this section. If the affected person fails to relinquish such employment, such elective office shall become vacant and an election shall be held pursuant to Article X. This section 8 shall remain in effect so long as the Tribal Council is receiving a full salary.
- A. The Tribal Council shall hold its regular meeting on the first Tuesday of each month, unless special circumstances arise. Special meetings shall be held at the request of the President or at the request of three members of the Tribal Council, notice to be given to all members of the council at least three days before such meeting. In case of an emergency, the three day notice shall be suspended, provided that all members of the Tribal Council are afforded reasonable notice, and further that at least three of the Council Members agree to the meeting.
- B. A majority of the members of the Tribal Council shall constitute a quorum for the transaction of business. In the absence of the President and Vice President from any regular or special meeting, the Tribal Council members shall choose a presiding officer for such meeting from among the members of the Tribal Council present.
- C. There shall be no proxy voting by the Tribal Council.
- D. No member may vote on an issue wherein such Council Member has a financial or personal interest, unless approved by a majority of the remaining members. Any Tribal Council vote, where a member of the Tribal Council had a financial or personal conflict of interest, that was not approved by a majority of the remaining Tribal Council, shall be voidable.
- E. Tribal Council meetings shall be open to members of the Nation, except when the Tribal Council calls for an Executive Session by a majority vote of the quorum present. Executive Session meetings shall be closed. The Tribal Council shall adopt an open meetings ordinance.
- A. Powers:
 - 1. To regulate its own procedures; to appoint committees, advisors and clerks; to provide for the safekeeping of its records; to establish and disestablish departments and offices of the tribal government; to prescribe the functions, powers, procedures, qualifications and duties of its personnel;
 - 2. To govern the civil and criminal conduct of persons within the jurisdiction of the Nation;
 - 3. To enact and enforce ordinances regulating the following: civil actions, crimes, law enforcement, gaming, zoning, business, signs, land use, environmental quality, housing development and improvement, uniform building codes and enforcement, the sale and use of tobacco and alcoholic beverages, protection of minors and mental incompetents, including the appointment of guardians, custodial care and adoptions;
 - 4. To establish law enforcement agencies;
 - 5. To protect and regulate the public health, safety, and morals of the Nation;
 - 6. To provide for the public welfare and particularly the welfare and protection of children, the poor, disabled and aged;

7. To regulate the domestic relations of persons within the jurisdiction of the Nation;
 8. To prescribe rules of inheritance and enact laws to provide for the administration of probate estates;
 9. To regulate hunting and fishing;
 10. To regulate livestock and animal health;
 11. To prescribe and regulate safe standards for housing, buildings and structures;
 12. To administer, protect and preserve historic and prehistoric arts, crafts, sites and other items;
 13. To authorize, charter and regulate voluntary associations, economic enterprises and corporations for business or charitable purposes;
 14. To remove and exclude from the territory of the Fort McDowell Yavapai Nation, non-members who violate tribal laws or ordinances, or whose presence is found detrimental to the peace, health or morals of the Fort McDowell Yavapai Nation;
 15. To consult, negotiate, contract, conclude and perform agreements with Federal, state, local governments and Indian tribes, as well as any person, association, partnership, corporation, government or other private entity on behalf of the Fort McDowell Yavapai Nation;
 16. To employ legal counsel consistent with the requirements of Federal law;
 17. To prevent the sale, lease, disposition, or encumbrance of lands and interests in lands, without the consent of the Tribal Council;
 18. To lease and otherwise grant to private persons, entities and public bodies the right to use tribal lands consistent with the requirements of tribal and Federal laws;
 19. To enter into agreements concerning the use, exploration, development and extraction of the natural and mineral resources;
 20. To acquire and/or convey lands or other property by gift, escheat, will, exchange, purchase or sale; and to acquire lands or other property needed for public purposes by negotiation or condemnation;
 21. To manage the lands, natural resources and other public property of the Nation;
 22. To regulate use and disposition of private property within its territory;
 23. To enact an annual budget for the various and particular functions of the tribal government;
 24. To enact and levy taxes, duties, fees and assessments on persons, entities, transactions and property; and
 25. To borrow money or loan money for public purposes and to secure the repayment thereof.
- B. To Take Necessary Action To Exercise Its Powers.
1. To enact laws, ordinances, resolutions and take such actions as shall be necessary or incidental to the exercise of its legislative powers; and
 2. Take any and all other actions necessary and proper for the exercise of the foregoing powers and duties, including those powers and duties not enumerated above, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribal Council through the Nation's inherent sovereignty or through Federal law.

ARTICLE VI - ELECTIONS AND VOTING

- A. Regular Elections are the regularly scheduled elections for elected offices pursuant to this Constitution.

- B. Special Elections are any elections other than a Regular Election, including but not limited to: Article VI, Section 2(D); Article IX, Section 2; Article X; and Article XI.
- C. Elections for President, Vice President, Treasurer, Secretary and Council Members shall be held on the second Tuesday in January in even numbered years. The candidate with the most votes for that specific office, certified as elected by the Election Board, shall be installed into office the second Tuesday in February. All elected officers shall hold office until their successors have been elected and installed.
- D. The regular term of office shall be four-year terms for all elected officers. The first election under this Constitution shall be held in January 2000. The President, Treasurer, and one Council Member shall be elected for regular four-year terms and the terms of those offices will thereafter be four-years. The Vice-President, Secretary, and one Council Member shall be elected for two-year terms, expiring in January 2002. The Council Member receiving the most votes in this election will serve the four-year term. The regular election for the Vice-President, one Council Member, and the Secretary will begin in January 2002 and the terms of office will thereafter be four years.

ARTICLE VII - JUDICIARY

- A. The Judiciary shall exercise jurisdiction over all cases and controversies within the jurisdiction of the Nation, in law and equity, whether civil or criminal in nature, that arise under the Constitution, laws, customs, or traditions of the Nation, by virtue of the Nation's inherent sovereignty, or which is vested in the Judiciary by Tribal or Federal law.
- B. The maternity or paternity of an applicant for enrollment shall be decided exclusively by the Judiciary and the decision of the Judiciary shall be final for membership purposes.
- A. Interpret, construe and apply this Constitution and the laws and customs of, or applicable to, the Fort McDowell Yavapai Nation;
- B. Declare the laws of the Fort McDowell Yavapai Nation void if such laws are inconsistent with this Constitution;
- C. Issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and writs of habeas corpus upon petition by, or on behalf of, any person held in actual custody; and
- D. Establish court rules and procedures for the Judiciary, except that the Tribal Council may by ordinance modify such procedures consistent with this Constitution.
- A. The Tribal Council may suspend, dismiss or remove any Judge of the Trial or Supreme Court by a unanimous vote of all five members of the Tribal Council. The presiding officer of the Tribal Council shall cast a vote relative to the suspension, dismissal or removal. A Judge shall be removed for any of the following reasons:
 - 1. Conviction of a felony in any Federal, state or tribal court;
 - 2. Conviction in any court of bribery, embezzlement, extortion, fraud, forgery, perjury, theft, any alcohol related or drug related driving offense, contributing to the delinquency or dependency of a minor, or any other crime of moral turpitude;
 - 3. Substantial and documented nonfeasance, misfeasance, or malfeasance with regard to official duties.
- B. A Judge shall be given notice of the charges and fair opportunity to reply to any and all charges for which he may be suspended, dismissed or removed from judicial office.
- C. A Judge suspended, dismissed or removed under Article VII, Section 11 (A) may appeal directly to the Supreme Court which shall have jurisdiction over such matters. The Supreme Court decision shall be final.

ARTICLE VIII - BILL OF RIGHTS

- A. Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition for redress of grievances.
- B. Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
- C. Subject any person for the same offense to be twice put in jeopardy.
- D. Compel any person in any criminal case to be a witness against himself.
- E. Take any private property for public use without just compensation.
- F. Deny to the accused in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense.
- G. Require excessive bail, impose excessive fines, inflict cruel and unusual punishment, and in no event impose for conviction of one offense, any penalty or punishment that is expressly prohibited by Federal law.
- H. Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.
- I. Pass any bill of attainder or ex post facto law.
- J. Deny to any person accused of any offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

ARTICLE IX - REMOVAL AND RECALL FROM OFFICE

- A. Causes for removal: The office of any elected official of the Fort McDowell Yavapai Nation shall be forfeited and declared vacant if such official, during such officer's term of office, is:
 - 1. Convicted of any felony or a misdemeanor involving moral turpitude and no appeal is pending; or
 - 2. Fails to physically reside within the Nation during his term of office; or
 - 3. Is found guilty by the Tribal Council of neglect of duty, malfeasance in office, or misconduct affecting the dignity and integrity of the tribal government.
- B. Hearing:
 - 1. An elected official shall be removed from office by a unanimous vote of the remaining members of the Tribal Council after a hearing before the Tribal Council. Five days before such hearing a written statement of the charges shall be served by the Tribal Council on such person and at that hearing an opportunity to answer such charges shall be allowed.
 - 2. All remaining members of the Tribal Council must be present during the vote to remove any Council Member. For the purpose of this section, the presiding officer of the Tribal Council shall cast a vote. The person subject to removal shall not cast a vote.
 - 3. No more than two elected officials may be recalled at a time.
 - 4. No member of the Tribal Council may vote on the removal wherein such member has been charged with the same offense.
- A. The Election Board shall hold a Special Election to recall an elected official upon the filing with the Election Board of an official recall petition form, demanding the recall of any elected officer, signed by at least 40 percent of the total qualified voters of the Nation, provided that the office

held by such person shall not be subject to election at a regular general election within 90 days of the date the recall petition is filed.

1. Such election shall be called and held between 20 and 30 days from the date of the filing of the petition.
 2. No Council Member or other elected official shall be recalled unless a majority of the qualified voters voting in the recall election vote in favor of the recall, and at least 40 percent of the voters of the Nation vote in the recall election.
 3. No more than two elected officials may be recalled at a time.
- B. Every official recall petition must contain a clear and concise statement of the grounds for the recall.
- C. Any recalled official shall not be eligible for elected office for a period of eight years after their recall from office.

ARTICLE X - VACANCIES

ARTICLE XI - INITIATIVE AND REFERENDUM

- A. Petition and Election: Upon receipt by the Election Board of a written petition signed by not less than 30 percent of the total number of qualified voters of the Fort McDowell Yavapai Nation and calling for a vote to consider the enactment of any ordinance or resolution, or other official action, Election Board shall hold a Special Election to consider the enactment of such ordinance or resolution, or other official action. The election shall take place between 30 days and 60 days after receipt of the petition by the Election Board.
- B. Required Votes for Passage: If a majority of the voters voting in the Special Election are in favor of the enactment or repeal of such an ordinance or resolution, provided that at least 30 percent of the qualified voters vote in such an election, the ordinance or resolution shall be enacted or repealed. No action undertaken by this procedure shall be overturned by the Tribal Council.
- C. Contractual Obligations: No petition shall be effective if its enactment would impair the obligations of any contract previously authorized by an ordinance or resolution of the Tribal Council, unless such petition is submitted to the Election Board within 30 days of said obligation.

ARTICLE XII - AMENDMENTS

This Constitution may be amended by a majority vote of the voters of the Fort McDowell Yavapai Nation voting in an election called for that purpose by the Secretary of the Interior, provided that at least 30 percent of those who in accordance with Secretarial regulations shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior or by operation of law. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of the Tribal Council or upon receipt of a petition signed by not less than 30 percent of the voters of the Nation.

ARTICLE XIII - ADOPTION OF CONSTITUTION

This Constitution, when adopted by a majority vote of the voters of the Fort McDowell Yavapai Nation voting at a special election authorized by the Secretary of the Interior in which at least 30 percent of those registered in accordance with Secretarial regulations to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and, if approved by the Secretary of the Interior or by operation of law, shall be effective from the date of such approval.

ARTICLE XIV - REPEAL OF PREVIOUS CONSTITUTION AND SAVINGS CLAUSE

ARTICLE XV - SOVEREIGN IMMUNITY

- A. Any duly enrolled member of the Fort McDowell Yavapai Nation may bring an action exclusively in the Fort McDowell Yavapai Judiciary against the Nation or Tribal Council to enforce the terms of this Constitution for equitable and injunctive relief, but this section (2)(A) shall not be deemed a waiver of sovereign immunity for purposes of any monetary damages against the Nation.
- B. The Tribal Council may authorize a waiver of sovereign immunity, but only in writing and in clear and unequivocal language.

Chapter 1 - THE COURT AND PROCEDURE

ARTICLE I. - DEFINITIONS

Sec. 1-1. - Definitions.

- A. Tribal Council means the Fort McDowell Yavapai Nation Tribal Council as the governing body of the Fort McDowell Yavapai Nation.
- B. Court means the appropriate court(s) of the Fort McDowell Yavapai Nation the context of this Code requires.
- C. He/His means he or she, his or her, and the singular includes the plural.
- D. Indian means any person:
 - 1. Who is enrolled or eligible for enrollment in any federally recognized Indian tribe; or,
 - 2. Of no less than one-fourth (¼) degree Indian blood, who can document direct lineal descent from a person, who is enrolled or eligible for enrollment in any federally recognized Indian tribe; or,
 - 3. Of any verifiable quantum of blood of any federally recognized Indian tribe who holds himself out to society to be an Indian and who is generally recognized as an Indian, whether by a tribe, by society, or by the federal government.
- E. Law and Order Code or Code means the Law and Order Code of the Fort McDowell Yavapai Nation, Arizona adopted by Resolution No. 90-30, as amended.
- F. President means the President of the Fort McDowell Community Tribal Council.
- G. Reservation means the Fort McDowell Yavapai Nation.
- H. Nation means the Fort McDowell Yavapai Nation.

(Sec. 1-1 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-1; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Secs. 1-2—1-4. - Reserved.

ARTICLE II. - ESTABLISHMENT OF COURT, JURISDICTION

Sec. 1-5. - Establishment of Court.

In accordance with the powers of the Nation and the constitutional authority of the Tribal Council, there are established tribal judicial forums to be referred to generally as the Courts of the Fort McDowell Yavapai Nation. The Courts of the Fort McDowell Yavapai Nation shall be the courts of original and appellate jurisdiction for the Fort McDowell Yavapai Nation and shall be courts of record. The Courts shall be composed of three (3) divisions: the Appellate Division to be called the Fort McDowell Tribal Court of Appeals; the Juvenile Division to be called the Fort McDowell Juvenile Court; and the Trial Division to be

called the Fort McDowell Tribal Court. These divisions shall have such powers and duties as provided in the Law and Order Code.

(*Sec. 1-5 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.*)

(Law & Order Code 2006, § 1-5; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-6. - Territorial jurisdiction.

The territorial jurisdiction of the Court includes: all land within the exterior boundaries of the Nation including fee patented land, rights-of-way, roads, waters, bridges, and land used for schools, churches, hospitals, or federal departmental or agency use; all lands purchased by the Nation or held in trust by the United States government for the Nation; all allotments, the Indian title to which has not been extinguished or which have or may be converted to trust or restricted status through purchase, devise, gift, or escheat; and, such other lands without the exterior boundaries of the Nation that have been or may be added to the Nation or held in trust for the Nation, or to which alienation has been restricted under any lawful authority of the United States, and any other lands over which the Nation may lawfully exert jurisdiction.

(*Sec. 1-6 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.*)

(Law & Order Code 2006, § 1-6; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-7. - Civil jurisdiction.

- A. The Court may exercise personal and subject matter jurisdiction in all cases consistent with the inherent sovereign powers and federally-delegated powers of the Nation, as well as the constitution, laws and ordinances of the Nation, subject to the provisions of this Law and Order Code.
- B. Bases for personal jurisdiction shall include, but are not limited to:
 - (a) Presence, domicile or residence on the Reservation or other tribal lands;
 - (b) Membership in the Nation;
 - (c) Consent, whether by contract, implication or otherwise, including marriage to a tribal member;
 - (d) Appearance in the Courts of the Fort McDowell Yavapai Nation other than a special appearance for the sole purpose of contesting jurisdiction;
 - (e) Contracting or attempting to contract to insure any person, property or risk located within the Reservation;
 - (f) Doing business or attempting to do business on the Reservation whether in person or by any other method of communication, including entering or attempting to enter into a contract for the sale, lease, use, or purchase of any property or services; when such contract is entered into or is to be performed within the exterior boundaries of the Reservation;
 - (g) Using or attempting to use or purchasing or attempting to purchase any resource or service of the Nation;
 - (h) Engaging in any act on the Reservation;
 - (i) Causing a foreseeable effect or result on the Reservation by an act or omission elsewhere;
 - (j) Ownership, use, or possession of personal property on the Reservation; or,
 - (k) Committing any tortious act on the Reservation.

Tribal Court jurisdiction shall extend to corporations, partnerships, associations, and governmental entities as well as to natural persons; and unless otherwise provided, the word person as used in this Code includes all of the above.

- C. The Court may exercise subject matter jurisdiction:
1. As provided in subsection A of this section, regardless of whether the parties are Indian or non-Indian;
 2. Over all real and personal property located on the Reservation to determine the application of such property to the satisfaction of a claim relating to the property;
 3. Over actions brought before the Court with the consent of all parties; and,
 4. Over actions arising from an event which has occurred within the territorial jurisdiction of the Court.
- D. Nothing in this section shall be construed to effect a waiver of the sovereign immunity of the Nation or limit the Nation's inherent jurisdiction.

(*Sec. 1-7 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.*)

(Law & Order Code 2006, § 1-7; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-8. - Criminal jurisdiction.

- A. The Court shall have criminal jurisdiction over all actions or conduct that constitutes a violation of any provision of this Law and Order Code or any tribal ordinance which either:
1. is designated as a prohibited criminal act; or,
 2. provides for incarceration as a penalty,

when such actions or conduct occur within the territorial jurisdiction of the Court. Nothing in this Code shall be construed as limiting the jurisdiction of the Nation over non-Indians subject to express limitations imposed by the laws of the United States or the Nation.

- B. For the purpose of exercising criminal jurisdiction over offenses contained in Chapter 6 of this Code, the jurisdiction of the Fort McDowell Yavapai Nation shall extend to any jail, prison, or other secure adult or juvenile detention facility utilized by the Fort McDowell Yavapai Nation pursuant to a contract or intergovernmental agreement between the Fort McDowell Yavapai Nation and any state, county, municipality, or other Indian tribe or tribal entity.

(*Sec. 1-8 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.*)

(Law & Order Code 2006, § 1-8; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-9. - Powers and duties of the Courts of the Fort McDowell Yavapai Nation.

- A. Each Court of the Fort McDowell Yavapai Nation shall have the following powers:
1. To preserve and enforce order in its immediate presence.
 2. To enforce order in the proceedings before it, or before a person empowered to conduct a judicial investigation under its authority.
 3. To provide for the orderly conduct of proceedings before it and its officers.

4. To compel obedience to its judgments, orders, and process, and to the orders of a judge or commissioner of the court, in any action or proceeding pending therein.
 5. To control in furtherance of justice the conduct of its officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter pertaining thereto.
 6. To issue subpoenas either on the court's own motion or upon motion of a party to a case to compel the attendance of persons to testify in any action or proceeding pending therein.
 7. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.
 8. To control its procedures and amend its orders so as to make them conformable to law and justice.
 9. To devise, craft, and approve new procedures and forms of proceedings, consistent with the law, necessary to carry into effect its powers, duties, and jurisdiction.
- B. Nothing in subsection A of this section shall be construed to abrogate or limit any inherent power of the Court, and all such powers shall remain vested in the Court unless clearly, specifically, and unequivocally abrogated or limited by federal statute or tribal law.

(Sec. 1-9 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-9; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Secs. 1-10—1-14. - Reserved.

ARTICLE III. - JUDGES; OFFICERS; STAFF; PRACTITIONERS

Sec. 1-15. - Composition of Court; judges; commissioners; judges pro tempore.

- A. The Court shall be composed of one (1) Chief Judge, such Associate Judges as may be deemed necessary by the Tribal Council, and one (1) Juvenile Court Judge.
- B. The Chief Judge may appoint such Court Commissioners as may be deemed necessary. Court Commissioners shall have the same powers, privileges and duties as a judge for the limited purposes of issuing:
 1. Search warrants;
 2. Emergency orders of protection; and
 3. Emergency orders for custody or searches and seizures regarding minors or incompetent persons.
- C. Court Commissioners shall have such other powers and duties as the Chief Judge may prescribe on a case by case basis upon appointment.
- D. The Chief Judge may appoint judges pro tempore from a list of qualified persons approved by the Tribal Council to preside over civil, criminal, or juvenile cases before the Court. Judges pro tempore shall be authorized to perform any judicial function of a judge of the Nation relative to the assigned case while presiding over that case. Judges pro tempore shall be compensated in an amount to be set by the Tribal Council.

(Sec. 1-15 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997. Subsection D amended by Resolution No. Ft. McD. 98-02, effective January 5, 1998. Sec. 1-15(D) amended by Resolution No. Ft. McD. 2004-54, effective April 27, 2004.)

(Law & Order Code 2006, § 1-15; Ft. McD. Res. No. 97-93, eff. 8-23-1997; Ft. McD. Res. No. 98-02, eff. 1-5-1998; Ft. McD. Res. No. 2004-54, eff. 4-27-2004)

Sec. 1-16. - Appointment of judges and commissioners; filling of vacancies; salaries.

- A. The Chief Judge, Associate Judges, and Juvenile Court Judge shall be appointed by the Tribal Council. Should a vacancy occur for Chief Judge, Associate Judge or Juvenile Court Judge through death, prolonged infirmity, physical or mental incapacity, resignation, removal or otherwise, the Tribal Council shall appoint such person as deemed qualified and appropriate to fill such vacancy.
- B. Court Commissioners shall be appointed by the Chief Judge. The Chief Judge shall appoint such persons as deemed qualified and appropriate to serve as Court Commissioners.
- C. Salaries for judges, commissioners, and all other court personnel shall be fixed by the Tribal Council.

(*Sec. 1-16 added by Resolution No. Ft. McD. 97-93, effective August 13, 1997.*)

(Law & Order Code 2006, § 1-16; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-17. - Term of office.

- A. Each judge shall hold office for a period of two (2) years unless sooner removed for cause pursuant to Sec. 1-20, or by reason of the abolition of said office, provided, however that each judge shall be eligible for reappointment at the expiration of his term.
- B. Each Court Commissioner shall serve until he resigns, is removed by the Chief Judge, or as provided by the appointment.

(*Sec. 1-17 added by Resolution No. Ft. McD. 97-93, effective August 13, 1997.*)

(Law & Order Code 2006, § 1-17; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-18. - Qualifications for judges.

- A. No person shall be eligible for judicial office unless all of the following qualifications are met:
 - 1. He is Thirty (30) years of age or older.
 - 2. He is a graduate from high school or has obtained a GED and is proficient in reading, writing and speaking the English language.
 - 3. He has never been convicted of a felony in any court in any jurisdiction, and, within one (1) year of the date of an application filed with the Tribal Council, has not been convicted of a serious misdemeanor in any court of any jurisdiction. A serious misdemeanor shall be considered to be, for purposes of this section, behavior proscribed by Chapter 6 of this Code or equivalent proscribed behavior in any other jurisdiction.
 - 4. He is of good moral character.
 - 5. He consents to undergo such training as the Tribal Council or the President specifies.
 - 6. Any person shall be eligible to serve as Chief Judge, Associate Judge or Juvenile Court Judge, whether or not he is a resident of the Nation.
- B. The Tribal Council shall have the power to set additional qualifications for judicial office above the minimum qualifications enumerated in subsection A of this section.

(Sec. 1-18 added by Resolution No. Ft. McD. 97-93, effective August 13, 1997.)

(Law & Order Code 2006, § 1-18; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-19. - Disqualification to act.

- A. Any judge or court commissioner who believes that, in the course of executing any of his official duties, any of the grounds delineated in subsection C of this section applies to him shall recuse himself from any action or further action in any matter over which he may preside or has presided immediately upon discovery by such judge or court commissioner of the applicability of any such ground.
- B. In any action pending in any Fort McDowell Court, any party may request the disqualification of the judge assigned to hear the case for any of the grounds delineated in subsection C of this section by filing an Affidavit of Disqualification of Judge stating the specific grounds involved, and stating with particularity the facts upon which the requesting party relies in support of the request.
- C. For purposes of this section, grounds for the disqualification of a Tribal Court judge are that the judge:
 - 1. Was counsel at any time in the action presently before the court;
 - 2. Has a material interest in the action;
 - 3. Is kin or related to any party in the action presently before the court;
 - 4. Is a material witness in the action presently before the court; or
 - 5. Is believed to be biased and prejudiced.

For the purposes of this section, bias and prejudice means a hostile feeling or spirit of ill-will, or undue friendship or favoritism, towards one of the parties. The bare fact that a judge may have an opinion as to the merits of the cause or a strong feeling about the type or subject of the litigation involved does not in itself constitute bias or prejudice.

- D. An affidavit pursuant to subsection B of this section shall be filed with the Clerk of the Court and copies served on the presiding judge and all other parties.
- E. An affidavit pursuant to subsection B of this section shall be timely filed and served within ten (10) days after discovery that grounds exist for the disqualification of a judge.
- F. The Clerk of the Court shall schedule a hearing to determine the issues connected with the affidavit. A hearing judge or commissioner other than the challenged Judge shall decide the issues by the preponderance of the evidence and, depending on his findings, may assign a different judge.

(Sec. 1-19 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-19; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-20. - Removal of judges.

- A. Any judge of any Court of the Fort McDowell Yavapai Nation may be suspended, dismissed or removed by the Tribal Council for any of the following reasons:
 - 1. Conviction of a felony in any court.
 - 2. Conviction in any court of bribery, embezzlement, extortion, fraud, forgery, perjury, theft, any alcohol related driving offense, or contributing to the delinquency or dependency of a minor.

3. Being under the influence of alcohol, narcotics or other controlled substances without a prescription, or any other intoxicating substance or vapor while presiding during open court.
 4. Any conduct unbecoming to a judge or which might foster disrepute of or disrespect for the Court, or otherwise adversely affect the integrity of the Court.
 5. Nonfeasance, misfeasance, or malfeasance with regard to official duties.
- B. A judge shall be given full and fair opportunity to reply to any and all charges for which he may be removed from his judicial office. Such judge shall be given a written statement of the charges against him at least ten (10) days prior to any meeting of the Tribal Council where a vote is scheduled to be taken pursuant to subsection C of this section. Such judge shall have the opportunity at any such meeting of the Tribal Council to answer any and all charges, to present documentation and to call witnesses in his behalf.
- C. Removal from office of any judge shall require a majority vote of those Tribal Council members voting at any regular or special meeting where a quorum is present.

(Sec. 1-20 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-20; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-21. - Duties of judges.

The Chief Judge and Associate Judges shall have original jurisdiction and a duty to hear and decide all cases, civil or criminal, in law and equity, in a fair and impartial manner when such cases are properly before the Court, and to exercise the inherent and lawfully delegated powers of a judge and the Court to the end that justice may be administered and law and order maintained. In order to expedite the handling of judicial work, the Chief Judge may assign any judge or court commissioner to aid in the work of another judge.

(Sec. 1-21 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-21; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-22. - Officers of the Court.

Officers of the Court shall include, but are not limited to:

1. Clerk of the Court and any deputy clerks, probation officers, mediators, conciliators, and arbitrators.
2. All persons properly authorized to enforce the laws and ordinances of the Nation as well as resolutions of the Tribal Council when applicable.
3. Legal counsel, attorneys, and non-attorney advocates.
4. Bailiff.
5. Tribal Prosecutor, Assistant Prosecutors, and Juvenile Officer.

(Sec. 1-22 added by Resolution No. Ft. McD. 97-93, effective 13, 1997.)

(Law & Order Code 2006, § 1-22; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-23. - Clerk of the Court; duties.

- A. The Chief Judge shall appoint a qualified person as Clerk of the Court.
- B. The Clerk or his deputy shall process all court filings by marking such filings to show the date and time of day each such filing was received, along with the initials, signature or other identifying mark of the clerk or deputy who received and marked each such filing.
- C. The Clerk or his deputy shall assign a number to each case upon the initial filing of such case. Such number shall include the designation "CR" for criminal cases, "DR" for domestic relations actions pursuant to Chapter 10 of the Code, "CV" for all other civil cases, "JV" for all juvenile delinquency actions, and "CC" for all other actions filed pursuant to Chapter 11 (Juvenile Code), and "TR" for all citations issued pursuant to Chapter 16 of this Code, followed by the last two (2) digits of the calendar year in which each case is filed, followed by the sequential number of the case within each designation in the order filed during each calendar year, e.g., for calendar year 1992:

CR-92-001 - JV-92-001

DR-92-001 - CC-92-001

CV-92-001 - TR-92-001
- D. The Clerk or his deputy shall attend all proceedings and keep a record and verbatim account by shorthand, mechanical, electronic, or electromagnetic means of all proceedings of the Courts of the Fort McDowell Yavapai Nation, administer oaths to witnesses, and mark exhibits.
- E. The Clerk shall be the custodian of all court records.
- F. The Clerk or his deputy shall collect all bonds, bail monies, filing fees and fines required by law or by order of the Court to be paid to the Court; provide a monthly accounting of all such monies collected to the proper tribal officials; and, provide a full accounting to the Tribal Council upon request.
- G. The Clerk shall be the custodian of the Seal of the Court.
- H. The Clerk shall also act as the Clerk of Court for the Fort McDowell Tribal Court of Appeals.
- I. The Clerk shall prepare all transcripts necessary for appellate purposes.
- J. The Clerk shall perform all other related duties as assigned by the Chief Judge.

(Sec. 1-23 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-23; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-24. - Tribal Prosecutor; authority; duties.

The Tribal Council shall appoint a person of suitable education, training, knowledge and experience to act as the Tribal Prosecutor. The Tribal Prosecutor and any duly appointed Assistant Prosecutors shall have the power and authority to sign, file, present, and prosecute on behalf of the Nation any and all complaints and other papers necessary, and to appear on behalf of the Nation, in any criminal proceeding properly before the Court pursuant to this Code.

(Sec. 1-24 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-24; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-25. - Legal counsel.

- A. Any person may represent himself in any civil or criminal action unless the judge presiding over that action determines that such person cannot adequately and competently protect his own interests.

- B. Any attorney licensed to practice law in any state or territory of the United States, who is in good standing with the Bar of that jurisdiction and all other jurisdictions to which said attorney has been admitted, at the time of initial appearance and at all times thereafter during the pendency of any cause in which he is counsel of record, may serve as legal counsel in any criminal or civil proceeding before any Court of the Fort McDowell Yavapai Nation upon filing a Notice of Appearance in writing with the Clerk of the Court that avers both the attorney's state of admission and that the attorney is in good standing in all jurisdictions in which the attorney is admitted to practice and filing a certificate of good standing from a state Bar in which the attorney is admitted to practice.
- C. Any Indian person who is not licensed to practice law in any state or territory of the United States, or in the Federal Court system, shall be permitted to practice before any court of the Fort McDowell Yavapai Nation. The requirement of Indian heritage shall not apply to any person employed by a governmental department, agency, commission or other subordinate entity of the Tribal Council as a non-attorney advocate. Non-attorney advocates shall enter their appearance by filing an action or a notice of appearance in writing with the Clerk of the Court. Non-attorney advocates shall be held to the same standards of knowledge and ability as are expected of attorneys. A person who retains the services of a non-attorney advocate in his defense of a criminal charge against him thereby exercises his right to the assistance of counsel. Any person who retains the services of a non-attorney advocate does so at his own risk regarding the competence of the advocate.
- D. Any person who practices as legal counsel before any Court of the Fort McDowell Yavapai Nation shall be required to have adequate knowledge of substantive and procedural tribal law as set forth in the Law and Order Code and Rules of Court to prosecute or defend their claims.

(Sec. 1-25(B) amended by Resolution No. Ft. McD. 99-106, effective September 9, 1999. Sec. 1-25(B)(1) added by Resolution No. Ft. McD. 2001-102, effective September 18, 2001. Sec. 1-25(B)-(C) further amended by Resolution No. Ft. McD. 2003-82, effective July 15, 2003.)

- E. All persons practicing as legal counsel in the Tribal Court shall conform to the standards of the Model Rules of Professional Conduct of the American Bar Association or such standards as may be established by tribal law or court rule in performance of their duties as legal counsel.
- F. The Chief Judge shall have the duty and authority to:
 - (1) Initiate or receive comments, inquiries, or complaints regarding the competence or professional conduct of any person serving as legal counsel in any action before any court of the Fort McDowell Yavapai Nation.
 - (2) Develop, implement and conduct proceedings to determine whether there exists any factual basis to substantiate a complaint regarding the competence or professional conduct of any person serving as legal counsel in any action before any court of the Fort McDowell Yavapai Nation.
 - (3) Impose an appropriate sanction (including, but not limited to temporary suspension or permanent revocation of the privilege of practicing before the courts of the Fort McDowell Yavapai Nation) against any person serving as legal counsel who the Chief Judge determines has failed to comply with any applicable rule or standard of ethics or professional conduct, or who is found not to have exhibited reasonable competence in the provision of services as legal counsel to his client. Suspension or revocation of the privilege to practice as legal counsel before any court of the Fort McDowell Yavapai Nation shall be by written order to the court, signed by the Chief Judge, stating with particularity the reasons(s) for such action.
- G. Any person adversely affected by the application of the provisions of this section may petition the Fort McDowell Tribal Court of Appeals for review of the action. Such person shall file a memorandum of points and authorities, which shall address only those issues contained in the Order of the Chief Judge issued pursuant to subsection H(3) of this section. After consideration of the Order, pertinent court records, and the memorandum of points and authorities, the Court of Appeals shall affirm, modify or vacate such order.

- H. In the event that an attorney or advocate is held in contempt before any Court of the Fort McDowell Yavapai Nation, the tribal judge or Court commissioner may levy a penalty for said contempt not to exceed the sum of five hundred dollars (\$500.00), and that tribal judge or court commissioner may recommend that the Chief Judge suspend or revoke the privilege to practice before any tribal court. If an attorney or advocate fails to pay a fine for contempt within a reasonable time after exhausting all available appeals or administrative remedies, the Chief Judge shall permanently revoke the privilege of such attorney or advocate to practice before any court of the Fort McDowell Yavapai Nation.

(Sec. 1-25 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-25; Ft. McD. Res. No. 97-93, eff. 8-23-1997; Ft. McD. Res. No. 99-106, eff. 9-9-1999; Ft. McD. Res. No. 2001-102, eff. 9-18-2001; Ft. McD. Res. No. 2003-82, eff. 7-15-2003)

Secs. 1-26—1-39. - Reserved.

ARTICLE IV. - OPERATION OF COURT; PROCEDURES

Sec. 1-40. - Hours of the Court.

The Court shall be open and available for regular judicial business from 8:00 a.m. to 12:00 noon and from 1:30 p.m. to 5:00 p.m. Monday through Thursday and 8:00 a.m. to 12:00 noon on Friday of each week, excepting only those legal holidays observed by the Nation or as otherwise ordered by the President or Tribal Council.

(Sec. 1-40 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-40; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-41. - Court records.

- A. The Clerk of each Court of the Fort McDowell Yavapai Nation shall keep and maintain a record of all proceedings of that Court which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of each hearing or trial and by whom conducted, the findings and orders of the Court, the judgment, originals of all documents filed with the Court, and all other appropriate facts or circumstances.
- B. Except for records of actions filed pursuant to Chapter 11 or Article III of Chapter 10 of this Code, all court records shall be open for inspection by the public. However, the Court, on its own motion or upon request by either party, for good cause and not otherwise in violation of any applicable law, may declare the record of any particular case to be sealed and issue a written order setting forth a basis for that order.

(Sec. 1-41 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 1-41; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 1-42. - Rules of Court; promulgation.

- A. All details of judicial procedure not otherwise prescribed in this Law and Order Code shall be set forth in formal rules of procedure.

- B. The Chief Judge shall have the authority and duty to promulgate such rules of procedure or other rules of court which he deems necessary or appropriate for the effective administration of judicial business.
- C. Prior to the adoption of any court rule, the Chief Judge shall circulate the proposed rule for comment by providing copies of the proposed rule to the Tribal Council and posting a copy of the proposed rule in the court facility for review by court practitioners and the public. Not less than fifteen (15) days after posting the proposed rule, the Chief judge, after consideration of comments submitted, shall declare by court order that such rule is adopted and effective as of the date of the order.
- D. Nothing in this section shall abrogate the authority of the Tribal Council to establish rules of court by amendment or revision of the Law and Order Code.

(*Sec. 1-42 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997.*)

(Law & Order Code 2006, § 1-42; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Secs. 1-43—1-99. - Reserved.

Chapter 2 - BUSINESS CODE

ARTICLE I. - BUSINESS LICENSE

[**HISTORICAL NOTE:** Art. I. was enacted pursuant to Resolution No. Ft. McD. 98-29, effective April 27, 1998.]

Sec. 2-1. - Business license.

All persons, associations, companies, firms or corporations conducting or engaged in any business or trade within the Fort McDowell Yavapai must obtain a license from the Nation and pay a license fee as provided in Section 2-7. The license shall authorize the licensee to transact the business or trade described in the license for a particular time period and within a particular area within the exterior boundaries of the Reservation as described in the license. Separate licenses shall be obtained for each branch establishment or each separate location on the Reservation. However, a particular project with multiple sites (e.g. housing project) may constitute a single location.

(Law & Order Code 2006, § 2-1; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Sec. 2-2. - Application and issuance.

- A. An Application for a business license shall be submitted in writing to the Land Use and Lease Manager or other individual authorized by the Tribal Council of the Nation on a form approved by the Fort McDowell Yavapai Nation. The application shall include, among other things, the following information:
 - 1. A description of the business or trade; and
 - 2. The name and address of the owner or owners of the business or trade, including proof of identification; and
 - 3. The trade name, if any, to be used by the business or trade; and
 - 4. The location at which the business or trade will be conducted; and
 - 5. The time period in which the business will be conducted.

- B. A check, money order, or cash, as provided for in the Fee Schedule as described in Section 2-7 of this Article, payable to the Fort McDowell Yavapai Nation shall accompany each application.
- C. Upon approval of the application by the Land Use and Lease Manager and payment of the prescribed fee, a business license shall be issued to the applicant on a form approved by the Tribal Council. The business license shall be signed by the Land Use and Lease Manager of the Nation or his authorized representative, and the General Manager of the Nation, or his authorized representative. The license shall specifically describe, among other things, (1) the business or trade to be conducted, (2) the name of the owner or owners of the business or trade, (3) the trade name, if any, to be used by the business or trade, (4) the time period the business will be conducted, and (5) the location at which the business or trade will be conducted.
- D. Upon receipt of each application, the Land Use and Lease Manager shall conduct such investigation of the applicant's business and moral character as he deems necessary for the protection of the public good. If as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Land Use and Lease Manager shall notify the applicant that his application is disapproved and that no license will be issued. If the character and business responsibility of the applicant are found to be satisfactory, the Land Use and Lease Manager shall endorse and deliver the license to the applicant after obtaining all required signatures and approvals. If a license is denied pursuant to this subsection, the applicant shall be entitled to an appeal under the same procedures set forth in Section 2-9(B), Revocation of License.
- E. No business license issued pursuant to this chapter is transferable or assignable.

(Law & Order Code 2006, § 2-2; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Sec. 2-3. - Estimate of business receipts.

All applicants for a business license or renewal of a business license shall submit an estimate of the probable amount of gross receipts which he will transact during each of the next succeeding three (3) months, and during the term of the license. The statement shall be based on the amount of business transacted by such person in the preceding months, if any.

(Law & Order Code 2006, § 2-3; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Sec. 2-4. - Term of license.

- A. Short Term Business License: A short term business license shall be issued for a period of less than six (6) months, such period to be specifically set forth on the license.
- B. Annual Business License: An annual business license or renewal thereof shall be issued for a period of one (1) year. Businesses within the confines of a Tribally Owned Industrial Park, Retail Development, or other such multi-tenant Tribal enterprise, or any business chartered by the Nation, and such other business as specifically authorized by the Tribal Council may be issued Annual Business Licenses. If appropriate, the licenses may contain automatic renewal provisions that provide the license will renew automatically unless the Nation provides notice of cancellation. Licenses of longer duration must be approved by the Tribal Council.
- C. Perpetual Business License: Non-profit charitable, religious or educational organizations may be issued perpetual business licenses. These perpetual licenses shall be approved by the Tribal Council and are subject to the termination provisions contained in Section 2-9 of this Article.

(Law & Order Code 2006, § 2-4; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Sec. 2-5. - Transacting business without a license or transacting business in violation of the terms of the license.

- A. Any person, association, company, firm or corporation conducting or engaging in any business within the Reservation without a valid business license shall be notified of their liability for the business license fee and any applicable taxes by either the Land Use and Lease Department or the Tribal Police. After receiving such notification, the party shall not conduct any business within the jurisdiction or Territory of the Nation. If a party continues to conduct business after the notification or conducts business in violation of his license, the party's personal property used to conduct said business, along with any goods of the party, shall be subject to forfeiture and the party is subject to removal from the Territory of the Nation. The party may also be liable for any or all of the sanctions imposed by Chapter 7.5, Civil Trespass and any other applicable codes or ordinances. Tribal law enforcement officials are authorized to enforce this section, including removal and forfeiture, at any time after the party receives notice of noncompliance under this section and continues to violate any provision of this Article.
- B. If a party enters into a Contract or Agreement without a valid business license when that party is required to possess a license under this Article, the Contract or Agreement entered into shall be considered voidable by the other party to the Contract or Agreement.
- C. For the purposes of this Chapter and this Law and Order Code, a third party is defined as "Any person, agent, an employee of or a representative of any association, company, firm, legal entity, or corporation which does not have an existing contract with, or have an agreement with the Fort McDowell Yavapai Nation or any of its enterprises and is attempting to conduct business affecting the existing contractual relationship within the boundaries of the Fort McDowell Yavapai Nation." Contracts entered into by the Fort McDowell Yavapai Nation or its enterprises do not, as a matter of Tribal law, do not create third party beneficiaries.

(Law & Order Code 2006, § 2-5; Ft. McD. Res. No. 98-29, eff. 4-27-1998; Ft. McD. Res. No. 2008-78, ex. A, adopted 12-16-2008)

Sec. 2-6. - Complying with laws and regulations.

Any person or business operating within the boundaries of the Nation shall comply with all laws and regulations of the Nation and any applicable Federal laws and regulations. If a person, association, company, firm or corporation conducts any business within the Nation, with or without a Tribal license, permit or lease, the party shall be deemed to consent to the jurisdiction of the Courts of the Fort McDowell Yavapai Nation unless the parties expressly, knowingly and mutually agree to another jurisdiction in an Agreement (e.g., boiler plate language in a consumer contract would not qualify as an expressed and mutual agreement).

(Law & Order Code 2006, § 2-6; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Sec. 2-7. - License fee.

- A. Except as provided in Subsection B, every person or business issued or reissued a business license shall pay a license fee as may be set from time to time by the Tribal Council in a Fee Schedule. The Fee Schedule shall set forth the applicable daily, weekly, monthly, and yearly rates for designated types of businesses. If a party requests a license for a business not covered under the Fee Schedule, the license and the amount of the license must be approved by the Tribal Council.
- B. Exceptions:
 - (a) The business license fee for members of the Nation and for businesses owned and operated by members of the Nation shall be waived. To be exempt, a Tribal member operated business

must be at least fifty-one (51) percent owned by a member or members. However, this waiver shall not except said member or business of member from complying with the remainder of this Article.

- (b) Any business duly licensed under the Nation's gaming ordinance by the Tribal Gaming Office shall not be required to obtain a business license as provided in this Article and shall not be required to pay the fees set out in the Fee Schedule.
- (c) Any business conducting business pursuant to a valid permit or lease shall not be required to obtain a business license as provided in this Article and shall not be required to pay the fees set out in the Fee Schedule, provided however, that the business activities they are conducting conform to the terms of the permit or lease.
- (d) Any other exceptions approved by a duly authorized resolution of the Tribal Council.

(Law & Order Code 2006, § 2-7; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Sec. 2-8. - Regulatory license.

If any other ordinance or law of the Nation requires a business licensed under this ordinance to obtain a license or permit for regulatory purposes, no license under this ordinance shall be issued until the business has obtained such other required license or permit.

(Law & Order Code 2006, § 2-8; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Sec. 2-9. - Revocation of license.

- A. Licenses issued under the provisions of this chapter may be revoked after twenty-four (24) hours notice, for any of the following causes:
 - 1. Fraud, misrepresentation or incorrect statement contained in the application for license; or
 - 2. Fraud, misrepresentation or incorrect statement made in the course of carrying on his business; or
 - 3. Conviction of any crime; or
 - 4. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a danger to the health, safety or general welfare of the public.
 - 5. Conducting business or third-party activities in violation of Chapter 7, Section 7.5-2 or Chapter 15, Section 15-2(F) of this Code.
- B. Notice of Termination under subsection A shall be given by the Land Use and Lease Manager, in writing, setting forth the specific grounds of the complaint and the opportunity for a hearing before the Planning Advisory Board of the Nation. Such notice shall be mailed to the licensee at his last known address or shall be delivered by a Tribal police officer. Notice by mail to the licensee's last known address shall be deemed received not more than three (3) days following mailing the notice. After receiving a notice of termination, a licensee may request a hearing before the Fort McDowell Planning Board by submitting a request for hearing, in writing, within five (5) days after receiving the notice of termination. If a licensee requests a hearing, the hearing shall be held at the next regularly scheduled Planning Board meeting following the request. The decision of the Planning Board shall be final.
- C. Any License issued under the provisions of this Chapter may be revoked and/or terminated by the Nation, at its convenience and for any reason, by providing the licensee with thirty (30) days written notice of termination. No hearing shall be available in the event of termination for convenience.

(Law & Order Code 2006, § 2-9; Ft. McD. Res. No. 98-29, eff. 4-27-1998; Ft. McD. Res. No. 2008-78, ex. B, adopted 12-16-2008)

Sec. 2-10. - Exceptions and waivers.

The Tribal Council may grant exceptions and waivers to the requirements of this Article. Any such exception or waiver must be specifically stated in a duly authorized Tribal Council resolution.

(Law & Order Code 2006, § 2-10; Ft. McD. Res. No. 98-29, eff. 4-27-1998)

Secs. 2-11—2-99. - Reserved.

ARTICLE II. - SECURED OBLIGATIONS ORDINANCE

[**HISTORICAL NOTE:** Art. II. was enacted pursuant to Resolution No. Ft. McD. 2004-3, effective January 6, 2004]

Sec. 2-100. - Pledge of collateral and attachment or attachment or security interest.

- A. A pledge of collateral by the Nation to secure directly or indirectly the payment of principal or redemption price of, or interest on, any bonds, or any reimbursement or similar agreement with any provider of credit enhancements for bonds, any interest rate swap or similar financial transaction, or the payment of any other obligations, which is issued by or entered into by the Nation, shall be valid and binding in accordance with the terms of the pledge documents from the time the pledge is made for the benefit of pledges and successors thereto.
- B. The collateral shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the collateral and be effective, binding and enforceable against the pledgor, its successors, purchasers of the collateral, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the pledge document irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

(*Sec. 2-100 added by Resolution No. Ft. McD. 2004-3, effective January 6, 2004*).

(Law & Order Code 2006, § 2-100; Ft. McD. Res. No. 2004-3, eff. 1-6-2004)

Secs. 2-101—2-199. - Reserved.

ARTICLE III. - LIMITED LIABILITY COMPANY ORDINANCE

[**HISTORICAL NOTE:** Art. III. was enacted pursuant to Resolution No. Ft. McD. 2004-88, effective July 30, 2004. It was originally labeled as Art. II.]

DIVISION I. - GENERAL PROVISIONS

Sec. 2-200. - General.

1. Purpose: The Fort McDowell Yavapai Nation Tribal Council, governing body of the Nation under the Nation's Constitution, pursuant to the Indian Reorganization Act of 1934, hereby establishes an ordinance for the formation of limited liability companies under tribal law.

(Law & Order Code 2006, § 2-200; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-201. - Definitions.

As used in Article III unless the context otherwise requires:

1. **Bankruptcy** means an event that causes a person to cease to be a member as provided in § 2-253 of this ordinance.
2. **Articles of organization** means the Articles referred to in § 2-225 of this ordinance, and the Articles as amended or restated.
3. **Contribution** means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.
4. **Foreign limited liability company** means a limited liability company formed under laws other than the laws of the Nation.
5. **Knowledge** means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact.
6. **Limited liability company and domestic limited liability company** means a limited liability company formed under the laws of the Nation and having one (1) or more members.
7. **Limited liability company agreement or operating agreement** means any agreement, written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business. The operating agreement of a limited liability company having only one (1) member shall not be unenforceable by reason of there being only one (1) person who is a party to the operating agreement. A written operating agreement or another written agreement or writing:
 - (a) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the operating agreement:
 1. If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee; or
 2. Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing; and
 - (b) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subparagraph a. of this paragraph, or by reason of its having been signed by a representative as provided in this article.
8. **Limited liability company interest** means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.
9. **Liquidating trustee** means a person carrying out the winding up of a limited liability company.
10. **Manager** means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, the Operating Agreement or similar instrument under which the limited liability company is formed.

11. **Member** means a person who has been admitted to a limited liability company as a member as provided in § 2-250 of this ordinance or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.
12. **Nation** means the Fort McDowell Yavapai Nation.
13. **Nation owned limited liability company** means a limited liability company of which the Nation or its enterprises is a member.
14. **Person** means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.
15. **Personal representative** means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.
16. **Reservation** means any real property belonging to the Nation or its members or any real property located within the geographic boundaries of the land described as the Fort McDowell Yavapai Nation Reservation or any real property granted to the Nation by subsequent acts of Congress.
17. **Secretary of the Tribal Council or Secretary** means the Secretary of the Tribal Council of the Nation.
18. **State** means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the Nation.
19. **Tribal Attorney or General Counsel** means the attorney employed by the Nation so designated.
20. **Tribal Council** means the Nation's Tribal Council.
21. **Tribal Court Clerk** means the clerk of the Nation's Tribal Court.
22. **Tribal Court** means the Fort McDowell Yavapai Nation's Tribal Court established by the Nation.

(Law & Order Code 2006, § 2-201; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-202. - Name set forth in articles of organization.

The name of each limited liability company as set forth in its articles of organization:

1. Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC";
2. May contain the name of a member or manager;
3. Must be such as to distinguish it upon the records in the office of the Secretary of the Tribal Council from the name of any corporation or limited liability company reserved, registered, formed or organized under the laws of the Nation or qualified to do business or registered as a foreign corporation or foreign limited liability company by the Nation; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of the Tribal Council from the name of any domestic or foreign corporation or limited liability company reserved, registered, formed or organized under the laws of the Nation with the written consent of the other corporation or limited liability company, which written consent shall be filed with the Secretary of the Tribal Council; and
4. May contain the following words: "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited" or "Trust" (or abbreviations of like import).

(Law & Order Code 2006, § 2-202; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-203. - Reservation of name.

- A. The exclusive right to the use of a name may be reserved by:
- (1) Any person intending to organize a limited liability company under Article III and to adopt that name;
 - (2) Any domestic limited liability company or any foreign limited liability company registered by the Nation which, in either case, proposes to change its name;
 - (3) Any foreign limited liability company intending to register with the Nation and adopt that name; and
 - (4) Any person intending to organize a foreign limited liability company and intending to have it register by the Nation and adopt that name.
- B. The reservation of a specified name shall be made by filing with the Secretary of the Tribal Council an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. The Secretary of the Tribal Council shall then, at the next regular meeting or special meeting of the Tribal Council, request a Tribal Council resolution determining whether or not such specified name is available for use. If the Tribal Council, in its sole discretion, finds that the name is available for use by a domestic or foreign limited liability company, the Secretary shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty (120) days. Once having so reserved a name, the same applicant may again reserve the same name for successive one hundred twenty-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of the Tribal Council a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. However, such transfer shall become effective only upon prior approval by the Tribal Council embodied in a Tribal Council resolution. The reservation of a specified name may be cancelled by filing with the Secretary of the Tribal Council a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Unless the Secretary of the Tribal Council finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of the Tribal Council as required by this subsection does not conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of the Tribal Council.
- C. A fee as set forth in § 2-454(a)(1) of this ordinance shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

(Law & Order Code 2006, § 2-203; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-204. - Registered office; registered agent.

- A. Each limited liability company shall have and maintain within the Nation:
- (1) A registered office, which may but need not be a place of its business within the Nation; and
 - (2) A registered agent for service of process on the limited liability company, which agent may be an individual person, resident of the Nation, or member of the Nation eighteen (18) years of age or older whose business office is identical with the limited liability company's registered office, or a domestic corporation, or a domestic limited liability company, or a foreign corporation, or a foreign limited liability company authorized to do business within the Nation having a business office identical with such registered office, which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent, or the limited liability company itself.

- B. A registered agent may change the address of the registered office of the limited liability company(ies) for which such registered agent is registered agent to another address within the Nation by paying a fee as set forth in § 2-454(a)(2) of this ordinance and filing with the Secretary of the Tribal Council a certificate, executed by such registered agent, setting forth the names of all the limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such limited liability companies, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies recited in the certificate. Upon the filing of such certificate, the Secretary of the Tribal Council shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office within the Nation of each of the limited liability companies recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary of the Tribal Council a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such limited liability companies, and shall pay a fee as set forth in § 2-454(a)(2) of this ordinance. Upon the filing of such certificate, the Secretary of the Tribal Council shall furnish to the registered agent a certified copy of the certificate under the Secretary's hand and seal of office. Filing a certificate under this section shall be deemed to be an amendment of the articles of organization of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its articles of organization under § 2-226 of this ordinance. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.
- C. The registered agent of one (1) or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 2-454(a)(2) of this ordinance and filing a certificate with the Secretary of the Tribal Council, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office within the Nation. The Secretary of the Tribal Council shall furnish to the successor registered agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the articles of organization of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its articles of organization under § 2-226 of this ordinance.
- D. The registered agent of a limited liability company may resign without appointing a successor registered agent by paying a fee as set forth in § 2-454(a)(2) of this ordinance and filing a certificate with the Secretary of the Tribal Council stating that it resigns as registered agent for the limited liability company identified in the certificate, but such resignation shall not become effective until one hundred twenty (120) days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or the president, a vice-president or the secretary thereof if a corporation, that at least thirty (30) days prior to and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to the limited liability company for which such registered agent is resigning as registered agent, at the principal office thereof within or outside the Nation, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such limited liability company, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so

resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of one hundred twenty (120) days after the filing by the registered agent of the certificate of resignation, the articles of organization of such limited liability company shall be deemed to be cancelled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of the Tribal Council in accordance with § 2-206(b) of this ordinance.

(Law & Order Code 2006, § 2-204; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-205. - Service of process on domestic limited liability companies.

- A. Service of legal process upon any domestic limited liability company shall be made by delivering a copy personally to any manager of the limited liability company or the registered agent of the limited liability company, or by leaving it at the dwelling house or usual place of abode of any such manager or registered agent (if the registered agent is an individual), or at the registered office or other place of business of the limited liability company. If the registered agent be a corporation, service of process upon it as such may be made by serving, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of a manager or registered agent, or at the registered office or other place of business of the limited liability company, to be effective, must be delivered thereat at least six (6) days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the manager or registered agent.
- B. In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection A of this section, it shall be lawful to serve the process against the limited liability company upon the Secretary of the Tribal Council, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection A of this section. In the event that service is effected through the Secretary of the Tribal Council in accordance with this subsection, the Secretary of the Tribal Council shall forthwith notify the limited liability company by letter, certified mail, return receipt requested, directed to the limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary of the Tribal Council or, if no such address appears, at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of the Tribal Council pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Tribal Council that service is being effected pursuant to this subsection, and to pay the Secretary of the Tribal Council the sum of fifty dollars (\$50.00) for the use of the Nation, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of the Tribal Council shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the ordinance, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of the Tribal Council shall not be required to retain such information for a period longer than five (5) years from the Secretary's receipt of the service of process.
- C. In the case of any Nation owned limited liability company, in addition to the requirements of this section, a copy of the service of legal process shall be delivered to the General Counsel of the Nation. Any tribally owned LLC shall be exempt from the fee described in subsection B above.

(Law & Order Code 2006, § 2-205; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-206. - Nature of business permitted; powers.

- A. A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of granting policies of insurance, or assuming insurance risks or banking.
- B. A limited liability company shall possess and may exercise all the powers and privileges granted by Article III or by any other law of the Nation or by its operating agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

(Law & Order Code 2006, § 2-206; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-207. - Business transactions of member or manager with the limited liability company.

Except as provided in the operating agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one (1) or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

(Law & Order Code 2006, § 2-207; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-208. - Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its operating agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

(Law & Order Code 2006, § 2-208; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-209. - Service of process on managers and liquidating trustees.

- A. A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings in Tribal Court involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company, or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company (or, if there is none, the Secretary of the Tribal Council) as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee and such appointment of the registered agent (or, if there is none, the Secretary of the Tribal Council) shall be irrevocable. As used in this subsection A and in subsections B, C and D of this section, the term "manager" refers (i) to a person who is a manager as defined in § 2-201(10) of this ordinance and (ii) to a person, whether or not a member of a limited liability company, who, although not a manager as defined in § 2-201(10) of this ordinance, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 2-201(10) of this ordinance shall not, by itself, constitute participation in the management of the limited liability company.

- B. Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of the Tribal Council) with one (1) copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of the Tribal Council, the plaintiff shall pay to the Secretary of the Tribal Council the sum of fifty dollars (\$50.00) for the use of the Nation, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Tribal Court Clerk in which the civil action or proceeding is pending shall, within seven (7) days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the registered office of the limited liability company and at the manager's or liquidating trustee's address last known to the party desiring to make such service.
- C. In any action in which any such manager or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Tribal Court Clerk as provided in subsection B of this section; however, the Tribal Court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such manager or liquidating trustee reasonable opportunity to defend the action.
- D. Unless the operating agreement provided otherwise, the manager(s) and each member of the limited liability company consents to be subject to the jurisdiction of the Tribal Court. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction, a member who is not a manager may not waive its right to maintain a legal action or proceeding in the Tribal Court with respect to matters relating to the organization or internal affairs of a limited liability company.
- E. Nothing herein contains limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.
- F. The Tribal Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

(Law & Order Code 2006, § 2-209; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-210. - Contested matters relating to managers; contested votes.

- A. Upon application of any member or manager, the Tribal Court may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than one (1) person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. All members shall be provided a copy of the application. The Tribal Court may make such order respecting further or other notice of such application as it deems proper under these circumstances. Unless the operating agreement provides

otherwise, the Tribal Court shall have exclusive jurisdiction to hear the matters contained in this subsection A.

- B. Upon application of any member or manager, the Tribal Court may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the operating agreement or other agreement or Article III (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the Tribal Court to adjudicate the result of the vote. The Tribal Court may make such order respecting further or other notice of such application as it deems proper under these circumstances. Unless the operating agreement provides otherwise, the Tribal Court shall have exclusive jurisdiction to hear the matters contained in this section 2-210.
- C. Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(Law & Order Code 2006, § 2-210; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-211. - Interpretation and enforcement of operating agreement.

Any action to interpret, apply or enforce the provisions of the operating agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, may be brought in the Tribal Court. Unless the operating agreement provides otherwise, the Tribal Court shall have exclusive jurisdiction to hear the matters contained in this section 2-211.

(Law & Order Code 2006, § 2-211; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-212—2-224. - Reserved.

DIVISION II. - FORMATION; ARTICLES OF ORGANIZATION

Sec. 2-225. - Articles of organization.

- A. In order to form a limited liability company, one (1) or more authorized persons must execute articles of organization. The articles of organization shall be filed in the office of the Secretary of the Tribal Council and set forth:
 - (1) The name of the limited liability company;
 - (2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 2-204 of this ordinance; and
 - (3) The name of each manager and member and a statement that the limited liability company and each manager and member consents to at least be subject to the non-exclusive jurisdiction of the Tribal Court and any other matters the members determine to include therein.
- B. In order to establish a limited liability company:
 - (1) The Secretary of the Tribal Council shall, at the next regular meeting or special meeting of the Tribal Council, request a motion determining whether or not such a limited liability company may be formed;

- (2) The Tribal Council, in its sole discretion, may decide by a Tribal Council resolution whether or not such a limited liability company may be formed; and
 - (3) A limited liability company is formed at the time of passage of a Tribal Council resolution approving the initial articles of organization filed in the office of the Secretary of the Tribal Council or at any later date or time specified in the articles of organization if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under Article III shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's articles of organization.
- C. The operating agreement may be entered into either before, after or at the time of the filing of a articles of organization and, whether entered into before, after or at the time of such filing, may be made effective as of the formation of the limited liability company or at such other time or date as provided in the operating agreement.

(Law & Order Code 2006, § 2-225; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-226. - Amendment to articles of organization.

- A. The articles of organization are amended by filing articles of amendment thereto in the office of the Secretary of the Tribal Council. The articles of amendment shall set forth:
 - (1) The name of the limited liability company; and
 - (2) The amendment to the articles of organization.
- B. A manager or, if there is no manager, then any member who becomes aware that any statement in the articles of organization was false when made, or that any matter described has changed making the articles of organization false in any material respect, shall promptly amend the articles of organization.
- C. The articles of organization may be amended at any time for any other proper purpose.
- D. Upon prior approval by resolution by the Tribal Council, which approval may not be unreasonably withheld and unless otherwise provided in Article III or unless a later effective date or time (which shall be a date or time certain) is provided for in the articles of amendment, articles of amendment shall be effective at the time of its filing with the Secretary of the Tribal Council.

(Law & Order Code 2006, § 2-226; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-227. - Cancellation of articles of organization.

The articles of organization shall be cancelled upon the dissolution and the completion of winding up of a limited liability company, or as provided in § 2-204(d) of Article III, or upon the filing of the articles of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation. Articles of termination shall be filed in the office of the Secretary of the Tribal Council to accomplish the cancellation of the articles of organization upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- A. The name of the limited liability company;
- B. The date of filing of its articles of organization;
- C. The reason for filing the articles of termination;
- D. The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the articles of termination; and
- E. Any other information the person filing the articles of termination determines.

(Law & Order Code 2006, § 2-227; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-228. - Execution.

- A. Each document required by Article III to be filed in the office of the Secretary of the Tribal Council shall be executed by one (1) or more authorized persons.
- B. Unless otherwise provided in the operating agreement, any person may sign any certificate, articles, or amendment thereof or enter into the operating agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate, articles, or amendment thereof or to enter into the operating agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the office of the Secretary of the Tribal Council, but if in writing, must be retained by the limited liability company.
- C. The execution of a certificate or articles by an authorized person constitutes an oath or affirmation, under the penalties of perjury, that, to the best of the authorized person's knowledge and belief, the facts stated therein are true.

(Law & Order Code 2006, § 2-228; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-229. - Execution, amendment or cancellation by judicial order.

- A. If a person required to execute a certificate or articles required by this Article III fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the certificate or articles. If the Tribal Court finds that the execution of the certificate or articles is proper and that any person so designated has failed or refused to execute the certificate or articles, it shall order the Secretary of the Tribal Council to record an appropriate certificate or articles.
- B. If a person required to execute the operating agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the operating agreement or amendment thereof. If the Tribal Court finds that the operating agreement or amendment thereof should be executed and that any person required to execute the operating agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

(Law & Order Code 2006, § 2-229; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-230. - Filing.

- A. The original signed copy of the articles of organization, the certificate of correction and of any articles of amendment, termination, amendment of the articles of merger or consolidation, termination of a merger or consolidation or cancellation (or of any judicial decree of amendment or termination), and of any articles of merger or consolidation, any restated articles, any articles of transfer, and any "articles of revival" shall be delivered to the Secretary of the Tribal Council. A person who executes a certificate or articles as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Any signature on any certificate or articles authorized to be filed with the Secretary of the Tribal Council under any provision of Article III may be a facsimile, a conformed signature or an electronically transmitted signature. Unless the Secretary of the Tribal Council finds that any certificate or articles does not conform to law, upon receipt of all filing fees required by law and upon the performance of any action of the Tribal Council required under the provisions of this ordinance the Secretary of the Tribal Council shall:

- (1) Certify that the articles of organization, the articles of amendment, the certificate of correction, the articles of amendment of the articles of merger or consolidation, the articles of termination of a merger or consolidation, the articles of termination (or of any judicial decree of amendment or cancellation), the articles of merger or consolidation, the restated articles, the articles of transfer or the articles of revival has been filed in the Secretary of the Tribal Council's office by endorsing upon the original certificate the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;
 - (2) File and index the endorsed certificate or articles; and
 - (3) Prepare and return to the person who filed it or that person's representative a copy of the original signed instrument, similarly endorsed, and shall certify such copy as a true copy of the original signed instrument.
- B. Upon the filing of articles of amendment (or judicial decree of amendment), certificate of correction or restated articles in the office of the Secretary of the Tribal Council, or upon the future effective date or time of articles of amendment (or judicial decree thereof) or restated articles, as provided for therein, the articles of organization shall be amended or restated as set forth therein. Upon the filing of the articles of termination (or a judicial decree thereof), or the articles of merger or consolidation which acts as an articles of termination or a articles of transfer, or upon the future effective date or time of an articles of termination (or a judicial decree thereof) or of the articles of merger or consolidation which acts as an articles of termination or articles of transfer, as provided for therein, or as specified in § 2-204(d) of this ordinance, the articles of organization is cancelled. Upon the filing of articles of amendment of articles of merger or consolidation, the articles of merger or consolidation identified in the articles of amendment of the articles of merger or consolidation is amended. Upon the filing of articles of termination of a merger or consolidation, the articles of merger or consolidation identified in the articles of termination of a merger or consolidation is terminated. Upon the filing of articles of revival, the limited liability company is revived with the effect provided in § 2-456 of this ordinance.
- C. A fee as set forth in § 2-454(a)(3) of this ordinance shall be paid at the time of the filing of articles of organization, articles of amendment, a certificate of correction, articles of amendment of the articles of merger or consolidation, articles of termination of a merger or consolidation, an articles of termination, articles of merger or consolidation, a restated articles, an articles of transfer or articles of revival.
- D. A fee as set forth in § 2-454(a)(4) of this ordinance shall be paid for a certified copy of any paper on file as provided for by Article III, and a fee as set forth in § 2-454(a)(5) of this ordinance shall be paid for each page copied.

(Law & Order Code 2006, § 2-230; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-231. - Notice.

The fact that the articles of organization is on file in the office of the Secretary of the Tribal Council is notice that the entity formed in connection with the filing of the articles of organization is a limited liability company formed under the laws of the Nation and is notice of all other facts set forth therein which are required to be set forth in the articles of organization by § 2-225(a)(1) and (2) of this ordinance.

(Law & Order Code 2006, § 2-231; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-232. - Restated articles of organization.

- A. A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its articles of organization which are then in effect and operative as a result of there having theretofore been filed with the Secretary of the Tribal Council one (1) or more certificates or articles or other instruments pursuant to any of the sections referred to in this Article III, and it may at

the same time also further amend its articles of organization by adopting a restated articles of organization.

- B. If a restated articles of organization merely restates and integrates but does not further amend the initial articles of organization, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in Article III, it shall be specifically designated in its heading as a "Restated Articles of Organization" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in § 2-230 of this ordinance in the office of the Secretary of the Tribal Council. If a restated articles restates and integrates and also further amends in any respect the articles of organization, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Articles of Organization" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one (1) authorized person, and filed as provided in § 2-230 of this ordinance in the office of the Secretary of the Tribal Council.
- C. A restated articles of organization shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original articles of organization with the Secretary of the Tribal Council, and the future effective date or time (which shall be a date or time certain) of the restated articles if it is not to be effective upon the filing of the restated articles. Restated articles shall also state that it was duly executed and is being filed in accordance with this section. If a restated article only restates and integrates and does not further amend a limited liability company's articles of organization as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated articles, it shall state that fact as well.
- D. Upon the filing of a restated articles of organization with the Secretary of the Tribal Council, or upon the future effective date or time of a restated articles of organization as provided for therein, the initial articles of organization, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated articles of organization, including any further amendment or changes made thereby, shall be the articles of organization of the limited liability company, but the original effective date of formation shall remain unchanged.
- E. Any amendment or change effected in connection with the restatement and integration of the articles of organization shall be subject to any other provision of Article III, not inconsistent with this section, which would apply if a separate article of amendment were filed to effect such amendment or change.

(Law & Order Code 2006, § 2-232; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-233. - Merger and consolidation.

- A. As used in this section, "other business entity" means a corporation, or a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), and a foreign limited liability company, but excluding a domestic limited liability company.
- B. Pursuant to a written agreement of merger or consolidation, one (1) or more domestic limited liability companies, may merge or consolidate with or into one (1) or more domestic limited liability companies or one (1) or more other business entities formed or organized under the laws of the Nation or any other Nation or any state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability companies or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability companies or other business entity. Unless otherwise provided in the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty (50)

percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

- C. If a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file the articles of merger or consolidation executed by one (1) or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the office of the Secretary of the Tribal Council. The articles of merger or consolidation shall state:
- (1) The name and jurisdiction of formation or organization of each of the domestic limited liability companies and other business entities which is to merge or consolidate;
 - (2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies and other business entities which is to merge or consolidate;
 - (3) The name of the surviving or resulting domestic limited liability company or other business entity;
 - (4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;
 - (5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;
 - (6) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and
 - (7) If the surviving or resulting entity is not a domestic limited liability company or a corporation organized under the laws of the Nation, a statement that such surviving or resulting other business entity agrees that the Company and each Manager or Member consents to at least be subject to the non-exclusive jurisdiction of the Tribal Court, that it may be served with process within the Nation in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the Secretary of the Tribal Council as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of the Tribal Council. In the event of service hereunder upon the Secretary of the Tribal Council, the procedures set forth in § 2-405(c) of this ordinance shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of the Tribal Council with the address specified in the articles of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of the Tribal Council, and the Secretary of the Tribal Council shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 2-405(c) of this ordinance.

- D. Unless a future effective date or time is provided in the articles of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of the Tribal Council of the articles of merger or consolidation. If the articles of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is amended to change the future effective date or time, or if an agreement of merger or consolidation permits the articles of merger or consolidation to be amended to change the future effective date or time without an amendment to the agreement of merger or consolidation, or if an agreement of merger or consolidation is amended to change any other matter described in the articles of merger or consolidation so as to make the articles of merger or consolidation false in any material respect, as permitted by subsection B of this section prior to the future effective date or time, the articles of merger or consolidation shall be amended by the filing of articles of amendment of the articles of merger or consolidation which shall identify the articles of merger or consolidation and the agreement of merger or consolidation, if applicable, which has been amended and shall state that the agreement of merger or consolidation, if applicable, has been amended and shall set forth the amendment to the articles of merger or consolidation. If the articles of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is terminated as permitted by subsection B of this section prior to the future effective date or time, the articles of merger or consolidation shall be terminated by the filing of articles of termination of a merger or consolidation which shall identify the articles of merger or consolidation and the agreement of merger or consolidation which has been terminated and shall state that the agreement of merger or consolidation has been terminated.
- E. Articles of merger or consolidation shall act as articles of termination for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation. Whenever this section requires the filing of the articles of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the articles of merger or consolidation.
- F. An agreement of merger or consolidation approved in accordance with subsection B of this section may:
- (1) Effect any amendment to the operating agreement; or
 - (2) Effect the adoption of a new operating agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

Any amendment to the operating agreement or adoption of a new operating agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in the operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the operating agreement of the surviving or resulting limited liability company.

- G. When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Nation, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the ordinance to any real property vested by deed or otherwise, under the laws of the Nation, in any of such domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of Article III; but all rights of creditors and all liens upon

any property of any of said domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under § 2-377 of this ordinance or pay its liabilities and distribute its assets under § 2-378 of this ordinance.

Sec. 2-234. - Reserved.

Sec. 2-235. - Certificate of correction.

- A. Whenever any articles or certificate authorized to be filed with the office of the Secretary of the Tribal Council under any provision of Article III has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such articles or certificate may be corrected by filing with the office of the Secretary of the Tribal Council a certificate of correction. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by Article III. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.
- B. In lieu of filing a certificate of correction, articles or a certificate may be corrected by filing with the Secretary of the Tribal Council corrected articles or certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Secretary of the Tribal Council if the articles or certificate being corrected were then being filed shall be paid and collected by the Secretary of the Tribal Council for the use of the Nation in connection with the filing of the corrected articles or certificate. The corrected articles or certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire articles or certificate in corrected form. The articles or certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the articles or certificate as corrected shall be effective from the filing date.

(Law & Order Code 2006, § 2-235; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-236—2-249. - Reserved.

DIVISION III. - MEMBERS

Sec. 2-250. - Admission of members.

- A. In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:
 - (1) The formation of the limited liability company; or
 - (2) The time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.
- B. After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

- (1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;
 - (2) In the case of an assignee of a limited liability company interest, as provided in § 2-353(a) of this ordinance and at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or
 - (3) Unless otherwise provided in an agreement of merger or consolidation, in the case of a person acquiring a limited liability company interest in a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with § 2-233(b) of this ordinance, at the time provided in and upon compliance with the operating agreement of the surviving or resulting limited liability company.
- C. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company.

(Law & Order Code 2006, § 2-250; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-251. - Classes and voting.

- A. The operating agreement may provide for classes or groups of members having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. The operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the operating agreement a class or group of limited liability company interests that was not previously outstanding. The operating agreement may provide that any member or class or group of members shall have no voting rights.
- B. The operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.
- C. The operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.
- D. Unless otherwise provided in the operating agreement, on any matter that is to be voted on by members, the members may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted.

Unless otherwise provided in the operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy.

(Law & Order Code 2006, § 2-251; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-252. - Liability to third parties; no waivers of tribal sovereign immunity.

- A. Except as otherwise provided by Article III, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company. The failure of the limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.
- B. Notwithstanding the provisions of subsection A of this section, under the operating agreement or under another agreement, a member or manager may agree in writing to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.
- C. Notwithstanding any other provision contained in this ordinance, a limited liability company shall have the power to consent to such limited liability company, but not the Nation or any other tribal entity other than said limited liability company itself, being sued in courts or to have claims against said limited liability company resolved through arbitration.
- D. Notwithstanding any other provision contained in this ordinance, a limited liability company has no rights with respect to and may not dispose of, mortgage, or otherwise encumber real or personal property of the member.
- E. In the event any jurisdiction refuses to recognize a Nation owned limited liability company created under this ordinance involving any particular controversy, claim, case, proceeding or other matter, the Nation owned limited liability company shall be deemed a subordinate economic entity of the Nation for that matter.

(Law & Order Code 2006, § 2-252; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-253. - Events of bankruptcy.

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

- A. Unless otherwise provided in the operating agreement, or with the written consent of all members, a member:
 - 1. Makes an assignment for the benefit of creditors;
 - 2. Files a voluntary petition in bankruptcy;
 - 3. Is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;
 - 4. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
 - 5. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;

6. Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or
- B. Unless otherwise provided in the operating agreement, or with the written consent of all members, one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

(Law & Order Code 2006, § 2-253; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-254. - Access to and confidentiality of information; records.

- A. Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in the operating agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:
 - (1) True and full information regarding the status of the business and financial condition of the limited liability company;
 - (2) Promptly after becoming available, a copy of the limited liability company's income tax returns for each year;
 - (3) A current list of the name and last known business, residence or mailing address of each member and manager;
 - (4) A copy of any written operating agreement and articles of organization and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the operating agreement and any certificate and all amendments thereto have been executed;
 - (5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and
 - (6) Other information regarding the affairs of the limited liability company as is just and reasonable.
- B. Each manager shall have the right to examine all of the information described in subsection A of this section for a purpose reasonably related to the position of manager.
- C. A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.
- D. Any demand by a member under this section shall be in writing and shall state the purpose of such demand.
- E. Unless the operating agreement provides otherwise, any action to enforce any right arising under this section shall be brought in the Tribal Court. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection A of this section or does not reply to the demand that has been made within five (5) business days after the demand has been made, the demanding member or manager may apply to the Tribal Court for an order to compel such disclosure. Unless the operating agreement provides otherwise, the Tribal Court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Tribal Court may summarily order the limited

liability company to permit the demanding member to obtain or manager to examine the information described in subsection A of this section and to make copies or abstracts therefrom, or the Tribal Court may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection A of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the Tribal Court deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection A of this section, the demanding member or manager shall first establish (1) that the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and (2) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be. The Tribal Court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Tribal Court may deem just and proper. The Tribal Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the Nation and kept within the Nation upon such terms and conditions as the order may prescribe.

(Law & Order Code 2006, § 2-254; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-255—2-274. - Reserved.

DIVISION IV. - MANAGERS

Sec. 2-275. - Designation of manager.

A person may be named or designated as a manager of the limited liability company as provided in § 2-201(10) of this ordinance.

(Law & Order Code 2006, § 2-275; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-276. - Management of limited liability company.

Unless otherwise provided in the operating agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than fifty (50) percent of the said percentage or other interest in the profits controlling; provided however, that if the operating agreement provides for the management of a limited liability company by a manager or managers, the management of the limited liability company shall be vested in the manager or managers who shall be chosen in the manner provided in the operating agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in the operating agreement. Subject to § 2-326 of this ordinance, a manager shall cease to be a manager as provided in the operating agreement. A limited liability company may have more than one (1) manager.

(Law & Order Code 2006, § 2-276; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-277. - Contributions by a manager.

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in the operating agreement, also has the rights and

powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

(Law & Order Code 2006, § 2-277; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-278. - Classes and voting.

- A. The operating agreement may provide for classes or groups of managers having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. The operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the operating agreement a class or group of limited liability company interests that was not previously outstanding.
- B. The operating agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.
- C. The operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.
- D. Unless otherwise provided in the operating agreement, on any matter that is to be voted on by managers, the managers may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted. Unless otherwise provided in the operating agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy.

(Law & Order Code 2006, § 2-278; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-279. - Remedies for breach of operating agreement by manager.

The operating agreement may provide that:

- A. A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and
- B. At the time or upon the happening of events specified in the operating agreement, a manager shall be subject to specified penalties or specified consequences.

This Section shall not be deemed to limit a manager's or member's right to seek recourse in Tribal Court.

(Law & Order Code 2006, § 2-279; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-280. - Reliance on reports and information by member or manager.

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

(Law & Order Code 2006, § 2-280; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-281. - Agency of members and managers.

A. Subject to subsections B and C:

- (1) Each member is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

B. Subject to subsection C, in a manager-managed company:

- (1) A member is not an agent of the company for the purpose of its business solely by reason of being a member. Each manager is an agent of the company for the purpose of its business, and an act of a manager, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.
- (2) An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was approved by the Company or is authorized under its operating agreement.

C. Unless the articles of organization limit their authority, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

(Law & Order Code 2006, § 2-281; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-282—2-299. - Reserved.

DIVISION V. - FINANCE

Sec. 2-300. - Form of contribution.

The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

(Law & Order Code 2006, § 2-300; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-301. - Liability for contribution.

- A. Except as provided in the operating agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the operating agreement or applicable law.
- B. Unless otherwise provided in the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of Article III may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into of the operating agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.
- C. The operating agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of that limited liability company interest, forfeiture of his or her limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of his or her limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.

(Law & Order Code 2006, § 2-301; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-302. - Allocation of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in the operating agreement. If the operating agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

(Law & Order Code 2006, § 2-302; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-303. - Allocation of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in the operating agreement. If the operating agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

(Law & Order Code 2006, § 2-303; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-304. - Defense of usury not available.

No obligation of a member or manager of a limited liability company to the limited liability company arising under the operating agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action.

(Law & Order Code 2006, § 2-304; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-305—2-324. - Reserved.

DIVISION VI. - DISTRIBUTIONS AND RESIGNATION

Sec. 2-325. - Interim distributions.

Except as provided in this Article III, to the extent and at the times or upon the happening of the events specified in the operating agreement, a member is entitled to receive from a limited liability company distributions before the member's resignation from the limited liability company and before the dissolution and winding up thereof.

(Law & Order Code 2006, § 2-325; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-326. - Resignation of manager.

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in the operating agreement and in accordance with the operating agreement. The operating agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that the operating agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning manager.

(Law & Order Code 2006, § 2-326; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-327. - Resignation of member.

A member may resign from a limited liability company only at the time or upon the happening of events specified in the operating agreement and in accordance with the operating agreement. Notwithstanding anything to the contrary under applicable law, unless the operating agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, the operating agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

(Law & Order Code 2006, § 2-327; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-328. - Distribution upon resignation.

Except as provided in this Division, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled under the operating agreement and, if not otherwise provided in the operating agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's limited liability company interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

(Law & Order Code 2006, § 2-328; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-329. - Distribution in kind.

Except as provided in the operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company. Except as provided in the operating agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

(Law & Order Code 2006, § 2-329; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-330. - Right to distribution.

Subject to §§ 2-331 and 2-378 of this ordinance, and unless otherwise provided in the operating agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. The operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

(Law & Order Code 2006, § 2-330; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-331. - Limitations on distribution.

- A. A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection A, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.
- B. A member who receives a distribution in violation of subsection A of this section, and who knew at the time of the distribution that the distribution violated subsection A of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection A of this section, and who did not know at the time of the distribution that the distribution violated subsection A of this section, shall not be liable for the amount of the distribution.

Subject to subsection C of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

- C. Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this Article III or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced in Tribal Court prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action.

(Law & Order Code 2006, § 2-331; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-332—2-349. - Reserved.

DIVISION VII. - ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

Sec. 2-350. - Nature of limited liability company interest.

A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

(Law & Order Code 2006, § 2-350; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-351. - Assignment of limited liability company interest.

- A. A limited liability company interest is assignable in whole or in part except as provided in the operating agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in the operating agreement and upon:
 - (1) The approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; or
 - (2) Compliance with any procedure provided for in the operating agreement.
- B. Unless otherwise provided in the operating agreement:
 - (1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;
 - (2) An assignment of a limited liability company interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and
 - (3) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's limited liability company interest. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.
- C. The operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.
- D. Unless otherwise provided in the operating agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

- E. Unless otherwise provided in the operating agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the operating agreement, any such interest so acquired by the limited liability company shall be deemed cancelled.

(Law & Order Code 2006, § 2-351; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-352. - Member's limited liability company interest subject to charging order.

- A. On application by a judgment creditor of a member or of a member's assignee, the Tribal Court may issue an order charging the limited liability company interest based on the judgment debtor's interest in the limited liability company in order to satisfy the judgment. The Tribal Court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited liability company, which receiver shall have only the rights of an assignee, and the Tribal Court may make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances of the case may require.
- B. A charging order constitutes a lien on the judgment debtor's limited liability company interest. The Tribal Court may order a foreclosure sale of the limited liability company interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of an assignee.
- C. Unless otherwise provided in the operating agreement, at any time before foreclosure sale, a limited liability company interest subject to the charging order may be redeemed:
 - (1) By the judgment debtor;
 - (2) With property other than limited liability company property, by one (1) or more of the other members; or
 - (3) By the limited liability company with the consent of all of the members whose interests are not so charged.
- D. This Article III does not deprive a member of a right under exemption laws with respect to the member's limited liability company interest.
- E. This section provides the exclusive remedy by which a judgment creditor of a member or member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest.
- F. No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(Law & Order Code 2006, § 2-352; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-353. - Right of assignee to become member.

- A. An assignee of a limited liability company interest may become a member as provided in the operating agreement upon:
 - (1) The approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; or
 - (2) Compliance with any procedure provided for in the operating agreement.
- B. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this Article III. Notwithstanding the foregoing, unless otherwise provided in the operating agreement, an assignee who becomes a member is liable for the obligations of the assignor to make contributions as provided in § 2-301 of this ordinance, but shall not be liable for the obligations of the assignor under Division VI of this Article III. However, the assignee is not obligated for liabilities, including the

obligations of the assignor to make contributions as provided in § 2-301 of this ordinance, unknown to the assignee at the time the assignee became a member and which could not be ascertained from the operating agreement.

- C. Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to a limited liability company under Divisions V and VI of this Article III.

(Law & Order Code 2006, § 2-353; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-354. - Powers of estate of deceased or incompetent member.

If a member who is an individual dies or a Tribal Court or a state court adjudges the member to be incompetent to manage the member's person or property, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under the operating agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legally designated agent or transferee.

(Law & Order Code 2006, § 2-354; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-355—2-374. - Reserved.

DIVISION VIII. - DISSOLUTION

Sec. 2-375. - Dissolution.

- A. A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:
- (1) At the time specified in the operating agreement, but if no such time is set forth in the operating agreement, then the limited liability company shall have a perpetual existence;
 - (2) Upon the happening of events specified in the operating agreement;
 - (3) Unless otherwise provided in the operating agreement, upon the affirmative vote or written consent of the members of the limited liability company or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than two-thirds ($\frac{2}{3}$) of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate;
 - (4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:
 - (a) Unless otherwise provided in the operating agreement, within ninety (90) days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that the operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

- (b) A member is admitted to the limited liability company in the manner provided for in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within ninety (90) days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

(5) The entry of a decree of judicial dissolution under § 2-376 of this ordinance.

- B. Unless otherwise provided in the operating agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

(Law & Order Code 2006, § 2-375; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-376. - Judicial dissolution.

On application by or for a member or manager the Tribal Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the operating agreement.

(Law & Order Code 2006, § 2-376; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-377. - Winding up.

- A. Unless otherwise provided in the operating agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty (50) percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but the Tribal Court, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, the member's or manager's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.
- B. Upon dissolution of a limited liability company and until the filing of articles of termination as provided in § 2-227 of this ordinance, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

(Law & Order Code 2006, § 2-377; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-378. - Distribution of assets.

- A. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

- (1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under § 2-325 or § 2-328 of this ordinance;
- (2) Unless otherwise provided in the operating agreement, to members and former members in satisfaction of liabilities for distributions under § 2-325 or § 2-328 of this ordinance; and
- (3) Unless otherwise provided in the operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

B. A limited liability company which has dissolved:

- (1) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;
- (2) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and
- (3) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within ten (10) years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefore. Unless otherwise provided in the operating agreement, any remaining assets shall be distributed as provided in Article III. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

- C. A member who receives a distribution in violation of subsection A of this section, and who knew at the time of the distribution that the distribution violated subsection A of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection A of this section, and who did not know at the time of the distribution that the distribution violated subsection A of this section, shall not be liable for the amount of the distribution. Subject to subsection D of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.
- D. Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under Article III or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three (3) year period and an adjudication of liability against such member is made in the said action.
- E. Section 2-331 of this ordinance shall not apply to a distribution to which this section applies.

(Law & Order Code 2006, § 2-378; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-379—2-399. - Reserved.

DIVISION IX. - FOREIGN LIMITED LIABILITY COMPANIES

Sec. 2-400. - Tribal business license.

In lieu of registration under Article III, all foreign limited liability companies shall obtain a tribal business license under Chapter 2, Article I, Business License, of this Code and shall be subject to the provisions of Chapter 2, Article I, Business License.

(Law & Order Code 2006, § 2-400; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-401. - Doing business without business license.

- A. A foreign limited liability company doing business within the Nation may not maintain any action, suit or proceeding within the Nation unless it has obtained a tribal business license.
- B. Notwithstanding Chapter 2, Article I, Business License, the failure of a foreign limited liability company to obtain a tribal business license within the Nation does not impair:
 - (1) The validity of any contract or act of the foreign limited liability company;
 - (2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or
 - (3) Prevent the foreign limited liability company from defending any action, suit or proceeding in the Tribal Court.
- C. A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business within the Nation without a tribal business license.

(Law & Order Code 2006, § 2-401; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-402. - Foreign limited liability companies doing business without having qualified; injunctions.

The Tribal Court shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business within the Nation if such foreign limited liability company has failed to obtain a tribal business license under Chapter 2, Article I or if such foreign limited liability company has secured a business license on the basis of false or misleading representations. Upon the motion of the Tribal Prosecutor or upon the relation of proper parties, the General Counsel shall proceed for this purpose by complaint in Tribal Court.

(Law & Order Code 2006, § 2-402; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-403. - Execution; liability.

Section 2-228(c) of this ordinance shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

(Law & Order Code 2006, § 2-403; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-404. - Service of process on registered foreign limited liability companies.

- A. Service of legal process upon any foreign limited liability company doing any business within its Nation, shall be made by delivering a copy personally to any managing or general agent or manager

of the foreign limited liability company or the registered agent of the foreign limited liability company, or by leaving it at the dwelling house or usual place of abode of any such managing or general agent, manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the foreign limited liability company. If the registered agent be a corporation, service of process upon it as such may be made by serving, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any managing or general agent, manager or registered agent, or at the registered office or other place of business of the foreign limited liability company, to be effective must be delivered thereat at least six (6) days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the managing or general agent, manager or registered agent.

- B. In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection A of this section, it shall be lawful to serve the process against the foreign limited liability company upon the Secretary of the Tribal Council, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection A of this section. In the event service is effected through the Secretary of the Tribal Council in accordance with this subsection, the Secretary of the Tribal Council shall forthwith notify the foreign limited liability company by letter, certified mail, return receipt requested, directed to the foreign limited liability company at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of the Tribal Council pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Tribal Council that service is being effected pursuant to this subsection, and to pay to the Secretary of the Tribal Council the sum of fifty dollars (\$50.00) for the use of the Nation, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of the Tribal Council shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the ordinance, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary of the Tribal Council shall not be required to retain such information for a period longer than five (5) years from the Secretary's receipt of the service of process.

(Law & Order Code 2006, § 2-404; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-405. - Service of process on unregistered foreign limited liability companies.

- A. Any foreign limited liability company which shall do business within the Nation without having registered under Chapter 2, Article I of the Code shall be deemed to have thereby appointed and constituted the Secretary of the Tribal Council its agent for the acceptance of legal process in any civil action, suit or proceeding against it in Tribal Court arising or growing out of any business done by it within the Nation. The doing of business within the Nation by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the Nation.
- B. In the event of service upon the Secretary of the Tribal Council in accordance with subsection A of this section, the Secretary of the Tribal Council shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the Secretary of the Tribal Council by the plaintiff in such action, suit or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of the Tribal Council. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Tribal Council that service is being made pursuant to this subsection, and to pay to the Secretary of the

Tribal Council the sum of fifty dollars (\$50.00) for the use of the Nation, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of the Tribal Council shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the ordinance, docket number and nature of the proceeding in which process has been served upon the Secretary, the return date thereof, and the day and hour when the service was made. The Secretary of the Tribal Council shall not be required to retain such information for a period longer than five (5) years from the receipt of the service of process.

(Law & Order Code 2006, § 2-405; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-406. - Foreign limited company doing business on the Nation.

Whenever the words "doing business," "the doing of business" or "business done on the Nation," by any such foreign limited liability company are used in this Division VIII, they shall mean the course or practice of carrying on any business activities within the Nation, including, without limiting the generality of the foregoing, the solicitation of business or orders within the Nation.

(Law & Order Code 2006, § 2-406; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-407—2-424. - Reserved.

DIVISION X. - DERIVATIVE ACTIONS

Sec. 2-425. - Right to bring action.

A member or an assignee of a limited liability company interest may bring a derivative action in the Tribal Court in the right of a limited liability company to recover a judgment in favor of the limited liability company if the managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

(Law & Order Code 2006, § 2-425; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-426. - Proper plaintiff.

In a derivative action, the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and:

- A. At the time of the transaction of which the plaintiff complains; or
- B. The plaintiff's status as a member or an assignee of a limited liability company interest had devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction.

(Law & Order Code 2006, § 2-426; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-427. - Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

(Law & Order Code 2006, § 2-427; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-428. - Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the Tribal Court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

(Law & Order Code 2006, § 2-428; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-429—2-449. - Reserved.

DIVISION XI. - MISCELLANEOUS

Sec. 2-450. - Construction and application of Article III and operating agreement.

- A. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to Article III.
- B. It is the policy of Article III to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.
- C. To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager or to an other person that is a party to or is otherwise bound by the operating agreement:
 - (1) Any such member or manager or other person acting under the operating agreement shall not be liable to the limited liability company or to any such other member or manager or to any such other person for the member's or manager's or other person's good faith reliance on the provisions of the operating agreement; and
 - (2) The member's or manager's or other person's duties and liabilities may be expanded or restricted by provisions in the operating agreement.
- D. Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of Article III.

(Law & Order Code 2006, § 2-450; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-451. - Short ordinance.

This Article III may be cited as the "Fort McDowell Yavapai Nation Limited Liability Company Ordinance."

(Law & Order Code 2006, § 2-451; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-452. - Severability.

If any provision of this Article III or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of Article III which can be given effect without the invalid provision or application, and to this end, the provisions of this Article III are severable.

(Law & Order Code 2006, § 2-452; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-453. - Cases not provided for in Article III.

In any case not provided for in Article III, the rules of law and equity, shall govern pursuant to the application of law as set forth in Chapter 5 of the Fort McDowell Yavapai Nation Tribal Code.

(Law & Order Code 2006, § 2-453; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-454. - Fees.

A. No document required to be filed under Article III shall be effective until the applicable fee required by this section is paid. The fees provided for in this section shall not be required for any limited liability company of which the Nation is a member. The following fees shall be paid to and collected by the Secretary of the Tribal Council for the use of the Nation:

- (1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation, a fee in the amount of seventy-five dollars (\$75.00).
- (2) Upon the receipt for filing of a certificate under § 2-204(b) of this ordinance, a fee in the amount of fifty dollars (\$50.00), upon the receipt for filing of a certificate under § 2-204(c) of this ordinance, a fee in the amount of fifty dollars (\$50.00) and a further fee of two dollars (\$2.00) for each limited liability company affected by such certificate, and upon the receipt for filing of a certificate under § 2-204(d) of this ordinance, a fee in the amount of two dollars and fifty cents (\$2.50).
- (3) Upon the receipt for filing of the articles of organization, articles of amendment, articles of termination, the articles of merger or consolidation, a restated articles of organization under § 2-232 of this ordinance, articles of amendment of the articles of merger or consolidation, articles of termination of a merger or consolidation, a certificate of correction, or articles of revival, and upon the restoration of a domestic limited liability company or a foreign limited liability company, a fee in the amount of fifty dollars (\$50.00).
- (4) For certifying copies of any paper on file as provided for by Article III, a fee in the amount of twenty dollars (\$20.00) for each copy certified.
- (5) The Secretary of the Tribal Council may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, whether certified or not, a fee of five dollars (\$5.00) shall be paid for the first page and one dollar (\$1.00) for each additional page. The Secretary of the Tribal Council may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of two dollars (\$2.00) shall be paid therefor.
- (6) For preclearance of any document for filing, a fee in the amount of two hundred fifty dollars (\$250.00).
- (7) For preparing and providing a written report of a record search, a fee in the amount of thirty dollars (\$30.00).
- (8) For issuing any certificate of the Secretary of the Tribal Council, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (4) of this subsection, a fee in the amount of twenty dollars (\$20.00), except that for issuing any certificate of the Secretary of the Tribal Council that recites all of a limited liability company's filings with the Secretary of the Tribal Council, a fee of one hundred dollars (\$100.00) shall be paid for each such certificate.
- (9) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by Article III, for which no different fee is specifically prescribed, a fee in the amount of twenty-five dollars (\$25.00).

- (10) The Secretary of the Tribal Council may in his or her discretion charge a fee of twenty-five dollars (\$25.00) for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.
- B. In addition to those fees charged under subsection A of this section, there shall be collected by and paid to the Secretary of the Tribal Council the following:
- (1) For all services described in subsection A of this section that are requested to be completed within two (2) hours on the same day as the day of the request, an additional sum of up to five hundred dollars (\$500.00);
 - (2) For all services described in subsection A of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to two hundred dollars (\$200.00); and
 - (3) For all services described in subsection A of this section that are requested to be completed within a twenty-four-hour period from the time of the request, an additional sum of up to one hundred dollars (\$100.00).

The Secretary of the Tribal Council shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

(Law & Order Code 2006, § 2-454; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-455. - Reserved power of the Nation to alter or repeal Article III.

All provisions of this Article III may be altered from time to time or repealed and all rights of members and managers are subject to this reservation. Unless expressly stated to the contrary in this Article III, all amendments of Article III shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment.

(Law & Order Code 2006, § 2-455; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Sec. 2-456. - Revival of domestic limited liability company.

- A. A domestic limited liability company whose articles of organization have been cancelled pursuant to § 2-204(d) of this ordinance may be revived by filing in the office of the Secretary of the Tribal Council articles of revival accompanied by the payment of the fee required by § 2-454(a)(3) of this ordinance. The articles of revival shall set forth:
- (1) The name of the limited liability company at the time its articles of organization was cancelled and, if such name is not available at the time of revival, the name under which the limited liability company is to be revived;
 - (2) The date of filing of the original articles of organization of the limited liability company;
 - (3) The address of the limited liability company's registered office within the Nation and the name and address of the limited liability company's registered agent within the Nation;
 - (4) A statement that the articles of revival is filed by one (1) or more persons authorized to execute and file the articles of revival to revive the limited liability company; and
 - (5) Any other matters the persons executing the articles of revival determine to include therein.
- B. The articles of revival shall be deemed to be an amendment to the articles of organization of the limited liability company, and the limited liability company shall not be required to take any further action to amend its articles of organization under § 2-226 of this ordinance with respect to the matters set forth in the certificate of revival.

- C. Upon the filing of articles of revival, a limited liability company shall be revived with the same force and effect as if its articles of organization had not been cancelled pursuant to § 2-204(d) of this ordinance. Such revival shall validate all contracts, acts, matters and things made, done and performed by the limited liability company, its members, managers, employees and agents during the time when its articles of organization was cancelled pursuant to § 2-204(d) of this ordinance, with the same force and effect and to all intents and purposes as if the articles of organization had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited liability company at the time its articles of organization was cancelled pursuant to § 2-204(d) of this ordinance or which were acquired by the limited liability company following the cancellation of its articles of organization pursuant to § 2-204(d) or of this ordinance, and which were not disposed of prior to the time of its revival, shall be vested in the limited liability company after its revival as fully as they were held by the limited liability company at, and after, as the case may be, the time its articles of organization was canceled pursuant to § 2-204(d) of this ordinance. After its revival, the limited liability company shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its members, managers, employees and agents prior to its revival as if its articles of organization had at all times remained in full force and effect.

(Law & Order Code 2006, § 2-456; Ft. McD. Res. No. 2004-88, eff. 7-30-2004)

Secs. 2-457—2-474. - Reserved.

ARTICLE IV. - RIGHT TO WORK ORDINANCE

[**HISTORICAL NOTE:** Art. IV. was enacted pursuant to Resolution No. Ft. McD. 2004-152, effective December 14, 2004. It was originally labeled as Art. III.]

Sec. 2-475. - Findings.

The Fort McDowell Yavapai Nation hereby finds that:

1. The Fort McDowell Yavapai Nation is a federally recognized Indian tribe which exercises inherent powers of self-government.
2. The Nation is acting pursuant to its inherent powers and its Indian Reorganization Act Constitution.
3. The right to work on the Nation's reservation and other tribally owned lands is a fundamental right that should not be abridged.
4. No employee should be forced to join or be penalized for not joining a Labor Organization or other collective bargaining organization and should be able to make that choice freely and voluntarily.
5. The State of Arizona is a right to work state. Adopting a right to work ordinance applicable on the Fort McDowell Yavapai Nation reservation provides consistency of employment laws with the surrounding areas.

(Law & Order Code 2006, § 2-475; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-476. - Definitions.

In this article, unless the context otherwise requires:

1. **Labor Organization** means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

2. **Nation** means the Fort McDowell Yavapai Nation.
3. **Person** includes a natural person, a corporation, association, company, firm or Labor Organization.

(Law & Order Code 2006, § 2-476; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-477. - Right to work.

No person shall be required, as a condition of employment or continuation of employment on the Nation's reservation or on lands owned by the Nation or as an employee of the Nation or any of its political or economic subdivisions or entities, to: (i) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a Labor Organization; (ii) become or remain a member of a Labor Organization; (iii) pay dues, fees, assessments or other charges of any kind or amount to a Labor Organization; (iv) pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a Labor Organization; or (v) be recommended, approved, referred or cleared through a Labor Organization. All such acts prohibited by this Section 2-202 are illegal.

(Law & Order Code 2006, § 2-477; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-478. - Strike or picketing for illegal purpose.

Any strike or picketing to force or induce an employer to make an agreement orally or in writing in violation of this article is illegal.

(Law & Order Code 2006, § 2-478; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-479. - Prohibition of threatened or actual interference with a person, his or her family or property to compel him to join labor organization, strike or leave employment.

It is illegal for an employee, Labor Organization, or officer, agent or member thereof, by any threatened or actual interference with the person, his immediate family or his property, to compel or attempt to compel such person to join a Labor Organization, to strike against his will or to leave his employment.

(Law & Order Code 2006, § 2-479; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-480. - Prohibition of conspiracy to induce persons to refuse to work with persons not members of labor organization.

A combination or conspiracy by two (2) or more persons to cause the discharge of any person or to cause him/her to be denied employment because he/she is not a member of a Labor Organization by inducing or attempting to induce any other person to refuse to work with such person, is illegal.

(Law & Order Code 2006, § 2-480; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-481. - Enforcement.

Any agreement by any employer which violates any act prohibited by section 2-202, 2-203, 2-204 or 2-205 of this Article shall be deemed null and void and of no force and effect. Any Labor Organization which seeks to include such a provision in a labor agreement and any employer who agrees to such provision shall be subject to a civil penalty of not less than five hundred dollars (\$500.00) and not more than ten thousand dollars (\$10,000.00), in addition to any other damages, compensatory or punitive, which may be awarded by a court of law. The Nation and any employee shall have standing to bring an action in any court of competent jurisdiction to enforce the provisions of this Article. In any such action the prevailing party shall be entitled to his, her or its reasonable attorneys fees, as determined by the court, in addition to its cost of suit.

(Law & Order Code 2006, § 2-481; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-482. - Injunctive relief.

Notwithstanding any other provision of law to the contrary, any person injured or threatened with injury by an act declared illegal by this Article and the Nation shall be entitled to injunctive relief.

(Law & Order Code 2006, § 2-482; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-483. - Business license requirement.

Except for any Labor Organization that is a licensee, a permittee, or a lessee exempted under Section 2-7(B)(b-d), all Labor Organizations shall obtain a business license as required by Article 1 of this Chapter 2, with the following modifications to Article 1:

- A. Sec. 2-2(A)(2): Because the terms "owner" or "owner(s)" may not be applicable to Labor Organizations, Labor Organizations shall provide the names and addresses of the Labor Organization's "principals" as that term is defined in the Nation's Gaming Ordinance and the names and addresses of all persons who will conduct activities on the Nation, including their proof of identification.
- B. Any other reasonable adjustments to Article 1 required by the Nation to conform its application to a Labor Organization.

(Law & Order Code 2006, § 2-483; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-484. - Severability.

If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Article. The Tribal Council declares that it would have passed this Article and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one (1) or more such provisions be declared unconstitutional or invalid.

(Law & Order Code 2006, § 2-484; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-485. - No waiver of sovereign immunity intended.

No provision of this Article is intended to waive and does not waive the Nation's sovereign immunity or the official immunity of any of its officers or employees nor is this Article intended to constitute a consent to suit or consent to the jurisdiction of any court, administrative agency, arbitrator or other tribunal.

(Law & Order Code 2006, § 2-485; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Sec. 2-486. - Effective date.

This Article shall become effective immediately upon its adoption by the Tribal Council.

(Law & Order Code 2006, § 2-486; Ft. McD. Res. No. 2004-152, eff. 12-14-2004)

Secs. 2-487—2-499. - Reserved.

ARTICLE V. - EMPLOYER/EMPLOYEE RELATIONSHIP

[**HISTORICAL NOTE:** Art. V. was enacted pursuant to Resolution No. Ft. McD. 2005-9, effective January 11, 2005]

Sec. 2-500. - Severability of employment relationship; protection from retaliatory discharge; exclusivity of statutory remedies in employment.

The public policy of the Fort McDowell Yavapai Nation ("Nation") is that:

- A. The employment relationship is at-will contractual in nature.
- B. The employment relationship is severable at the pleasure of either the employee or the employer unless both the employee and the employer have signed a written contract to the contrary setting forth that the employment relationship shall remain in effect for a specified duration of time or otherwise expressly restricting the right of either party to terminate the employment relationship. Either: 1) both the employee and the employer must sign this written contract, or 2) this written contract must be set forth in the employment handbook or manual or any similar document distributed to the employee, if that document expresses the intent that it is a contract of employment. Partial performance of employment shall not be deemed sufficient to eliminate the requirements set forth in this paragraph.
- C. An employee may have a claim against an employer for termination of employment only if one (1) or more of the following circumstances have occurred:
 1. The employer has terminated the employment relationship of an employee in breach of an employment contract, as set forth in paragraph B of this section, in which case the remedies for the breach are limited to the remedies for a breach of contract.
 2. The employer has terminated the employment relationship of an employee in violation of an ordinance of this Nation. If the ordinance provides a remedy to an employee for a violation of the ordinance, the remedies provided to an employee for a violation of the ordinance are the exclusive remedies for the violation of the ordinance or the public policy set forth in or arising out of the ordinance. All definitions and restrictions contained in the ordinance also apply to any civil action based on a violation of the public policy arising out of the ordinance. If the ordinance does not provide a remedy to an employee for the violation of the ordinance, the employee shall have the right to bring a tort claim for wrongful termination in violation of the public policy set forth in the ordinance.
 3. The employer has terminated the employment relationship of an employee in retaliation for any of the following:
 - (i) The refusal by the employee to commit an act or omission that would violate the Constitution of Nation or the ordinances of this Nation or any other applicable laws.

- (ii) The disclosure by the employee in a reasonable manner that the employee has a reasonable belief that the employer, or an employee of the employer, has violated, is violating or will violate the Constitution of the Nation, ordinances of this Nation, or other applicable laws. The employee may disclose this information to either: the employer or a representative of the employer who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information provided by the employee and to take action to prevent further violations of the Constitution of the Nation, ordinances of this Nation, or other applicable laws or 2) an employee of a public body or political subdivision of this Nation or any agency of a public body or political subdivision having jurisdiction on the Nation.
 - (iii) The exercise of rights under the workers' compensation ordinances or plans.
 - (iv) Service on a jury.
 - (v) The exercise of voting rights.
 - (vi) The exercise of free choice with respect to nonmembership in a labor organization.
 - (vii) Service in the national guard or armed forces.
 - (viii) The exercise of the right to be free from the extortion of fees or gratuities as a condition of employment. This prohibition shall not be deemed to prohibit valid tip pooling, tip sharing or other similar legal arrangements.
 - (ix) The exercise of the right to be free from coercion to purchase goods or supplies from any particular person as a condition of employment.
- D. Nothing contained in this Article shall be deemed to authorize a suit in any court or jurisdiction other than in the courts of the Fort McDowell Yavapai Nation against any employer. The Fort McDowell Yavapai Nation specifically reserves the right to raise the defense of sovereign immunity and/or governmental immunity for the Nation, its Boards, Officers and employees in: 1) any other courts or jurisdictions other than the courts and jurisdiction of the Fort McDowell Yavapai Nation for any claims, including claims for injunctive or monetary relief, or 2) the courts of the Fort McDowell Yavapai Nation for claims for monetary relief.

(Law & Order Code 2006, § 2-500; Ft. McD. Res. No. 2005-9, eff. 1-11-2005)

Sec. 2-501. - Constructive discharge.

- A. In any action for wrongful discharge, constructive discharge may only be established by evidence of objectively difficult or unpleasant working conditions to the extent that a reasonable employee would feel compelled to resign, if the employer has been given at least fifteen (15) days' notice by the employee that the employee intends to resign because of these conditions and the employer fails to respond to the employees concerns.
- B. As a precondition to the right of an employee to bring a constructive discharge claim against an employer pursuant to subsection A, paragraph 1 of this section, the employee shall take each of the following actions before deciding whether to resign:
 1. Notify an appropriate representative of the employer, in writing, that a working condition exists that the employee believes is objectively so difficult or unpleasant that the employee feels compelled to resign or intends to resign.
 2. Allow the employer fifteen (15) calendar days to respond in writing to the matters presented in the employee's written communication under paragraph 1 of this subsection.
 3. Read and consider the employer's response to the employee's written communication under paragraph 1 of this subsection.

- C. If an employee reasonably believes that the employee cannot continue to work during the period for the employer to respond to the employee's written communication regarding the conditions allegedly constituting constructive discharge, the employee is entitled to a paid or unpaid leave of up to fifteen (15) calendar days or until the time when the employer has responded in writing to the employee's written communication, whichever occurs first.
- D. Any communications or actions by an employer in response to an employee's communications about the employees working conditions shall not be deemed an admission by the employer that it has committed any action that gives rise to any claim or cause of action by the employee against the employer.
- E. An employer shall be deemed to have waived the right to notice under subsection A, paragraph 1 if the employer fails to provide written notice to its employees of the requirements of this section as follows:
 - 1. Notice by the employer under this section shall be provided by the posting of a notice, substantially in the form set forth in paragraph 2 of this subsection, in conspicuous places on the employer's premises where notices to employees are customarily posted, by including substantially similar language in an employment handbook or policy manual that is distributed to employees or by including the notice in a written communication that is provided to employees.
 - 2. A notice that is substantially in the following form satisfies the notice requirements of this section:

NOTICE

An Employee is encouraged to communicate to the employer whenever the employee believes working conditions may become intolerable to the employee and may cause the employee to resign. Under Tribal law, an employee shall be required to notify an appropriate representative of the employer in writing that a working condition exists that the employee believes is intolerable, that will compel the employee to resign or that constitutes a constructive discharge, if the employee wants to preserve the right to bring a claim against the employer alleging that the working condition forced the employee to resign.

Under Tribal law, an employee may be required to wait for fifteen (15) calendar days after providing written notice before the employee may resign if the employee desires to preserve the right to bring a constructive discharge claim against the employer. An employee may be entitled to paid or unpaid leave of absence of up to fifteen (15) calendar days while waiting for the employer to respond to the employee's written communication about the employee's working condition.
- F. Notwithstanding any other requirements of this section, an employee may bring a constructive discharge claim without prior written notice in the event of extreme outrageous conduct by the employer or by a managing agent of the employer if the conduct would cause a reasonable employee to feel compelled to resign immediately.

(Law & Order Code 2006, § 2-501; Ft. McD. Res. No. 2005-9, eff. 1-11-2005)

Secs. 2-502—2-524. - Reserved.

ARTICLE VI. - WORKER'S COMPENSATION

[**HISTORICAL NOTE:** Art. VI. was enacted pursuant to Resolution No. Ft. McD. 2005-10, effective January 11, 2005.]

Sec. 2-525. - Worker's compensation.

As long as any employer within the boundaries of the Fort McDowell Yavapai Nation carries insurance or self insures, thereby securing worker's compensation for employees, the employer shall not be liable for damages at common law or by statute except as provided for by a separate section in this Chapter or by a separate Ordinance.

(Law & Order Code 2006, § 2-525; Ft. McD. Res. No. 2005-10, eff. 1-11-2005)

Secs. 2-526—2-550. - Reserved.

Chapter 3 - ELECTIONS

[**Historical note:** chapter 3 is derived from resolution Ft. McD. No. 99-07, enacted 1/11/99, further amended by resolution Ft. McD. No. 99-144, enacted 11/4/99.]

ARTICLE I. - ELECTION BOARD

Sec. 3-1. - Election board.

- A. **Composition.** The Election Board shall be appointed by a majority of a quorum of the Tribal Council. The Election Board shall consist of five (5) members and up to two (2) alternates all of whom are enrolled members of the Fort McDowell Yavapai Nation. The Election Board members shall be appointed for a period of four (4) years effective on the date of his or her appointment; provided that two (2) of the initial members shall be designated to serve initial terms of two (2) years. Each member shall serve until his or her replacement has been appointed by the Tribal Council. Upon expiration of the term of an Election Board Member, the Tribal Council shall appoint a member to serve for a period of four (4) years. The Chairperson of the Election Board shall be chosen by the Election Board from which its own members. The four (4) remaining members of the Board shall be designated as tellers.
- B. **Removal.** By a majority of a quorum vote of the Tribal Council, any member of the Election Board may be removed for failing to uphold the duties of his position on the Election Board or for other good cause. The member shall be afforded reasonable notice and an opportunity to be heard regarding the alleged grounds for removal. The term of a member shall be automatically terminated if such member is convicted of a felony or of a misdemeanor involving moral turpitude as defined in this Election Ordinance.
- C. **Qualifications.** No candidate for office is eligible for appointment to the Election Board. No existing member of the Election Board may run for office without prior resignation from the Election Board. The resignation must be received no later than the first of September prior to the next regularly scheduled election. No person shall be eligible for appointment to the Election Board who has been convicted of a felony or who has, within five (5) years prior to appointment, been convicted of a misdemeanor involving moral turpitude as defined in this the Election Ordinance. Serving on the Election Board involves a substantial commitment, members of the Election Board must be able to dedicate the time and effort necessary to fulfill this substantial commitment. Election Board Members must be at least twenty-one (21) years of age.
- D. **Compensation.** The Election Board shall be compensated at a rate as set by the Tribal Council.
- E. **Vacancies.** Vacancies for any reason shall be filled by a majority vote of a quorum of the Tribal Council for the remainder of the existing term.
- F. **Conflict of Interest.** Unless a majority of the remaining members of the Election Board agree that the member can sit as a fair and impartial judge, no Election Board member shall participate in any election contest or appeal involving a candidate or voter who is an immediate family member. For purposes of this section, immediate family shall mean father, mother, husband, wife, son, daughter, sister or brother.

(Law & Order Code 2006, § 3-1; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-1, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-2. - Duties.

- A. **In General.** The Election Board shall have the duty of assuring that all of the relevant election dates and deadlines are met and shall possess the powers necessary to conduct an orderly and fair election. The Election Board shall ensure that all elections are conducted according to the Constitution and this ordinance. The Election Board shall hear election contests and disputes.
- B. **Oath.** Prior to the election, each member of the Election Board shall take an oath to faithfully perform the duties imposed upon him or her by the Constitution of the Fort McDowell Yavapai Nation and Tribal Law. A Tribal Judge shall administer and certify the oath.
- C. **Chairman.** The Chairman of the Election Board shall be responsible for the safe keeping of the ballots and ballot boxes. The Chairman shall periodically check and monitor the work of the Election Board members to insure accuracy. The Chairman shall supervise the counting of the election results.
- D. **Tellers.** The Tellers of the Election Board shall check off the voter's names on the final list of eligible voters as they arrive to vote on election day.
- E. **Alternates.** Alternates shall attend meetings and replace Board members as required.
- F. **Mailing Addresses.** The Election Board pursuant to a request from a candidate who has filed a petition to run for Tribal office is authorized to release to that candidate a copy of the mailing addresses of all eligible voters for that particular election. However, the Election Board may not disseminate the mailing address of an individual for a particular election where that voter has informed the Election Board in writing that his or her mailing address may not be disseminated to candidates. A voter may not allow his or her mailing address to be given to selected candidates only.

(Law & Order Code 2006, § 3-2; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2001-101, eff. 9-18-2001; Ft. McD. Res. No. 2007-60, § 3-2, adopted 9-18-2007, eff. 9-18-2007)

ARTICLE II. - ELIGIBILITY OF VOTERS AND CANDIDATES

Sec. 3-3. - Voters.

- A. **Eligibility.** All enrolled members of the Fort McDowell Yavapai Nation who are twenty-one (21) years of age or over on the date of the Tribal election shall be eligible to vote.
- B. **List of Eligible Voters.** A list of Eligible voters shall be prepared by the Election Board. The list of eligible voters shall be posted at designated places within the Community by the first Friday in December before the General Election.
- C. **Appeals.** Any enrolled member of the Fort McDowell Yavapai Nation whose name has been removed or omitted from the list of Eligible Voters may appeal in writing to the Election Board for listing. The final date for an appeal will be the second Friday in December. The Election Board shall hold a hearing within five (5) days after the second Friday in December for any filed voter eligibility appeals. If there is more than one (1) appeal, the Election Board may consolidate the hearings of the appeals. The decision of the Election Board shall be made no later than five (5) days after the hearing and shall be final.

(Law & Order Code 2006, § 3-3; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-3, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-4. - Absentee voter.

- A. **Request for Absentee Ballot.** Eligible voters who are temporarily absent or otherwise unable to cast their ballots at the polling place may request absentee ballots. Such request must be in writing and delivered to the Election Board at least twenty-one (21) days prior to the date of the election.
- B. **Schedule.** Absentee ballots shall be mailed to eligible voters at least twelve (12) days prior to the date of the election. The absentee voter must seal his ballot in an unmarked envelope which, in turn, must be sealed in an envelope which bears the absentee voter's signature and address. The absentee voter must sign the envelope to have his or her votes counted. Ballots returned to the Election Board through the mail shall be mailed to the Election Board at the address indicated on the ballot. Absentee ballots must be received by the Election Board by 5:00 p.m. the day before the election. If any such absentee ballot is not received by the date and time described herein, then such absentee ballot shall be rejected and not be counted.
- C. **Lost Absentee Ballot.** If an absentee voter loses his absentee ballot, or fails to properly return his absentee ballot, he may still vote on election day. The Election Board shall check the list of persons who have voted by absentee ballot to insure that person has not already voted by absentee ballot.
- D. **Received Absentee Ballots.** As the Election Board receives completed absentee ballots, the Election Board shall properly record the name of the absentee voter and shall remove the completed absentee ballot from its outer envelope and place the absentee ballot in a locked ballot box. The signed envelopes shall be retained with the records of the election.

(Law & Order Code 2006, § 3-4; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-4, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-5. - Candidates.

- A. **Qualifications.** A person may run for only one (1) elective office. Candidates for the office of President, Vice-President, Treasurer, Secretary and Council Member shall meet the minimum qualifications as listed in Article V, Section 6 of the Fort McDowell Yavapai Nation Constitution which requires that all candidates:
 - 1. Must be an enrolled member of the Fort McDowell Yavapai Nation; and
 - 2. Must have continuously physically resided within the Fort McDowell Yavapai Nation for at least one (1) year immediately preceding the election date; and
 - 3. Must be twenty-five (25) years of age; and
 - 4. Must possess a high school diploma or its equivalent. Proof of educational requirements must be submitted to the Election Board at the same time that Candidates submit their completed petitions to the Election Board; and
 - 5. Must not have been convicted of a felony or been convicted of a misdemeanor involving moral turpitude. Candidates must be fingerprinted to verify the requirements of this subsection. Candidates are required to have their fingerprints inked by an authorized Tribal department no later than the first Monday of the November prior to the next regularly scheduled election. Results of the fingerprint record checks shall be sent by the authorized department to the Nation's Prosecutor for review.

- B. **Moral Turpitude.** No person who has been convicted of a felony, or who has been convicted of a misdemeanor involving moral turpitude shall be eligible to hold any elected office under the Constitution. The following misdemeanors and no others shall be considered misdemeanors involving moral turpitude: bribery, embezzlement, extortion, deceit, fraud, misappropriation of funds, forgery, homicide, misbranding, perjury, rape, sexual offenses with a minor and theft.
- C. **Residence.** Residence for the purpose of candidacy shall mean the "physical presence." The candidate must have continuously resided within the boundaries of the Fort McDowell Yavapai Nation for one (1) year prior to the date of the election. Temporary absence from the Fort McDowell Yavapai Nation for purposes of employment, education, military service, illness or physical disability shall not otherwise affect the residence of the member, where such member has otherwise qualified under this Section.

(Law & Order Code 2006, § 3-5; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2001-101, eff. 9-18-2001; Ft. McD. Res. No. 2001-109, eff. 9-27-2001; Ft. McD. Res. No. 2007-60, § 3-5, adopted 9-18-2007, eff. 9-18-2007)

ARTICLE III. - PETITIONS

Sec. 3-6. - Election petitions.

Candidates for office shall be required to obtain the following number of signatures or more from qualified voters of the Nation:

- A. For President, fifty (50) signatures;
- B. For Vice-President, forty (40) signatures
- C. For Treasurer, thirty (30) signatures
- D. For Secretary, twenty (20) signatures
- E. For At Large Council Members, thirty (30) signatures.

Tribal Members may sign more than one (1) petition form.

(Law & Order Code 2006, § 3-6; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-6, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-7. - Certification, authorization and waiver.

Any person who takes a petition for the purpose of collecting signatures for any office shall sign a certificate certifying that he or she meets the qualifications for office. The person shall also sign an authorization and waiver allowing the Tribal Council designated agency or person to conduct a background check, including a criminal records search with tribal, local, county, state, and/or federal law enforcement agencies for a conviction of felony or a conviction of a misdemeanor as defined in this ordinance. The designated tribal agency or person shall only release information concerning the criminal records check to the Election Board that relates to any felonies or misdemeanors involving moral turpitude.

(Law & Order Code 2006, § 3-7; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-7, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-8. - Procedure for review and determination of candidacy qualification.

The Election Board shall review the candidates' qualifications and the validity of the candidates' submitted Petitions. The Election Board shall meet to review the qualifications and the Petitions. If the Election Board determines that a person is not qualified to be a candidate or a Petition is invalid, the individual affected shall immediately be notified by certified mail, or personal service or both. The notice shall be delivered no later than the second Wednesday in December. The notification shall include the reason for the adverse decision.

An appeal of the Election Board's decision that a person is not qualified or a Petition is not valid may be made in writing to the Election Board within two (2) days after receipt of the decision. Along with the notice of appeal, the potential candidate shall submit his or her justifications and/or evidence indicating why the Election Board's initial determination is in error. The Election Board shall hold a hearing within two (2) days after receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply.

The Election Board shall issue a written opinion within three (3) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The individual affected shall immediately be notified by certified mail, personal service or both. If there is more than one (1) appeal, the Election Board may consolidate the hearings.

An appeal of the decision of the Election Board may be made in writing to the Trial Court of the Tribal Court within two (2) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Tribal Court shall decide the matter within three (3) days of receipt of the appeal. Except in rare cases with good cause shown as to why the additional evidence should be considered, the Trial Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Court, the Trial Court shall not hold a hearing. The decision of the Trial Court of the Tribal Court shall be final.

(Law & Order Code 2006, § 3-8; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-8, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-9. - Availability of petitions, deadline for the submission of petitions.

The Election Board shall make petitions available to the candidates no later than the third Monday in October. For the initial election under the new Constitution scheduled for January of 2000, Petitions shall be made available as soon as practical. All petitions shall be submitted to the Election Board on or before the 1st Monday in November. Candidates must submit a non-refundable three hundred dollar (\$300.00) petition-filing fee at the same time petitions are submitted to the Election Board. The petition filing fee shall be deposited in the Nation's general fund to assist the Tribal government's cost of administering elections.

(Law & Order Code 2006, § 3-9; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2001-101, eff. 9-18-2001; Ft. McD. Res. No. 2007-60, § 3-9, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-10. - Public inspection of filed petitions.

Any eligible voter may inspect all Petitions filed with the Election Board. If an eligible voter has reason to believe a Petition is invalid, the eligible voter shall immediately notify the Chairman of the Election Board for consideration. Any such notification must be received within five (5) days after the deadline to submit Petitions has passed or such notification will not be considered by the Election Board.

(Law & Order Code 2006, § 3-10; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-10, adopted 9-18-2007, eff. 9-18-2007)

ARTICLE IV. - ELECTION

Sec. 3-11. - Preparation, form and content of ballots.

- A. Ballots shall be prepared by the Election Board. Each ballot shall be headed "Official Ballot."
- B. The ballots shall list the names of the candidates whose names appear on the final list of candidates as established by the Election Board. The names of the candidates on the ballots shall be listed alphabetically by last name.
- C. Voters shall not be permitted to write-in candidates on the official ballot.
- D. Voters may cast a vote for each open seat that is open for election. In other words, if the offices of the President, the Treasurer and one (1) Council Member are open for election, then each voter may cast one (1) vote for each office. The voter may also choose to vote for only one (1) candidate for only one (1) office on their ballot. For instance, if a voter only wanted to vote for one (1) person for the office of Treasurer, without voting for other open offices, the voter's ballot would remain valid. However, if a person votes for more than one (1) candidate for an office, then the entire ballot shall be spoiled (rejected) and no votes on the ballot shall be counted. A rejected ballot shall be folded and marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of counting.

(Law & Order Code 2006, § 3-11; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2003-144, eff. 11-25-2003; Ft. McD. Res. No. 2007-60, § 3-11, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-12. - Election procedures.

- A. **Election.** Regular elections shall be held on the second (2nd) Tuesday in January in even numbered years. The Election Board shall:
 - 1. Make Petitions for Candidates available no later than the third (3rd) Monday in October before the election and inform the prospective candidates the deadline for the submission of the completed Petitions is on or before the first Monday in November.
 - 2. Post voter's list on the first (1st) Friday of December before the election.
 - 3. Post sufficient notices of the election to be held on the second (2nd) Tuesday in January before the election.
 - 4. Post the names of qualified candidates, as verified by the Election Board, for a period of at least fifteen (15) days prior to the election, duly noting any pending appeals.
 - 5. Post the location of the polling place in various tribal locations sufficient to provide adequate notice to eligible voters.
- B. **Hours of Voting.** The polls shall be open from 7:00 a.m. to 6:00 p.m. Any eligible voter who, at the moment of closing, is in the line of waiting voters shall be allowed to prepare and cast a ballot.
- C. **Method of Voting.** Each prospective voter, upon being identified as being an eligible voter of the Fort McDowell Yavapai Nation, shall be handed an unused ballot and shall sign his or her name on a form kept for that purpose to acknowledge that he or she has received that ballot.

- D. **Write In Candidates.** Write in candidates shall not be eligible for election. Voters shall not be permitted to write-in candidates on the official ballot. If any voter actually votes for a write-in candidate despite this prohibition, the entire ballot shall be spoiled, meaning that the vote for that write-in candidate and any votes for any other candidates on the ballot shall not be counted. A rejected ballot shall be refolded and marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.
- E. **Fifty (50) Foot Limit Notices:**
1. **Notices.** The Election Board shall make two (2) notices stating: "Fifty Foot Limit" or "50 Foot Limit." Before opening the polls, the Election Board shall post the two (2) fifty (50) foot limit notices approximately fifty (50) feet in different directions from the main outside entrance of the designated polling place that the elects on is being held.
 2. **Campaigners.** No campaigning by any person will be allowed on election day within a polling place or in a public manner within fifty (50) feet of the main outside entrance of a polling place.
 3. **Effect.** No persons shall be allowed to remain inside the fifty (50) foot limit while the polls are open except for the purpose of voting. After a voter has cast his or her ballot, he/she shall immediately leave the boundaries of the fifty (50) foot limit. Members of the Election Board are the only persons allowed to remain inside the fifty (50) foot limit.
- F. **Spoiled Ballots.** If a voter spoils a ballot and obtains another, the spoiled ballot shall be folded and marked SPOILED in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the spoiled ballots shall be placed in the ballot box at the end of the counting.
- G. **Unused Ballots.** Ballots unused at the end of the voting shall be tied or stapled together, marked "UNUSED" in red ink.
- H. **Rejected Ballots.** If during the counting of the votes, the members of the Election Board are unable to determine from a ballot the choices of the voter, that ballot shall be rejected. In other words, if three (3) seats are on the ballot for election and the Election Board cannot determine the voter's choices, the entire ballot shall be rejected. A rejected ballot shall be refolded and marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.
- I. **The Count.** As soon as the polls are closed and the last ballot has been deposited in the ballot box, the Election Board shall within one-half ($\frac{1}{2}$) hour begin the counting the votes cast. With the exception that the Election Board may take a fifteen (15) minute break, the count shall continue until completed and the results determined and declared. After the Election Board Chairperson unlocks the ballot box, the Chairperson shall remove and open each ballot and shall read aloud the name of each candidate voted for as indicated on the ballot which shall be duly recorded by all tellers.
- J. **Witnesses.** The counting of the votes shall be open for public observation but the public must remain at a reasonable distance from the Chairperson, tellers, and ballot box. The public must remain quiet and in no way interfere with the orderly counting. If order cannot be kept, the Chairperson shall delay the counting until such time as order has been reestablished.
- K. **Tally Sheet.** Four (4) tellers shall separately write on a tally sheet the titles of the offices and underneath each title the names of the candidates for each office. They shall also place opposite the candidates' names the number of votes for each candidate as the votes are read aloud.
- L. **The Abstract.** At the end of the count, the Election Board shall determine the total votes cast for each candidate. The lists of the Tellers must match in order to be certified. These results shall be written down together with the number of rejected and spoiled votes and shall be certified by the Chairperson.
- M. **Return of Ballots to the Judiciary.** The Election Board shall return to the Fort McDowell Yavapai Nation Judiciary the following:

1. The official returns; and
2. The spoiled, rejected and unused ballots; and
3. The signature roster, poll list, tally sheet and abstract; and
4. The certification of Election; and
5. All other relevant election documentation.

N. Posting of Results

Immediately after the results are certified, the Election Board shall post the results.

(Law & Order Code 2006, § 3-12; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2001-101, eff. 9-18-2001; Ft. McD. Res. No. 2003-145, eff. 11-25-2003; Ft. McD. Res. No. 2007-60, § 3-12, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-13. - Resignation and notice.

- A. **Council Membership.** Any member of the Fort McDowell Yavapai Nation Tribal Council who desires to run for a different office than that person is currently serving, and the member's current office is not normally scheduled for a vote in the coming election, shall be required to provide notice to the Election Board. The notice shall state that the member will be running for a different office and the member will resign from the member's current position effective on the date the newly elected officers are sworn into office. Such notice and notice of future resignation must be provided to the Election Board not less than seventy-five (75) days prior to the scheduled election. This notice is required to allow the Election Board to hold a Special Election for the current office of the resigning member on the same date as the upcoming election.
- B. **Other Employment or Offices.** No Council Member shall hold other employment while serving on the Tribal Council. No member of the Tribal Council shall be an employee of or hold other constitutional office in the Fort McDowell Yavapai Nation government. No member of the Tribal Council shall be employed in any branch of the United States Government nor shall any member of the Tribal Council hold any elective office in any other governmental body. This section shall not prohibit a Council Member from serving as the Council's representative on boards, associations or committees.

Upon written notice by the Tribal Council to a member of the Tribal Council or the Secretary who has violated this section, the affected person shall have fourteen (14) days to relinquish such employment or elective office prohibited by this section. If the affected person fails to relinquish such employment, such elective office shall become vacant and an election shall be held pursuant of Article X of the Constitution. This subsection shall remain in effect so long as the Tribal Council is receiving a full salary or compensation equivalent to a full salary.

(Law & Order Code 2006, § 3-13; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-13, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-14. - Absence from tribal employment for the purpose of voting.

A person entitled to vote at a Tribal election held within the Fort McDowell Yavapai Nation shall not be liable for any penalty nor deduction from salary or wages because of absence from employment while voting. Requests shall be made for such absence prior to the date of the election, and the employer may specify the hours during which the employee may be absent.

(Law & Order Code 2006, § 3-14; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-14, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-15. - Grounds for challenging voters.

A person offering to vote may be orally challenged by the Election Board members upon any of the following grounds:

- A. That he/she is not the person whose name appears on the List of Eligible Voters.
- B. That he/she has already voted before in the election that is presently being held.

If the Election Board determines that the challenge is correct, the person shall be prohibited from casting any votes.

(Law & Order Code 2006, § 3-15; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-15, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-16. - Tie votes.

In the case of a tie between one (1) or more candidates, a runoff election shall be held. The Runoff election shall be held between five (5) days and ten (10) days after the election results are certified by the Election Board. In the event the Runoff election results in another tie, the winner shall be determined by drawing cards with the high card winning or, if the tied candidates agree, another similar method (e.g. a coin toss, drawing of lots) mutually agreeable to the tied candidates.

(Law & Order Code 2006, § 3-16; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-16, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-17. - Validity of elections; election challenges.

Any eligible candidate whose name appears on the ballot may challenge the conduct of the election. Such challenge must be filed in writing within two (2) days following the Certification of the Election by the Election Board. The challenge shall be presented in writing to the Chairperson of the Election Board. Within three (3) days following the filing of the challenge, the Election Board shall hold a hearing to determine the validity of the challenge. The hearing shall be informal and the formal rules of evidence shall not apply. If there is more than one (1) challenge, the Election Board may consolidate those challenges. The Election Board shall ensure that all candidates in the election receive notice of the hearing either by personal service, or certified mail or both. The Election Board shall issue a written decision within five (5) days following the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision.

The decision of the Election Board may be appealed to the Trial Division of the Tribal Court within two (2) days after receipt of the Election Board decision. The findings and decisions of the Election Board shall be given deference by the Tribal Court and the Court's review shall be limited to whether or not the decision of the Election Board is sustained by sufficient evidence on the record. The member challenging the decision shall have the burden of proving the decision was wrong by a clear and convincing evidence standard. Except in rare cases with good cause shown as to why the additional evidence should be considered, the Trial Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Court, the Trial Court shall not hold a hearing. The Trial Court shall

hear and determine the appeal within seven (7) days following the filing of the appeal. The decision of the Trial Division of the Tribal Court shall be final and no other court, including the Tribal Supreme Court, shall have jurisdiction over election contests.

(Law & Order Code 2006, § 3-17; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-17, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-18. - Standard of review for an election contest.

For all election contests filed pursuant to Section 3-17 above, the Election Board and the Tribal Court shall be guided by the following principles as their standard of review:

- A. Election results are presumed to be regular and proper; and
- B. Irregularities or misconduct in an election which does not tend to affect the result or impeach the fairness of the result will not be considered; and
- C. Elections will not be set aside unless the facts definitely show that there was not a fair election; and
- D. The Rule of Proportionality shall apply which requires that unless it can be shown for which candidate any illegal vote(s) were cast, the illegal vote(s) are deducted from the whole vote of the election in proportion to the votes cast, not from the candidate having the largest number of votes.
- E. After an election, election provisions contained in this Ordinance and the Constitution are to be seen as directions unless the violations of the provisions either 1) obstructed a free and intelligent vote, 2) affected an essential element of a valid election.

(Law & Order Code 2006, § 3-18; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-18, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-19. - The tribal council during the pendency of an election contest.

- A. It is the custom and tradition of the Tribal Council to have a full Tribal Council (all five (5) members) when considering and deciding major issues. If an election contest appeal has been filed, the Tribal Council existing prior to the election shall continue to hold their offices until all newly elected Council Members are sworn into office. This hold-over Tribal Council shall only hear and decide issues that must be decided due to time considerations or every day issues where inaction would adversely affect the smooth running of the Nation. This power shall be exercised with extreme caution and the hold over Tribal Council shall refrain from deciding controversial issues.
- B. If a decision of the Election Board is appealed to the Trial Division of the Tribal Court, after the decision of the Trial Division the candidates shall be sworn into office on the second Tuesday in February or if that date has passed, as soon as practicable. The Appellate Division of the Tribal Court and all other courts are prohibited from accepting jurisdiction over any election contests. If any election contest is incorrectly filed in the Fort McDowell Supreme Court or any other court despite this prohibition, no court shall issue any stay, injunction or restraining order during the pendency of the appeal, such filing shall not stay or alter the swearing in of the candidates, and such appeal shall be dismissed as soon as practicable.

(Law & Order Code 2006, § 3-19; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-19, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-20. - Time.

In computing any period of time prescribed or allowed by these rules the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed under this Chapter is less than eleven (11) days, then Saturdays, Sundays, legal holidays, Tribal holidays and official days off shall be excluded in the computation. All persons who file any appeals under this Ordinance shall provide an address where that person can be served personally. If that person is not at the designated address when personal service is attempted, the process server is authorized to either leave the notice with a person of suitable age or to post the notice at the address. The act of leaving the notice with a person of suitable age or posting the notice shall constitute receipt of the notice for purposes of this Chapter.

(Law & Order Code 2006, § 3-20; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-20, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-21. - Repeal of previous election ordinances.

Any and all past election ordinances, including the election ordinance passed on January 11, 1999 pursuant to Res. No. 99-07, shall be considered superseded upon the ratification and approval of the Constitution adopted by the voters of the Nation on October 19, 1999.

(Law & Order Code 2006, § 3-21; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2007-60, § 3-21, adopted 9-18-2007, eff. 9-18-2007)

Secs. 3-22—3-49. - Reserved.

ARTICLE V. - RECALL PROCEDURES AND SPECIAL ELECTIONS

Sec. 3-50. - Officers subject to recall.

Each elected official of the Nation is subject to recall from office by the eligible voters of the Nation. A number of eligible voters equaling forty (40) percent of the total number of eligible voters may, by recall petition, demand a special election for the recall of a particular elected official. Not more than two (2) members elected officials may be subject to a recall election during the same period of time.

(Law & Order Code 2006, § 3-50; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-50, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-51. - Application for recall petition.

- A. In order to protect against fraud and deceit and to maintain the integrity of the election process pertaining to special elections, a person seeking to recall an elected official voter must first file an application with the Nation's Election Board to issue a recall petition on a form approved by the

Election Board. Only eligible voters of the Nation may file an application for a recall petition and only eligible voters of the Nation may circulate recall petitions and collect signatures thereof.

- B. On the application form prepared by the Election Board, the applicant must include the following information: the person's name and address; a statement of intention to circulate and submit a recall petition; and a clear and concise statement of the grounds for recall.
 - 1. The clear and concise statement of the grounds for recall shall consist of not more than one hundred fifty (150) words. A clear and concise statement means that the statement must be understandable to an average person of voting age under the Nation's laws.
- C. Each application may be directed against only one (1) elected official. If an applicant desires to subject two (2) or more elected officials to recall, the applicant must submit a separate application for each elected official. This subsection (C) does not change the rule that no more than two (2) elected officials may be subject to a Special Election during the same time period.
- D. An application for a recall petition may be submitted to any member of the Election Board.
- E. The member of the Election Board that receives an application shall immediately notify all members of the Election Board and the Board shall convene a meeting within twenty-four (24) hours of receipt of the application. The Election Board shall assign a number to the application. If the Election Board shall assign a number to the application. If the Election Board approves the application pursuant to 3-52, the Election Board shall place this number on the lower right hand corner on each side of each signature sheet of an official recall petition form.
- F. The Election Board shall maintain a record of each application received, of the date of its receipt and of the number assigned and issued to the applicant.

(Law & Order Code 2006, § 3-51; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-51, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-52. - Approval of application.

- A. Within two (2) days of receipt of an application for a recall petition, the Election Board shall determine whether the application satisfies the requirements of Article IX of the Nation's Constitution and the requirements of this Article V.
- B. Upon approval of the application, the Election Board shall have one (1) additional day to:
 - 1. Provide written notice to the applicant and the elected official who is the subject of recall that the Election Board has approved the application;
 - 2. Prepare an official recall petition that contains signature lines for at least forty (40) percent of the eligible voters of the Nation to sign and include the applicant's general statement at the top portion of each signature page; and
 - 3. Issue the official recall petition to the applicant to begin circulating for signatures; and
- C. Prior to the filing of the recall petition, the applicant may request additional official signature pages from the Election Board.
- D. In the event that the Election Board determines that the application does not comply with Article IX of the Nation's Constitution or this Article V, the Election Board shall have one (1) additional day to provide written notice to the applicant that the Board will not hold a recall election and the reasons for this decision.

(Law & Order Code 2006, § 3-52; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-52, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-53. - Appeal of election board's decision to approve or deny application.

- A. Within five (5) days of receipt of the Election Board's approval or denial of the application, the applicant or the elected official subject to recall may file a written appeal with the Election Board. Along with the notice of appeal, the applicant or the elected official shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within seven (7) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The applicant and the elected official shall immediately be notified by certified mail, personal service or both. If there is more than one (1) appeal, the Election Board may consolidate the hearings.
- B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.
- C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election.

(Law & Order Code 2006, § 3-53; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-53, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-54. - Form of petition.

Each signature page of the petition must include the applicant's statement for recall. Once the application is approved, neither the Election Board nor the applicant may amend or modify the language of the applicant's statement for recall. Each signature line must contain space for an eligible voter to: print and sign the person's first and last name and to print the date that the eligible voter signed the petition. The reverse side of each signature page must include an affidavit of verification to be signed by the person who collected the information and signatures appearing on the front side of the signature page.

(Law & Order Code 2006, § 3-54; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-54, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-55. - Filing a petition; limitations; subsequent petition.

- A. A recall petition must be filed with the Election Board within sixty (60) calendar days after the Election Board has approved the application and issued the official recall petition to the applicant. If an official recall petition is not timely filed, it shall be deemed invalid and the Election Board shall not consider it.
- B. A recall petition shall not be circulated against an elected official during the first one hundred twenty (120) days of that person's office and not within ninety (90) days of the next general election for that office.

- C. After one (1) recall petition and election, no further application for recall may be filed against the same elected official for a period of one (1) year after the results of the Special Election have been certified by the Election Board.

(Law & Order Code 2006, § 3-55; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-55, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-56. - Collection of signatures.

- A. For purposes of a recall petition, an "eligible voter" means a person who is eligible to vote pursuant to Section 3-3(A) as of the date the person signs a recall petition.
- B. Every eligible voter signing a petition for a recall election shall do so in the presence of the person who is circulating the petition and who is to execute the affidavit of verification on the reverse side of each signature page. At the time of signing, the eligible voter shall sign and print his first and last name and shall write, in the appropriate spaces following the signature, the date on which he signed the petition.
- C. The person circulating the petition (the "circulator") shall in an affidavit subscribed and sworn to by him verify that each of the names on the sheet was signed in his presence on the date indicated, and that in his belief each signer was an eligible voter of the Nation as of the date that each particular person signed the petition. The affidavit shall be in a form prescribed by the Election Board and in addition to the statements set forth above in this subsection (C), the affidavit shall also contain a statement by the circulator that the circulator is an eligible voter.
- D. Signatures obtained on recall petitions before the filing of an application for the issuance of official recall petition are void and shall not be counted in determining the legal sufficiency of the petition.
- E. A person circulating the petition, may not create extra copies of the signature pages comprising the recall petition for the purpose of collecting additional signatures. However, the applicant may request and shall receive additional original signature pages from the Election Board.

(Law & Order Code 2006, § 3-56; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-56, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-57. - Verification procedure.

- A. Within five (5) business days after the submission of a recall petition to the Election Board, the Election Board shall perform the following:
 - 1. Remove the following from the recall petition:
 - i. Signature pages that do not contain a circulator's affidavit that is not completed and signed by the circulator;
 - ii. Signature pages that do not contain the clear and concise statement of the grounds for recall;
 - iii. Signature pages that do not contain the Election Board's assigned number on the lower right hand corner of each side of the signature page;
 - iv. Signature pages that are photocopied or otherwise reproduced; and
 - v. Signature pages that are not original pages provided to the applicant by the Election Board.

2. Upon completing Subsection (A)(1), the Election Board shall remove the following signatures that are not eligible for verification by marking an "X" in red ink in the margin to the right side of the signature line:
 - i. If the signature or printed name of the eligible voter is missing;
 - ii. If the date on which the eligible voter signed is missing;
 - iii. If the date of the signature is a date that is prior to the issuance of the recall petition by the Election Board; and
 - iv. Signatures withdrawn by request of the signing eligible voter or the applicant. In order for the Election Board to comply with such request, the request must be made in writing.
3. Upon completing Subsection (A)(2), the Election Board shall count the number of signatures for verification on the remaining signature pages.
4. If the total number of signatures eligible for verification does not equal at least forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.
5. If the total number of signatures eligible for verification equals or exceeds forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall verify all signatures by the following means:
 - i. Determine whether each person signing the recall petition is an eligible voter of the Nation as of the date that the person signed the petition.
 - ii. Compare the signature of each person signing the recall petition to that person's signature on file with the Tribal government; If a signature does not appear to be similar to the applicable signature on file, the Election Board shall contact the person and verify whether the person actually signed the petition. If during the five (5) day period the Election Board, despite reasonable efforts, is not able to contact the person or the person does not respond to the Election Board's inquiry, the Election shall remove this person's name from the recall petition by marking an "X" in red ink in the margin to the right side of the signature line.
6. Upon completing Subsection (A)(5), the Election Board shall count the number of valid signatures and certify the result of the count. If the total number of signatures does not equal at least forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.
7. If the total number of signatures equals or exceeds forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall call a Special Election for the recall of the elected official to be held within thirty (30) calendar days pursuant to the notice requirements in Section 3-59.
 - i. In the event that the Election Board determines that the applicant and/or the circulators of the petition have engaged in fraud to obtain signatures, including but not limited to the act of forgery, the Election Board shall declare the entire petition invalid, unless the Board determines that certain signature pages were collected without fraudulent means. If the petition or certain signature pages of the petition are declared invalid, none of the signatures in the petition or relevant signature pages shall be counted unless the

signatures are proven by the applicant to be valid using the appeal process described in Section 3-58.

(Law & Order Code 2006, § 3-57; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-57, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-58. - Appeal of election board's verification process.

- A. Within five (5) days of notice of the Election Board's decision that: (1) a recall petition lacked the requisite number of signatures, (2) that the recall petition met the requirements to call a Special Election, or (3) that the petition or certain signature pages of the petition are invalid due to fraud, the applicant or the elected official subject to recall may file a written appeal with the Election Board challenging the Board's decision. Along with the notice of appeal, the applicant or the elected official shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within seven (7) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The appellant shall immediately be notified by certified mail, personal service or both. If there is more than one (1) appeal, the Election Board may consolidate the hearings.
- B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to review of the record of the Election Board proceedings and the evidence before the election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.
- C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election.

(Law & Order Code 2006, § 3-58; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-58, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-59. - Notice of recall election.

The Election Board shall mail written notice of the date and place of the special election and hours of voting to all eligible voters. The notice shall also include the procedures for those persons that want to vote via absentee ballot.

(Law & Order Code 2006, § 3-59; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-59, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-60. - Recall election ballot.

- A. The Election Board shall prepare the official recall election ballot form. On the ballot form, the Election Board shall pose the following question: "Should _____ be removed from the Office of _____?" Following the question shall be two (2) boxes. One (1) box shall have the word "yes" typed inside the box and the second box shall have the word "no" typed inside the box. The ballot shall inform voters that in order for a person to indicate his or her vote, the voter must circle either the "yes" or the "no" box to answer the question posed.
- B. If there are two (2) qualifying petitions against separate officials, the Election Board shall include both officials on the same ballot and follow the instructions contained in Subsection (A) for each official.
- C. Eligible voters who are temporarily absent or otherwise unable to cast their ballots at the polling place may request an absentee ballot. Such requests must be in writing and delivered to the Election Board at least twenty (20) calendar days prior to date set for the Special Election. Those rules set forth in Section 3-4 that are not in conflict with the rules in Article V shall be used for purposes of absentee ballots.
- D. Rejected Ballots. If during the counting of the votes, the members of the Election Board are unable to determine from a ballot all of the choices of the voter, that ballot shall be rejected. Ballots marked both "yes" and "no" will be rejected. Ballots with neither a "yes" nor "no" designation will be rejected. Ballots without clear, unambiguous designations will also be rejected. A rejected ballot shall be marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.
 - 1. In the event that there are two (2) elected officials subject to recall, and the Election Board is able to determine the choice of the voter pertaining to one (1) elected official, but not the other elected official, then the Election Board shall count the portion of the Ballot for which it is able to determine the choice of the voter and reject the portion of the Ballot for which it is unable to determine the choice of the voter.

(Law & Order Code 2006, § 3-60; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-60, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-61. - Election challenges.

- A. The applicant or the elected official subject to the Special Election may challenge the Special Election. Such a challenge must be filed in writing within five (5) days following the Certification of the Special Election by the Election Board. The challenge shall be presented in writing to any member of the Election Board. Within seven (7) days following the filing of the challenge, the Election Board shall hold a hearing to determine the validity of the challenge. The hearing shall be informal and the formal rules of evidence shall not apply. If there is more than one (1) challenge, the Election Board may consolidate the challenges. The Election Board shall ensure that both the applicant and the elected official subject to the Special Election receive notice of the hearing either by personal service, certified mail, or both. The Election Board shall issue a written decision within seven (7) days following the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision.
- B. The decision of the Election Board may be appealed to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The findings and decisions of the Election Board shall be given deference by the Tribal Court and the Court's review shall be limited to whether or not the decision of the Election Board is sustained by sufficient evidence on the record. The person challenging the decision shall have the burden of proving the decision was wrong by a clear and convincing evidence standard. Except in rare cases with good cause shown as to why the additional evidence should be considered, the Trial Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of

its decision. Unless good cause is shown for a hearing before the Trial Court, the Trial Court shall not hold a hearing. The Trial Division of the Tribal Court shall hear and determine the appeal in an expedited manner no longer than thirty (30) days following the filing of the appeal.

- C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election.

(Law & Order Code 2006, § 3-61; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-61, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-62. - Special elections.

The Constitution of the Fort McDowell Yavapai Nation, Article X, provides for "Initiative and Referendum." Article X Section 1. Initiative establishes the requirements for calling a vote to consider the enactment of any ordinance or resolution, or other official action. The Election Board upon receipt of a petition signed by not less than thirty (30) percent of the total number of qualified voters of the Fort McDowell Yavapai Nation shall hold an election to consider the enactment of such ordinance or resolution, or other official action.

(Law & Order Code 2006, § 3-62; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-62, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-63. - Application for petition for an initiative.

- A. In order to protect against fraud and deceit and to maintain the integrity of the election process pertaining to special elections, a person seeking to initiate a petition for an initiative must first file an application with the Nation's Election Board to issue a petition on a form approved by the Election Board. Only eligible voters of the Nation may file an application for an initiative petition and only eligible voters of the Nation may circulate such petitions and collect signatures thereof.
- B. On the application form prepared by the Election Board, the applicant must include the following information: the person's name and address; a statement of intention to circulate and submit an initiative; and a clear and concise statement of the ordinance or resolution, or other official action to be considered.
 - 1. The clear and concise statement of the grounds consist of not more than one hundred (100) words. A clear and concise statement means that the statement must be understandable to an average person of voting age under the Nation's laws.
- C. Each application for a petition shall address only one (1) enactment, or resolution or other official action to be considered.
- D. An application for an initiative petition may be submitted to any member of the Election Board.
- E. The member of the Election Board that receives an application shall immediately notify all members of the Election Board and the Board shall convene a meeting within thirty-six (36) hours of receipt of the application. The Election Board shall assign a number to the application. If the Election Board approves the application pursuant to Sec. 3-66, the Election Board shall place this number on the lower right hand corner on each side of each signature sheet of an official initiative petition form.
- F. The Election Board shall maintain a record of each application received, of the date of its receipt and of the number assigned and issued to the applicant.

(Law & Order Code 2006, § 3-63; Ft. McD. Res. No. 99-07, adopted 1-11-1999; Ft. McD. Res. No. 99-144, adopted 11-4-1999; Ft. McD. Res. No. 2004-126, adopted 10-5-2004; Ft. McD. Res. No. 2007-60, § 3-63, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-64. - Approval of application.

- A. Within three (3) days of receipt of an application for an initiative petition, the Election Board shall meet to determine whether the application satisfies the requirements of Article X, Section 1, Initiative, of the Nation's Constitution and the requirements of this Chapter.
- B. Upon approval of the application, the Election Board shall meet with the applicant to determine the wording of the Petition as soon as possible to:
 - 1. Provide applicant an opportunity to discuss the petition's proposed language.
 - 2. Clarify and answer any questions the applicant may have on procedures and requirements.
 - 3. Within five (5) days of the meeting with applicant, issue the official initiative petition to the applicant to begin circulating for signatures; and
- C. The applicant may request additional official petitions with signature pages from the Election Board to allow other eligible voters to obtain signatures with verification by collector.
- D. In the event that the Election Board determines that the application does not comply with Article X of the Nation's Constitution or this Article V, the Election Board shall provide written notice to the applicant that the Board will not hold an initiative election and the reasons for this decision.

(Ft. McD. Res. No. 2007-60, § 3-64, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-65. - Appeal of election board's decision to approve or deny application.

- A. Within five (5) days of receipt of the Election Board's approval or denial of the application, the applicant may file a written appeal with the Election Board. Along with the notice of appeal, the applicant shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within three (3) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include any findings of fact, the basis of their decision, and their decision. The applicant shall immediately be notified by certified mail, personal service or both.
- B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.
- C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election. The decision of the Tribal Court is not subject to appeal.

(Ft. McD. Res. No. 2007-60, § 3-65, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-66. - Form of petition.

- A. Each signature page of the petition must include the applicant's statement for recall. Once the application is approved, neither the Election Board nor the applicant may amend or modify the language of the applicant's statement for recall. Each signature line must contain space for an eligible voter to: print and sign the person's first and last name and to print the date that the eligible voter signed the petition. The reverse side of each signature page must include an affidavit of verification to be signed by the person who collected the information and signatures appearing on the front side of the signature page.

(Ft. McD. Res. No. 2007-60, § 3-66, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-67. - Collection of signatures.

- A. For purposes of a initiative petition, an "eligible voter" means a person who is eligible to vote pursuant to Section 3-3(A) as of the date the person signs a recall petition.
- B. Every eligible voter signing a petition for a recall election shall do so in the presence of the person who is circulating the petition and who is to execute the affidavit of verification on the reverse side of each signature page. At the time of signing, the eligible voter shall sign and print his first and last name and shall write, in the appropriate spaces following the signature, the date on which he signed the petition.
- C. The person circulating the petition (the "circulator") shall in an affidavit subscribed and sworn to by him verify that each of the names on the sheet was signed in his presence on the date indicated, and that in his belief each signer was an eligible voter of the Nation as of the date that each particular person signed the petition. The affidavit shall be in a form prescribed by the Election Board and in addition to the statements set forth above in this subsection (C), the affidavit shall also contain a statement by the circulator that the circulator is an eligible voter.
- D. Signatures obtained on initiative petitions before the filing of an application for the issuance of an official petition are void and shall not be counted in determining the legal sufficiency of the petition.
- E. A person circulating the petition, may not create extra copies of the signature pages comprising the recall petition for the purpose of collecting additional signatures. However, the applicant may request and shall receive additional original signature pages from the Election Board.

(Ft. McD. Res. No. 2007-60, § 3-67, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-68. - Verification procedure.

- A. The Election Board shall follow the verification procedures in Section 3-57 of this Chapter, recognizing the different requirements in Article XI of the Nation's Constitution.
- B. The appeal process to the Election Board's verification procedure shall follow the process provided for in Sec. 3-58 of this Chapter. Within five (5) business days after the submission of a recall petition to the Election Board, the Election Board shall perform the following:
 - 1. Remove the following from the recall petition:
 - vi. Signature pages that do not contain a circulator's affidavit that is not completed and signed by the circulator;
 - vii. Signature pages that do not contain the clear and concise statement of the grounds for recall;
 - viii. Signature pages that do not contain the Election Board's assigned number on the lower right hand corner of each side of the signature page;
 - ix. Signature pages that are photocopied or otherwise reproduced; and

- x. Signature pages that are not original pages provided to the applicant by the Election Board.
2. Upon completing Subsection (A)(1), the Election Board shall remove the following signatures that are not eligible for verification by marking an "X" in red ink in the margin to the right side of the signature line:
 - v. If the signature or printed name of the eligible voter is missing;
 - vi. If the date on which the eligible voter signed is missing;
 - vii. If the date of the signature is a date that is prior to the issuance of the recall petition by the Election Board; and
 - viii. Signatures withdrawn by request of the signing eligible voter or the applicant. In order for the Election Board to comply with such request, the request must be made in writing
 3. Upon completing Subsection (A)(2), the Election Board shall count the number of signatures for verification on the remaining signature pages.
 4. If the total number of signatures eligible for verification does not equal at least forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.
 5. If the total number of signatures eligible for verification equals or exceeds forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall verify all signatures by the following means:
 - i. Determine whether each person signing the recall petition is an eligible voter of the Nation as of the date that the person signed the petition.
 - ii. Compare the signature of each person signing the recall petition to that person's signature on file with the Tribal government; If a signature does not appear to be similar to the applicable signature on file, the Election Board shall contact the person and verify whether the person actually signed the petition. If during the five (5) day period the Election Board, despite reasonable efforts, is not able to contact the person or the person does not respond to the Election Board's inquiry, the Election shall remove this person's name from the recall petition by marking an "X" in red ink in the margin to the right side of the signature line.
 6. Upon completing Subsection (A)(5), the Election Board shall count the number of valid signatures and certify the result of the count. If the total number of signatures does not equal at least forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.
 7. If the total number of signatures equals or exceeds forty (40) percent of the total number of eligible voters of the Nation, the Election Board shall call a Special Election for the recall of the elected official to be held within thirty (30) calendar days pursuant to the notice requirements in Section 3-59.
 - i. In the event that the Election Board determines that the applicant and/or the circulators of the petition have engaged in fraud to obtain signatures, including but not limited to the act of forgery, the Election Board shall declare the entire petition invalid, unless the Board determines that certain signature pages were collected without fraudulent means. If the

petition or certain signature pages of the petition are declared invalid, none of the signatures in the petition or relevant signature pages shall be counted unless the signatures are proven by the applicant to be valid using the appeal process described in Section 3-58.

(Ft. McD. Res. No. 2007-60, § 3-68, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-69. - Appeal of election board's verification process.

- A. Within five (5) days of notice of the Election Board's decision that: (1) a recall petition lacked the requisite number of signatures, (2) that the recall petition met the requirements to call a Special Election, or (3) that the petition or certain signature pages of the petition are invalid due to fraud, the applicant or the elected official subject to recall may file a written appeal with the Election Board challenging the Board's decision. Along with the notice of appeal, the applicant or the elected official shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within seven (7) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The appellant shall immediately be notified by certified mail, personal service or both. If there is more than one (1) appeal, the Election Board may consolidate the hearings.
- B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to review of the record of the Election Board proceedings and the evidence before the election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.
- C. The filing of an appeal with the Trial Division of the Tribal Court or the Supreme Court automatically stays a Special Election.

(Ft. McD. Res. No. 2007-60, § 3-69, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-70. - Notice of initiative election.

- A. The Election Board shall mail written notice of the date and place of the special election, the petition language and hours of voting to all eligible voters. The notice shall also include the procedures for those persons that want to vote via absentee ballot.
- B. The Election Board may also include in the notice copies any proposed ordinance or copies of an existing ordinance or resolution that is the subject of the initiative petition.

(Ft. McD. Res. No. 2007-60, § 3-70, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-71. - Election ballot for an initiative.

- A. The Election Board shall prepare the official election ballot form. On the ballot form, the Election Board shall pose the approved petition language as a question. Following the question shall be two (2) boxes. One (1) box shall have the word "yes" typed inside the box and the second box shall have

the word "no" typed inside the box. The ballot shall inform voters that in order for a person to indicate his or her vote, the voter must circle either the "yes" or the "no" box to answer the question posed.

- B. Eligible voters who are temporarily absent or otherwise unable to cast their ballots at the polling place may request an absentee ballot. Such requests must be in writing and delivered to the Election Board at least twenty (20) calendar days prior to date set for the Special Election. Those rules set forth in Section 3-4 that are not in conflict with the rules in Article V shall be used for purposes of absentee ballots.
- C. Rejected Ballots. If during the counting of the votes, the members of the Election Board are unable to determine from a ballot all of the choices of the voter, that ballot shall be rejected. Ballots marked both "yes" and "no" will be rejected. Ballots with neither a "yes" nor "no" designation will be rejected. Ballots without clear, unambiguous designations will also be rejected. A rejected ballot shall be marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.

(Ft. McD. Res. No. 2007-60, § 3-71, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-72. - Election challenges.

- A. Challenges to Initiatives are limited to a challenge of approved petition language. Such a challenge must be filed in writing within ten (10) days following the issuance of the Notice of the Election by the Election Board. The challenge shall be presented in writing to any member of the Election Board. Within three (3) days following the filing of the challenge, the Election Board shall hold a hearing to determine the validity of the challenge. The hearing shall be informal and the formal rules of evidence shall not apply. If there is more than one (1) challenge, the Election Board may consolidate the challenges. The Election Board shall issue a written decision within two (2) days following the hearing. The Election Board's decision shall include the challenge, any findings of fact and the basis of their decision, and their decision.
- B. Challenges to the election procedures shall follow the process provided for in Section 3-61.
- C. The filing of an appeal with the Trial Division of the Tribal Court or the Supreme Court automatically stays the results of a Special Election.

(Ft. McD. Res. No. 2007-60, § 3-72, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-73. - Applicability of general election rules.

As a general rule, the rules pertaining to General Elections set forth in Articles I, II, III and IV shall govern the voting procedure for recall elections unless a particular rule is in conflict with a rule set forth in Article V.

(Ft. McD. Res. No. 2007-60, § 3-73, adopted 9-18-2007, eff. 9-18-2007)

Sec. 3-74. - Applicability of general election rules.

Any eligible voter may inspect all applications and petitions filed with the Election Board. If an eligible voter has reason to believe that an application, petition or signature is invalid, the eligible voter shall immediately inform an Election Board member for consideration. Any such notification must be received within eleven (11) days after the deadline to submit the relevant application or petition. Complaints received after this period will not be considered by the Election Board.

(Ft. McD. Res. No. 2007-60, § 3-74, adopted 9-18-2007, eff. 9-18-2007)

Chapter 4 - COURTS GENERALLY

ARTICLE I. - RESERVED

Sec. 4-1. - Reserved.

(Former Sec. 4-1 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-1; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-2. - Reserved.

(Former Sec. 4-2 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-2; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-3. - Reserved.

(Former Sec. 4-3 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-3; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-4. - Reserved.

(Former Sec. 4-4 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-4; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Secs. 4-5—4-20. - Reserved.

ARTICLE II. - RESERVED

Sec. 4-21. - Reserved.

(Former Sec. 4-21 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-21; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-22. - Reserved.

(Former Sec. 4-22 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-22; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-23. - Reserved.

(Former Sec. 4-23 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-23; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-24. - Reserved.

(Former Sec. 4-24 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-24; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-25. - Reserved.

(Former Sec. 4-25 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-25; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-26. - Reserved.

(Former Sec. 4-26 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-26; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-27. - Reserved.

(Former Sec. 4-27 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.)

(Law & Order Code 2006, § 4-27; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Secs. 4-28—4-30. - Reserved.

ARTICLE III. - APPEALS

Sec. 4-31. - Supreme Court.

- A. The Supreme Court of the Fort McDowell Yavapai Nation shall consist of three (3) Justices appointed by the Tribal Council as provided in Article VII of the Nation's Constitution.

(Sec. 4-31 added by Resolution No. Ft. McD. 97-93, effective August 23, 1997. Former Sec. 4-31 repealed and revised by Resolution No. Ft. McD. 98-02, effective January 5, 1998. Former Sec. 4-31 repealed and revised version enacted by Resolution No. Ft. McD. 2003-154, effective December 16, 2003.)

(Law & Order Code 2006, § 4-31; Ft. McD. Res. No. 97-93, eff. 8-23-1997; Ft. McD. Res. No. 98-02, eff. 1-5-1998; Ft. McD. Res. No. 2003-154, eff. 12-16-2003)

Sec. 4-32. - Right to appeal.

- A. The Supreme Court shall have original jurisdiction to hear all habeas corpus petitions and such other special actions consistent with the inherent power of the judiciary and the provisions of this Code.
- B. The Supreme Court shall have jurisdiction to hear appeals from any final judgment of the Courts of the Fort McDowell Yavapai Nation.
- C. The Supreme Court may, in its discretion, permit an interlocutory appeal of an order of a trial judge of this jurisdiction provided that:

1. Application for such interlocutory appeal is made within ten (10) calendar days of the entry of the order sought to be appealed from; and
 2. The applicant sufficiently alleges that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.
- D. Appellate review of final judgments shall be limited to a review of the record of the trial court. There shall be no de novo review of factual issues, and no new evidence or testimony shall be presented except where, in the discretion of the Supreme Court, the new evidence or testimony is necessary to assure a fair appeal.

(Sec. 4-32(A)-(D) amended by Resolution No. Ft. McD. 2003-154, effective retroactively to December 16, 2003, Sec. 4-32(D) amended by Resolution No. Ft. McD. 2004-57, effective retroactively to December 16, 2003.)

(Law & Order Code 2006, § 4-32; Ft. McD. Res. No. 2003-154, eff. 12-16-2003; Ft. McD. Res. No. 2004-57, eff. 12-16-2003)

Sec. 4-33. - Appellate procedure.

The Supreme Court shall have authority to adopt rules of procedure governing practice before the Court. Those rules, and any amendments made by the Court to the rules, shall be submitted to the Tribal Council at least sixty (60) days prior to their effect date. The Tribal Council may by ordinance prevent any rule or part thereof from going into effect, or amend, modify or repeal any rule after it has gone into effect.

(Sec. 4-33 repealed and current version enacted by Resolution No. Ft. McD. 2003-154, effective December 16, 2003. Section 4-33 amended by Resolution No. Ft. McD. 2004-57, effective retroactively to December 16, 2003.)

(Law & Order Code 2006, § 4-33; Ft. McD. Res. No. 2003-154, eff. 12-16-2003; Ft. McD. Res. No. 2004-57, eff. 12-16-2003)

Sec. 4-34. - Reserved.

(Sec. 4-34 repealed by Resolution No. Ft. McD. 2003-154, effective April 30, 2004. Former Sec. 4-34 repealed and current Sec. 4-34 enacted by Resolution No. Ft. McD. 98-02, effective January 5, 1998.)

(Law & Order Code 2006, § 4-34; Ft. McD. Res. No. 98-02, eff. 1-5-1998; Ft. McD. Res. No. 2003-154, eff. 12-16-2003; Ft. McD. Res. No. 2004-57, eff. 12-16-2003)

Sec. 4-35. - Reserved.

(Sec. 4-35 repealed by Resolution No. Ft. McD. 2004-57, effective April 30, 2004.)

(Law & Order Code 2006, § 4-3; Ft. McD. Res. No. 2003-154, eff. 12-16-2003; Ft. McD. Res. No. 2004-57, eff. 12-16-2003)

Secs. 4-36—4-40. - Reserved.

RULES OF APPELLATE PROCEDURE.

[**HISTORICAL NOTE:** The Rules of Appellate Procedure were submitted to the Fort McDowell Yavapai Nation Tribal Council on February 24, 2004, and the Fort McDowell Yavapai Nation Supreme Court, pursuant to Sec. 4-33, subsequently adopted said rules with an effective date of May 1, 2004.]

Rule 1. - Scope of rules.

These rules govern procedures in the Supreme Court of the Fort McDowell Yavapai Nation. Unless otherwise specified, the word "Court" in these Rules refers to the Supreme Court of the Nation.

Rule 2. - Appeals from final judgments or final orders.

- A. **Notice of Appeal.** A party may appeal from a final judgment or final order of a court of the McDowell Yavapai Nation by filing a written notice of appeal with the Clerk of the Supreme Court within ten (10) days after the judgment or order appealed from is filed in the lower court. The notice of appeal must specify the party or parties taking the appeal and clearly designate the judgment or order from which appeal is taken. If any party makes a timely motion in the court below for reconsideration of a final judgment or order of that court, or for a new trial, the time within which a notice of appeal must be filed begins to run on the date that the disposition of such a motion by the lower court is filed in that court.
- B. **Filing Fee.** Unless a motion to waive or delay payment of the filing fee is made, a party filing a notice of appeal must pay a filing fee of fifty dollars (\$50.00) to the Clerk of the Supreme Court at the time the notice of appeal is filed. The filing fee requirement does not apply to notices of appeal filed on behalf of the Fort McDowell Yavapai Nation, its agencies, departments or enterprises. If a party filing a notice of appeal is unable to pay the filing fee, the Clerk will file the notice of appeal and the party must file a motion asking the Court to waive or defer payment of the fee. Such a motion must be filed within five (5) days of filing the notice of appeal, and must be accompanied by a completed Affidavit of Financial Status for Waiver or Deferment of Appeal Filing Fee, signed by the appellant. Affidavit forms are available at the office of the Clerk of the Court. The form must be signed by the party, not by a representative. If the Court denies the motion to waive or delay payment of the fee, the appellant has five (5) days from the filing of the denial of the motion to pay the fee; if the fee is not paid within this five-day period, the appeal will be dismissed. If a motion to waive or delay payment of the filing fee is granted, the time for filing the appellant's opening brief, as provided in Rule 4(a) of these Rules, runs from the date the order granting the motion is filed. The filing fee must be paid in the form of a cashier's check. Cash, personal check or credit card are not acceptable forms of payment.
- C. **Motion to Dismiss.** A party that believes that a notice of appeal is untimely or legally insufficient, that a required filing fee has not been paid, or that an appeal should be dismissed for any other reason, may file a motion with the Court to dismiss the appeal. If the motion to dismiss is granted, no further briefs shall be filed and the matter is closed in the Supreme Court. If the motion to dismiss is denied, the time within which the appellant's opening brief must be filed begins to run when the Court's order denying the motion is filed.

Rule 3. - Appeals from non-final orders.

Appeals from non-final orders are permitted only in the discretion of the Court and only if (i) the order appealed from involves a controlling question of law as to which there is a substantial ground for difference in opinion, and (ii) an immediate appeal from the order will materially advance the ultimate termination of the litigation. A party seeking to appeal a non-final order must file a motion asking for leave to appeal within five (5) days of the date of the order. The motion must set forth the reasons why the conditions stated in the first sentence of this Rule are satisfied. The filing fee required by Rule 2(b) of

these Rules applies to motions for leave to appeal non-final orders. If leave to appeal a non-final order is granted by the Court, the Court will establish a briefing schedule at the time leave to appeal is granted.

Rule 4. - Briefs on appeal.

- A. **Time for Filing.** Unless the Court orders otherwise, an appellant must file an opening brief within thirty (30) days of (i) the date of filing of the notice of appeal, or (ii) the date of disposition of a motion to waive or delay payment of the filing fee, or (iii) the date of filing of the Court's denial of a motion to dismiss the appeal, whichever is the latest of these three (3) dates. Unless an extension of time to file the appellant's opening brief is granted, the failure of the appellant to file an opening brief within the time prescribed by the first sentence of this Rule will result in dismissal of the appeal unless the Court determines that extraordinary circumstances exist. The appellee may file a response brief within thirty (30) days of being served with the appellant's opening brief and the appellant may file a reply brief within ten (10) days of being served with the appellee's response brief. Unless an extension of time to file is granted, response or reply briefs that are not timely will not be considered by the Court unless the Court determines that extraordinary circumstances exist.
- B. **Content of Briefs.** The opening brief must contain, in the following order:
- (i) a specific identification of the judgment or order appealed from;
 - (ii) a statement of the issues presented for review;
 - (iii) a procedural statement of the case, briefly describing the nature of the case and the proceedings in the lower court;
 - (iv) a statement of the relevant facts;
 - (v) a brief summary of the decision below;
 - (vi) an argument in support of the appeal; and
 - (vii) a short conclusion stating the precise relief sought from the Court.

The appellee's response brief shall specify any disagreement with parts (i), (ii), (iii), (iv) and (v) of the appellant's opening brief and, in addition, shall contain an argument in support of appellee's position and a brief conclusion. A reply brief may only respond to matters contained in the response brief. Except for brief quotations, material that will be contained in the record on appeal (see Rule 5 of these Rules) should not be reproduced in the parties' briefs or in appendices to the briefs, but will be before the Court as part of the record on appeal. References in briefs to material that will be in the record on appeal should include the date and title of the material to which reference is made, e.g., "Trial Court Order dated February 30, 2003."

- C. **Appendices to Briefs.** Parties may attach appendices to their briefs reproducing materials relevant to the Court's consideration of the case that are not contained in the record on appeal.

Rule 5. - The record on appeal.

- A. **Contents of the Record on Appeal.** The Clerk of the Court will prepare a record on appeal for each appeal after all briefs have been filed. The record on appeal will consist of the judgment or order appealed from, any opinion issued in connection with that judgment or order, and any other material filed in the lower court (including the transcript of record, if any) that any party designates for inclusion in the record on appeal. Each party shall make such designation in writing to the Clerk of the Court at the time of filing its initial brief, and the appellant may designate additional material when filing a reply brief. Materials should be designated for inclusion in the record on appeal only if relevant to the Court's decision of the issues on appeal.
- B. **Form of the Record on Appeal.** After all briefs are filed, the Clerk will assemble the record on appeal, consisting of the material specified in subsection A of this Rule. The materials in the record on appeal will be arranged in chronological order, beginning with the earliest filed materials and

ending with the most recently filed material. The record on appeal will be bound separately from the appellate briefs.

- C. **Distribution to the Court of Briefs and the Record on Appeal.** Once all briefs have been filed and the record on appeal has been assembled, the Clerk will distribute the briefs and the record on appeal to the Justices. One (1) copy of each brief and one (1) copy of the record on appeal will be distributed to each Justice and one (1) copy of the record on appeal will be distributed to each party. The Clerk will retain at least one (1) copy of each brief and of the record on appeal for the Court's records.

Rule 6. - Oral argument.

After the appellate briefs and the record on appeal have been distributed to the Justices, the Court will determine whether it will hear oral argument. The parties will be notified by the Clerk regarding whether oral argument will be heard and, if argument is to be heard, when the argument will take place. If oral argument is heard, each side's argument will be limited to thirty (30) minutes unless the Court orders otherwise. The appellant will argue first and may reserve up to ten (10) minutes for rebuttal.

Rule 7. - Transcripts of lower court proceedings.

If a party believes that a written transcript of any proceedings in the lower court would aid in the Court's determination of an appeal, it may move the Court to order that such a transcript be prepared. The motion may seek either a full or a partial transcript of the lower court proceedings. The motion should explain why a transcript would aid the Court's consideration of the case. If the Court orders a transcript to be prepared, it will determine responsibility for the costs of preparation. The party requesting the transcript will be responsible for the costs of preparation unless the Court orders otherwise in the interests of justice. If a transcript is prepared, it will be included by the Clerk in the record on appeal.

Rule 8. - Motions practice.

A party wishing to respond to a motion may do so by filing a response within five (5) days of being served with the motion. The moving party may file a reply within three (3) days of being served with a response.

Rule 9. - Filing.

Whenever a notice, motion, brief or other document is required to be filed, the document is to be mailed or delivered by hand to the Clerk of the Court. Filing is deemed accomplished when the document is received at the Clerk's office at a time when the office is open for business. The date of filing will be stamped by the Clerk on the original of each filed document. Within five (5) days of the date of filing, all filed documents must be served on all parties by the party required to file the document.

Rule 10. - Service.

Whenever a notice, motion, brief or other document is required to be served by a party, service is accomplished when the party mails the document or delivers it by hand to the person or entity to be served. The date of service is the date when a document is delivered by hand to the person or entity to be served or five (5) days after a document is placed in the United States mail for the purpose of service.

Rule 11. - Representatives of parties.

Unless otherwise specified in these Rules, all acts required or permitted to be done by a party may be done by a party's representative and all service upon or notification to a party may be made upon or to a party's representative.

Rule 12. - Calculation of time.

In calculating time pursuant to these Rules, "days" refers to calendar days, including Saturdays, Sundays and legal holidays, except that, when the day on which an act must be done falls on a Saturday, Sunday or legal holiday recognized by the Nation, the act may be done on the next calendar day that is not a Saturday, Sunday or legal holiday.

Rule 13. - Extensions of time.

The Court may, for good cause shown, extend the time for filing any document or performing any act, except that the time for filing a notice of appeal may not be extended unless the party demonstrates that it did not receive timely notice of the judgment or order appealed from. A request for an extension of time is made by motion addressed to the Court. Before seeking an extension of time, the party requesting the extension must determine whether any other party objects to the request and the motion for extension must state whether there is such an objection. The motion for extension must explain why an extension is required, regardless of whether any other party objects to the request.

Rule 14. - Motions for stay of execution.

A party seeking a stay of execution of a judgment or sentence of the lower court, pending disposition of the party's appeal to the Supreme Court, must first seek that relief from the lower court. The Supreme Court will ordinarily consider a motion for such relief only after the lower court has ruled on the request, or when the lower court has failed to rule on the request after the passage of a reasonable period of time. The filing of a notice of appeal does not remove the lower court's jurisdiction to grant a stay of execution or similar relief pending appeal.

Rule 15. - Court decisions.

Decisions of the Supreme Court will be in writing and will be filed with the Clerk and distributed by the Clerk to the parties. Decisions on motions may be made by a single Justice authorized by the Court to act on motions. Decisions of appeals will be filed within six (6) months of the oral argument or within six (6) months of the filing of the last brief if the case is decided without oral argument. The Clerk will keep a permanent chronological file of the Court's decisions of motions and appeals. This file shall be available to the public upon request.

Rule 16. - Effective date.

These rules shall be effective from and after May 1, 2004.

ARTICLE IV. - RULES OF COURT

Sec. 4-41. - Reserved.

(*Former Sec. 4-41 repealed by Resolution No. Ft. McD. 97-93, effective August 23, 1997.*)

(Law & Order Code 2006, § 4-41; Ft. McD. Res. No. 97-93, eff. 8-23-1997)

Sec. 4-42. - Protection of defendant's rights.

Before any defendant is asked to plead to any criminal charge, the judge before whom he appears shall do the following:

- A. Read the charge and the language of the ordinance establishing the offense and fixing the penalty.
- B. Explain the charge in language the defendant can understand.

(Law & Order Code 2006, § 4-42)

Sec. 4-43. - Action in cases of concurrent jurisdiction.

Whenever it appears that a defendant is charged with an offense under tribal ordinance which is also an offense under state or federal law, it shall be the duty of the Community Court to determine whether the appropriate state or federal authorities will consent to exercise the jurisdiction lawfully vested in them over said offense. In making such determination, the Tribal Court may use the following form or may rely on information obtained in any other manner:

To the United States Attorney at _____

There has been duly arrested and brought before the tribal court of the Fort McDowell Yavapai Nation a defendant charged with the offense _____ as noted in the attached criminal complaint.

(Law & Order Code 2006, § 4-43)

Secs. 4-44—4-50. - Reserved.

ARTICLE V. - LIMITATIONS OF ACTIONS

DIVISION 1. - CIVIL ACTIONS

Sec. 4-51. - Accrual of actions.

For purposes of this Article, a cause of action accrues when the damaged party knows or reasonably should have known he or she has been damaged and knows or reasonably should have known the cause, source, act, event, instrumentality, or condition which caused or contributed to the alleged injury.

(*Sec. 4-51 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-51; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-52. - Contracts and agreements.

- A. An action upon a written contract or other written agreement shall be brought within six (6) years after the cause of action accrues, and not afterward.
- B. An action upon an oral contract or other oral agreement shall be brought within three (3) years after the cause of action accrues, and not afterward.

(*Sec. 4-52 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-52; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-53. - Torts.

An action for tortious conduct shall be brought within two (2) years after the cause of action accrues, and not afterward.

(*Sec. 4-53 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-53; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-54. - Actions against the Nation.

All actions against the Nation or any of its agencies, enterprises, divisions, departments, officials, officers, or employees shall be brought within one (1) year after the cause of action accrues, and not afterward.

(*Sec. 4-54 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-54; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-55. - General limitation.

Actions for which no limitation is otherwise prescribed shall be brought within two (2) years after the cause of action accrues, and not afterward.

(*Sec. 4-55 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-55; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-56. - Tolling; effect of minority, insanity, imprisonment.

- A. There shall be no tolling of the statute of limitations for any reason, including equitable reasons other than disability of a person as defined by this Section. Neither filing a notice of claim against the Nation, nor the filing of a lawsuit in another jurisdiction shall interrupt the running of the statute of limitations.
- B. If a person entitled to bring an action is at the time the cause of action accrues either less than eighteen (18) years of age, of unsound mind, or a person who has been judged by a court to be an incompetent person, the period of such disability shall not be counted or taken as a part of the time limited by the provisions of this Article or any other time limitation under the laws of the Nation. Such person shall have the same time after the disability ceases to exist which is allowed to others.
- C. If a person entitled to bring an action is at the time the cause of action accrues imprisoned, the period of such disability shall exist only until such time as the person imprisoned discovers the right to bring the action or with the exercise of reasonable diligence should have discovered the right to bring the action, whichever occurs first, and such person shall have the same time after the disability ceases to exist which is allowed all others.

(*Sec. 4-56 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-56; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-57. - Tacking of disabilities prohibited.

The period of limitation shall not be extended by the connection of one (1) disability to another. When the law of limitation begins to run, it shall continue to run notwithstanding a supervening disability of the party entitled to sue or liable to be sued.

(*Sec. 4-57 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-57; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-58. - Foreign judgments and causes of action.

- A. No action which arises in another jurisdiction outside the territory of the Nation shall be maintained against a person if such action is barred by the law of limitations of such other jurisdiction, except in favor of a plaintiff who has been a resident of the Nation, and who has held the cause of action from the time it accrued.
- B. An action in this jurisdiction upon a judgment or decree rendered in another jurisdiction outside the territory of the Nation shall be barred if by the laws of such other jurisdiction such action would have been barred there and the judgment or decree is incapable of being otherwise enforced there.

(*Sec. 4-58 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-58; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-59. - Commencement, saving of action timely commenced.

- A. For purposes of meeting the limitations deadlines set in this Article, a suit is commenced when the complaint is filed with the clerk of the court.
- B. If an action is timely commenced within the period of limitations prescribed for the action and the action is terminated in any manner other than by abatement, voluntary dismissal, dismissal for lack of prosecution, dismissal with prejudice, or a final judgment on the merits, the plaintiff, or a successor or personal representative, may commence a new action for the same cause of action within three (3) months after such termination.
- C. If an action is commenced within the period of limitations prescribed for the action and a judgment for the Plaintiff is reversed on appeal, other than on the merits, the Plaintiff or a successor or personal representative may commence a new action for the same cause of action within three (3) months after such termination.

(*Sec. 4-59 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-59; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-60. - Presumption of death.

For purposes of this Article, a person who is absent from the place of his last domicile for five (5) successive years shall be presumed dead in any action wherein his death comes in question, unless proof by clear and convincing evidence is made that he was alive within that time.

(*Sec. 4-60 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-60; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-61. - Exemption of Nation from limitations.

Except as otherwise provided by the laws of the Nation, the Nation shall not be barred by the limitations of actions prescribed in this Article or any other time limitation under the laws of the Nation.

(*Sec. 4-61 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-61; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-62. - Effect of absence from territory of Nation.

When a person against whom there is a cause of action is absent from the territory of the Nation at the time the cause of action accrues or at any time which the action might have been maintained and service of process cannot be accomplished on that person, such action may be brought against such person after his return to the territory of the Nation. The time of such person's absence shall not be counted or taken as a part of the time limited by the provisions of this Article or any other time limitation under the laws of the Nation. A Plaintiff must use reasonable efforts to effectuate service on the absent defendant for this exception to apply.

(*Sec. 4-62 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-62; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-63. - Persons who may maintain action for injury or death of a child or ward.

- A. Either parent may maintain an action for injury of a child, and a guardian may maintain an action for the injury of his ward.
- B. Either parent may maintain an action for the death of a child, and a guardian may maintain an action for the death of his ward.
- C. An action for wrongful death of a child shall be brought by and in the name of the personal representative of the deceased child on behalf of the decedent's estate in the event there exists no surviving husband, wife, children or parents of the deceased child.

(*Sec. 4-63 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-63; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Secs. 4-64—4-74. - Reserved.

DIVISION 2. - CRIMINAL ACTIONS

Sec. 4-75. - Limitations of prosecution.

- A. A prosecution for the misuse of public monies, the falsification of public records, homicide, and sexual offenses against minors may be commenced at any time.
- B. Except as otherwise provided by the laws of the Nation, prosecutions for other offenses must be commenced within one (1) year after actual discovery by the Nation or discovery by the Nation which should have occurred with the exercise of reasonable diligence, whichever occurs first.
- C. For the purposes of subsection B of this Section, a prosecution is commenced when an indictment, information or complaint is filed.
- D. The period of limitation does not run during any time when the accused is absent from the territory of the Nation or has no reasonable ascertainable place of abode within the territory of the Nation.
- E. If a complaint, indictment or information filed before the period of limitations has expired is dismissed without prejudice for any reason, a new prosecution may be commenced with three (3) months after the dismissal becomes final even if the period of limitation has expired at the time of the dismissal or will expire within three (3) months of such dismissal.

(Sec. 4-75 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.)

(Law & Order Code 2006, § 4-75; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

DIVISION 3. - GENERAL PROVISIONS

Sec. 4-76. - Severability.

If any section or provision of this Article or amendment made by this Article is held invalid, the remaining sections or provisions of this Article and amendments made by this Article shall continue in full force and effect.

(Sec. 4-76 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.)

(Law & Order Code 2006, § 4-76; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Secs. 4-77—4-84. - Reserved.

ARTICLE VI. - SOVEREIGN IMMUNITY

Sec. 4-85. - Sovereign immunity of the Nation.

- A. The Nation shall be immune from suit in any action or other proceeding brought in or before any court, board, or other tribunal against the Nation unless the Nation expressly and unequivocally waived such immunity in writing or has expressly and unequivocally waived such immunity within this Code of the Nation. The Nation may grant limited waivers of its sovereign immunity. In order for the Nation to waive its sovereign immunity, any writing or provision of this code must contain words "the Nation expressly and unequivocally waives its sovereign immunity."
- B. The immunity of the Nation described in subsection A of this Section shall act as a bar to any suit, action, or other proceeding brought against the Nation and shall prohibit the award of any damages of any kind against the Nation.
- C. Except as provided in Section 4-86(b), nothing in this Article shall be read, construed, or interpreted to, in any way, waive the sovereign immunity of the Nation.

(Sec. 4-85 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.)

(Law & Order Code 2006, § 4-85; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-86. - Immunity of officials, officers, and tribal employees.

- A. Except as provided by this section, the Tribal Employees, Officials and Officers shall be immune from suit, to the extent the Nation is immune from such suit, in the performance of their official duties.
- B. Tribal Employees, Officials and Officers shall not enjoy immunity from suit in an action for declaratory, injunctive, or other equitable relief brought for the sole purpose of compelling such employee, official or officer to comply with the Constitution or laws of the Nation provided:
 - 1. That such waiver of immunity shall not extend to the discretionary actions of such employees or any claim or judgment for monetary damages, and
 - 2. That all available administrative remedies have been exhausted.

(*Sec. 4-86 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-86; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Sec. 4-87. - Severability.

If any section or provision of this Article or amendment made by this Article is held invalid, the remaining sections or provisions of this Article and amendments made by this Article shall continue in full force and effect and such invalidity shall not effect the sovereign immunity of the Nation, its Officials, Officers, or Employees.

(*Sec. 4-87 added by Resolution No. Ft. McD. 97-45, effective May 29, 1997.*)

(Law & Order Code 2006, § 4-87; Ft. McD. Res. No. 97-45, eff. 5-29-1997)

Chapter 5 - CIVIL AND CRIMINAL PROCEDURE

ARTICLE I. - IN GENERAL

Sec. 5-1. - Application of law.

In all actions before the courts of the Fort McDowell Yavapai Nation, the law of the Fort McDowell Nation shall be controlling. The law of the Community consists of the Law and Order Code and the common law of the Fort McDowell Yavapai Nation. The common law of the Community is composed of both the customary law of the community and the rules of law and decisions of the Tribal Court.

In cases where the Law and Order Code is silent as to an issue of procedural law, the court may, in its discretion, use procedural rules or laws of the United States to fashion a remedy.

In determining issues of law the Tribal Court may use as a resource cases decided by the courts (1) of the Indian tribes, (2) of the United States, and (3) of the several states and territories of the United States.

(*Sec. 5-1 amended by Resolution No. Ft. McD. 93-12, Feb. 24, 1993.*)

(Law & Order Code 2006, § 5-1; Ft. McD. Res. No. 93-12, eff. 2-24-1993)

Secs. 5-3—5-10. - Reserved.

ARTICLE II. - CIVIL PROCEDURE

Sec. 5-11. - Commencement of action.

- A. Actions shall be commenced in the Fort McDowell Tribal Court by filing a claim, in concise form and free of technicalities. The plaintiff, plaintiff's lay advocate, or plaintiff's attorney shall verify the claim by oath or affirmation in the form provided by the clerk of the court or its equivalent, and shall sign it. When a claim is filed, the clerk of the Tribal Court shall write upon the original the day and hour on which it was filed and shall immediately issue a summons. The summons shall be in the form prescribed by the Tribal Court and shall be signed by the clerk and be under the seal of the Tribal Court.

- B. In order to bring a cause of action for relief, a plaintiff, counterclaimant, or third party seeking intervention (as a matter of right, or permissive intervention) has the burden of proof to establish the following elements to demonstrate standing to assert such cause.
1. The plaintiff, counterclaimant, or third party seeking intervention (as a matter of right, or permissive intervention) must have suffered an injury-in-fact which is (a) personal, (b) concrete and particularized and (c) actual or imminent, not merely conjectural, speculative, or hypothetical; and,
 2. The plaintiff, counterclaimant, or third party seeking intervention (as a matter of right, or permissive intervention) must demonstrate a causal connection between the injury and the conduct complained of; and,
 3. The plaintiff, counterclaimant, or third party seeking intervention (as a matter of right, or permissive intervention) must demonstrate that it is likely, as opposed to merely conjectural, speculative, or hypothetical, that the injury will be redressed by a favorable decision of the Court.
- C. The Nation shall have standing to intervene in civil actions where the personal, real, or proprietary interests of the Nation are the subject of the civil action and Sec. 4-61 (Exemption of Nation from Limitations) shall apply to the Nation's action to intervene. For purposes of illustration only and not intended as a limitation, the Nation shall have standing to intervene in all civil actions arising from, interpreting, construing, determinations of awards, benefits, amounts, or beneficiaries, or touching upon the Nation's Revenue Allocation Plan(s), housing programs, loan programs, tribal member or employee benefit plans, and any other governmental program or benefit plan of the Nation. The Court shall construe the Nation's right to intervene broadly. This section shall not impose an obligation on the Nation to intervene in any civil action.

(Sec. 5-11 amended by Resolution No. Ft.McD. No. 2004-53, effective April 27, 2004. Sec. 5-11(b)-(c) added by Resolution No. Ft. McD. No. 2004-53, effective April 27, 2004.)

(Law & Order Code 2006, § 5-11; Ft. McD. Res. No. 2004-53, eff. 4-27-2004)

Sec. 5-12. - Preparation of claim.

The clerk shall, at the request of any individual, give reasonable assistance in preparing the claim and other papers required to be filed in an action under this chapter.

(Law & Order Code 2006, § 5-12)

Sec. 5-13. - Service of process.

The summons and complaint shall be served together. Service shall be made as follows:

- A. **Service upon individuals.** Upon any individual by delivering a copy of the summons and of the complaint to him or her personally or by leaving copies of the summons and complaint at his dwelling, house or usual place of abode with some person of suitable age and discretion residing in such place.
- B. **Service upon resident individuals, corporations, partnerships, etc.** When the defendant is a resident of this community or is a corporation doing business in this community, or is a person, partnership, corporation or unincorporated association subject to suit in a common name which has caused an event to occur in this community out of which the claim which is the subject of the complaint arose, service may be made as herein provided, and when so made shall be of the same effect as personal service within the community.

1. A copy of the summons and complaint shall be forwarded to the superintendent of the reservation where the defendant is enrolled or found to be residing and there the summons and complaint shall be served by an appropriate officer.
 2. A copy of the summons and complaint shall be mailed by certified mail, return receipt requested, to the defendant's last known post office address by the clerk of the Tribal Court.
- C. **Time limit upon answer.** The defendant shall have thirty (30) days in which to answer the complaint from the time of the completed service.
- D. **Completion of service.** Service of summons and complaint shall be attested to by an affidavit of the officer who personally served the summons and complaint or by affidavit of the clerk of the court who mailed the summons and complaint. Service shall be complete at the time personal service is made (or at the time of mailing, if mailing is the method of service) providing an affidavit of service or mailing is filed with the clerk within ten (10) days after service is made. If such an affidavit is not filed within ten (10) days after service is made, then service shall be deemed complete from the date of the filing of such affidavit.
- E. **Delivery of papers to law department.** Upon the issuance of a summons by the clerk of the court or upon the issuance of an order or notice of hearing by a Chief Judge of the court, the clerk of the court shall deliver the notice, order or summons and complaint to the chief officer of the law department of the Fort McDowell Yavapai Nation or his designated agent for service of said papers or to such other person appointed by the chief judge to serve process within the community.
- F. **Personal service.** The court bailiff, chief officer of the Fort McDowell Yavapai Nation Law Department or his designated agent or other duty designated process server shall personally serve the order, notice or summons and complaint received from the Fort McDowell Tribal Court, upon the person or persons designated.
- G. **Time limit upon service of notice.** Service of the notice of hearing must be completed at least forty-eight (48) hours prior to the scheduled hearing in proceedings before the juvenile division of the Courts of the Fort McDowell Yavapai Nation or as otherwise provided in Chapter 11 of this Code.
- H. **Service upon members of Tribal Council and employees of Tribal government or employees of Tribal enterprises.** Service of process upon any member of Tribal Council and any individual employee of Tribal government or Tribally owned enterprises shall be served on the individual and also upon the Office of the Tribal Attorney.
1. An application for summons for a member of Tribal Council, or an employee of Tribal government or of a Tribal enterprise shall state whether the witness is being called in their capacity as a member of Tribal Council, in their capacity as a Tribal government or Tribal enterprise employee or as individual with information unrelated to their elected or employment status.
 2. Any such application shall include a brief summary of expected testimony or identify the subject matter to avoid unnecessary interviews or depositions by the parties and should be attached to the written summons or subpoena.
 3. Written interrogatories shall be served upon Tribal Council members and Tribal government or enterprise employees prior to any depositions if the testimony sought is derived or arises from their elected or employment status.
 4. The Office of the Tribal Attorney shall have standing to contest a summons issued against a member of the Tribal Council or a Tribal government or enterprise employee summoned based upon their elected or employment status.
- (i) **Service upon employees of Tribal enterprises employed at the Fort McDowell Yavapai Materials and/or Fountain Hills Concrete.** Service of process upon any individual employee of the Tribally owned enterprise, employed at Fort McDowell Yavapai Materials and/or Fountain

Hills Concrete, may be served on the Enterprise General Manager, or in his absence the Enterprise Controller, who shall serve as the Statutory Agent for the service of process from the Tribal Court.

- (1) The Enterprise General Manager and Controller shall develop and adopt procedures to document the delivery of process and documenting the date and time that process was served on the named individual.
- (2) These procedures shall be coordinated and approved by the Chief Judge of the Tribal Court and shall include a procedure for providing to the Court documentation of the service of process the following Court day.

(Sec. 5-13 added by Resolution No. Ft. McD. 2003-31, effective March 25, 2003. Amended by Resolution No. Ft. McD. 2004-85, effective July 20, 2004.)

(Law & Order Code 2006, § 5-13; Ft. McD. Res. No. 2003-31, eff. 3-25-2003; Ft. McD. Res. No. 2004-85, eff. 7-20-2004)

Sec. 5-14. - Set-off or counterclaim.

A defendant may assert a set-off to the plaintiffs complaint in his answer and may file a counterclaim against the plaintiff with his answer. If a counterclaim is filed by the defendant, the plaintiff shall have ten (10) days to file a reply to the counterclaim.

(Law & Order Code 2006, § 5-14)

Sec. 5-15. - Title, pleading, forms.

There shall be a claim (or complaint) and an answer which may include a counterclaim; and there shall be a reply to a counterclaim. No other pleading may be allowed without special order of the Tribal Court, and no action shall be barred because it was not brought within the scope of the original action if such action could not have been brought under this rule without special order of the Tribal Court. The pleading permitted shall be in substantial compliance with the official forms adopted.

(Law & Order Code 2006, § 5-15)

Sec. 5-16. - Judgment by default.

Upon failure of the defendant to answer the complaint within the time permitted by law, the plaintiff shall be entitled to a judgment for the amount claimed in the complaint upon proof satisfactory to the court that the amount is correct. The court may give judgment in any lesser proved amount.

(Law & Order Code 2006, § 5-16)

Sec. 5-17. - Notice of trial.

Within ten (10) days after the final pleading is filed in an action, the clerk shall furnish the parties with a memorandum of the hour and day set for the trial, which time shall be not less than thirty (30) days nor more than sixty (60) days from the date of the filing of the final pleading in the action. The court may extend the time of the trial for good cause, upon request of one (1) or more parties to the case, or upon its own motion.

(Law & Order Code 2006, § 5-17)

Sec. 5-18. - Discovery of information.

Either party may, by notice to the other party, request the other party to answer questions presented in writing, to turn over copies of documents or photographs, or to admit or deny statements made in writing. Such questions, requests for production of documents, and requests for admission or denial shall be made by filing an original of the question or request with the clerk of the Tribal Court and by mailing a copy to the other party. The party receiving such copy shall have ten (10) days from the time of receipt to make reply. If no reply is made within the time required, the Tribal Court may, upon request of the party applying and notice given to the other party, grant judgment for the moving party, subject to proof as required in section 5-16.

(Law & Order Code 2006, § 5-18)

Sec. 5-19. - Witnesses.

The clerk of the Tribal Court shall, at the request of the party, cause a subpoena to be issued to produce a witness at the time of trial of any case. Upon similar request, the clerk of the Tribal Court shall cause a subpoena duces tecum to be issued to require the presence of documents at the trial of the case. The Tribal Court shall adopt a uniform form of subpoena and subpoena duces tecum. The subpoena or subpoena duces tecum shall be served by the community police in the same manner as a summons and complaint are served. Witnesses subpoenaed shall be paid ten dollars (\$10.00) per day and traveling expenses as determined by the court. Payment of witness fees and expenses shall be borne by the party requesting issuance of the subpoena.

(Law & Order Code 2006, § 5-19)

Sec. 5-20. - Service of answer, counterclaim, reply and requests.

All papers required to be filed with the clerk, except summonses and complaints, shall be served upon the other party by mailing such papers at the time of filing to the other party by ordinary mail. All papers which may be served by ordinary mail shall have noted on the originals filed by the party a statement that copies were mailed, the date mailed, to whom mailed and at what address and signed by the party filing the paper.

(Law & Order Code 2006, § 5-20)

Sec. 5-21. - Conciliation and settlement of dispute.

Immediately before the trial of any case, the community judge shall make an earnest effort to settle the controversy by conciliation. If the community judge fails to induce the parties to settle their difference without a trial, he shall proceed with the trial upon the merits, or set a date for trial within thirty (30) days.

(Law & Order Code 2006, § 5-21)

Sec. 5-22. - Failure of parties to appear.

If at the time set for trial the defendant fails to appear, judgment may be entered for the plaintiff by default as above provided. If at the time set for trial the plaintiff fails to appear, the suit may be dismissed for want of prosecution or defendant may proceed to a trial on the merits, or the case may be continued for further proceedings on a later date, as the community judge may direct. If both parties fail to appear,

the community judge may continue the case for further proceedings at a later date, or order the same dismissed for want of prosecution, or make any other just and proper disposition thereof as justice may require.

(Law & Order Code 2006, § 5-22)

Sec. 5-23. - Procedure.

The parties with witnesses shall be sworn. The community judge shall conduct the trial in such manner as to do substantial justice between the parties and according to the rules of the court.

(Law & Order Code 2006, § 5-23)

Sec. 5-24. - Judgments and damages.

- A. ***Time of making judgment.*** The court shall make and enter findings of fact, conclusions of law and a judgment within ten (10) days after trial has been concluded. The court may, on its own motion, extend the time for the making and entering of findings of fact, conclusions of law, and judgment in those situations in which the court in writing determines that a post-trial investigation or supplementary hearing or proceedings are required. An extension of time within which to make and enter findings of fact, conclusions of law and judgment shall not exceed thirty (30) days.
- B. ***Judgments in civil actions generally.*** In civil cases, judgments may consist of an order of the court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party. In actions for divorce, annulment or separate maintenance, the court may enter such judgments as are consistent with Chapter 10 of this Code.
- C. ***Damages in cases of bodily injury or property damages.*** Where the injury inflicted was the result of negligence of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.
- D. ***Damages in cases involving contracts.*** The common law is adopted in assessing damages in cases involving contracts as modified by traditional understanding of justice in the community.
- E. ***Mitigated damages.*** Where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered.
- F. ***Costs.*** The court may assess the accruing costs of the case based on a cost statement prepared by the prevailing party, against the party or parties against whom judgment is entered, such costs are limited to fees paid to the clerk of the court, service of process, jury fees, witness fees, and deposition transcript charges.
- G. ***Payment of judgments from individual Indian moneys.*** Whenever the Fort McDowell Tribal Court shall have ordered payment of money damages to a party and the losing party refuses to make such payment within the time set for payment by the court and when the losing party has sufficient funds to his credit at the agency office to pay all or part of such judgment, the superintendent may certify to the Commissioner of Indian Affairs the record of the case and the amount of the available funds. If the Commissioner of Indian Affairs so directs, the disbursing agent shall pay over to the party entitled by judgment to it, the amount of the judgment or such lesser amount as may be specified by the Commissioner of Indian Affairs from the account of the delinquent party. A judgment shall be considered a lawful debt in all proceedings to distribute decedent's estate.
- H. ***Stay of entry and of execution; installment payment.*** When judgment is to be rendered and the party against whom it is to be entered requests it, the community judge shall inquire fully into the earnings and financial status of such party and shall have full discretionary power to stay the entry of judgment, and to stay execution, except in cases involving wage claims, and to order partial payments in such amounts, over such periods and upon such terms as shall seem just under the

circumstances and as will ensure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that such party has failed to meet any installment payment without just excuse, the stay of execution shall be vacated. When no stay of execution has been vacated as provided herein, the party in whose favor the judgment has been entered shall have the right to avail himself of all remedies otherwise available in the Tribal Court for the enforcement of judgments, including the issuance of a writ of execution.

- (i) **Judgment for wages; examination; payment.** In all cases in which the judgment is founded in whole or in part on a claim for wages or personal services, the community judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom such judgment has been entered, but not more often than once every four (4) weeks for oral examination under oath as to his financial status and his ability to pay such judgment and the community judge shall make such supplementary orders as may seem just and proper to effectuate the payment of the judgment upon reasonable terms.

(*Sec. 5-24, subsec. (f) amended by Resolution No. Ft McD. 93-12, Feb. 24, 1993.)*

(Law & Order Code 2006, § 5-24; Ft. McD. Res. No. 93-12, eff. 2-24-1993)

Sec. 5-25. - Juries.

- A. *Jury trials in Civil Cases.* Jury trials may be ordered by the court in civil cases only upon the stipulation in writing of all of the plaintiffs and defendants. The court shall have the discretion in cases where such a stipulation is filed with it to either order a jury trial or not. The court's order shall not be subject to appeal.
- B. *Jury Trials in Traffic Violation Cases.* There shall be no jury trials in cases where a person is charged with a traffic violation (1) when the exclusive penalty is a fine, or (2) when the court determines after a request for jury trial is made that no penalty of imprisonment shall be imposed in the event the defendant is found guilty. In cases where the possibility of imprisonment exists, the defendant shall have the right to elect a trial by jury.
- C. *Jury Procedure .* All procedures concerning trial by jury as found in Article III of this Chapter shall apply to this section.

(*Subsections A through C of Sec. 5-25 amended by Resolution No. A McD. 93-12, effective February 24, 1993; Subsection C of Sec. 5-25 subsequently amended by Resolution No. Ft. McD. 98-02, effective January 5, 1998.)*

(Law & Order Code 2006, § 5-25; Ft. McD. Res. No. 93-12, eff. 2-24-1993; Ft. McD. Res. No. 98-02, eff. 1-5-1998)

Secs. 5-26—5-30. - Reserved.

ARTICLE III. - CRIMINAL PROCEDURE

I. - APPLICABILITY.

Rule 1. - Jurisdiction and purpose.

The Fort McDowell Court shall have jurisdiction over all criminal offenses, including criminal traffic offenses and juvenile delinquency matters not otherwise covered by procedures contained in Chapter 11 of the Fort McDowell Law and Order Code occurring within the boundaries of the Fort McDowell Yavapai Nation as set forth in this Code, or in other enactments of the Tribal Council. These rules are intended to

provide for the just determination of every criminal and juvenile delinquency proceeding in accordance with Section 11-4 of the Fort McDowell Law and Order Code. They shall be construed to assure simplicity in procedure, fairness in administration and the elimination of expense and delay and will be interpreted consistently with all laws of the Fort McDowell Yavapai Nation. Unless specifically otherwise indicated, all references to criminal offenses shall apply to juvenile delinquency matters.

(Ft. McD. Res. No. 2007-34, ex.(Rule 1), 5-22-2007/8-1-2007)

Rule 2. - Scope.

These rules govern the procedure in all criminal, criminal traffic, and delinquency proceedings as specified in Rule 1 above in the Courts of the Fort McDowell Yavapai Nation and are to be known as the Fort McDowell Yavapai Nation Rules of Criminal Procedure. In cases where the Fort McDowell Law and Order Code is silent as to an issue of procedural law the Court may, in its discretion, use procedural rules or laws provided in the Federal Rules of Criminal Procedure.

(Ft. McD. Res. No. 2007-34, ex.(Rule 2), 5-22-2007/8-1-2007)

II. - PRELIMINARY PROCEEDINGS.

Rule 3. - Complaints.

A "complaint" is a sworn written statement, in plain and concise language, of the essential facts charging that a named individual has committed a particular criminal offense in violation of the Fort McDowell Law and Order Code. Except as otherwise provided in this Code, all criminal prosecutions are commenced by a complaint, and all criminal offenses listed in the Fort McDowell Law and Order Code may be prosecuted by complaint.

(a) **Contents.** The complaint will be in writing and will set forth:

1. The name of the Court;
2. The name of the person charged;
3. The offense charged, with the correct code citation and in the language of the code section; together with a statement as to the date, time, place, person, and or property involved to enable the defendant to understand the character of the offense charged.
4. The signature of an authorized representative of the Nation or a duly authorized law enforcement officer upon their oath that he or she has reasonable grounds based on information and belief that an offense has been committed and that the named defendant committed the offense. The complaining witness who observed the commission of an offense however may sign a complaint and must also be signed by an authorized representative of the Nation.

(b) **Deficient Complaint.** A complaint that does not meet the requirements set forth in this Rule will be subject to dismissal on the Court's own motion or on the motion of the defendant, defendant's counsel or the Nation. Dismissal based on error, omission or defect in the complaint may be without prejudice, or the prosecution may be given leave to amend the complaint as the Court deems proper. The Nation may amend a complaint at any time before the final pretrial hearing, in writing or during the final pretrial hearing orally so long as no substantial rights of the defendant are prejudiced.

(c) **Harmless Error.** An error or omission in the complaint or citation will not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not prejudice the defendant.

(Law & Order Code 2006, § 5-31; Ft. McD. Res. No. 95-34, eff. 4-24-1995; Res. No. 2007-34, ex.(Rule 3), 5-22-2007/8-1-2007)

Rule 4. - Joinder of offenses and of defendants.

- (a) **Offenses.** Two (2) or more offenses may be charged in the same complaint in a separate count for each offense if the offenses charged are of the same or similar character, or are based on the same act or transaction, or if two (2) or more acts or transactions are connected together, or if they are alleged to have been a part of a common scheme or plan.
- (b) **Defendants.** Two (2) or more defendants may be charged in the same complaint or tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one (1) or more counts together or separately and all of the defendants need not be charged in each count. A motion to join defendants for purposes of trial must be made no later than thirty (30) days before trial.

(Ft. McD. Res. No. 2007-34, ex.(Rule 4), 5-22-2007/8-1-2007)

Rule 5. - Severance.

The Court may on its own initiative, or on motion of a party, order severance of any or all offenses or any or all defendants whenever two (2) or more offenses or two (2) or more defendants have been joined for trial, and severance of such is necessary to promote a fair determination of guilt or innocence of any defendant or of any offense.

(Ft. McD. Res. No. 2007-34, ex.(Rule 5), 5-22-2007/8-1-2007)

Rule 6. - Criminal forfeiture.

No judgment of forfeiture may be entered in a criminal proceeding for which forfeiture is or may be allowed by the Fort McDowell Law and Order Code unless the Nation provides notice in the complaint and as otherwise required by Chapter 6 of the Fort McDowell Law and Order Code to the defendant or other party(ies) known or reasonably known to have an interest in the property subject to forfeiture that forfeiture proceedings have been initiated and that the property may be subject to forfeiture as part of any criminal sentence.

- (a) **Notice to Known Parties.** Written notice shall be provided to the defendant and all other parties known or reasonably known to have an interest in the property to be forfeited by personal service upon the defendant of the pending proceedings or by mailing written notice to the defendant or other party(ies) via United States Mail, certified, return receipt requested to the defendant or other party(ies) known or reasonably known to have an interest in the property to be forfeited at his/her last known address.
- (b) **Notice by Publication.** Written notice by publication in a newspaper of general circulation in location(s) reasonably known to provide adequate notice to parties who may have an interest in the property to be forfeited. Notice by publication shall comply with procedures set forth for forfeiture.
- (c) **Time Requirements.** No judgment for forfeiture may be entered in any criminal proceeding until such time as all judicial proceedings, up to and including any appeal process has been completed in the underlying criminal matter.
- (d) **General Forfeiture Procedures.** Procedures pertaining to civil forfeitures shall apply to forfeiture resulting from criminal proceedings.

(Ft. McD. Res. No. 2007-34, ex.(Rule 6), 5-22-2007/8-1-2007)

Rule 7. - Arrest.

- (a) **Authority to Arrest.** No law enforcement officer shall arrest any person for any offense defined by this Code or by federal law, except when the offense shall occur in the presence of the arresting officer; or unless the officer has probable cause to believe that the person arrested has committed an offense; and/or the officer cannot verify the suspect's identity or address; or unless the officer possesses a warrant commanding him or her to arrest the person. The officer need not physically have the warrant in his or her possession at the time of the arrest but upon request, the officer shall show the warrant to the defendant as soon as practicable.
- (b) **Noncustodial Arrests; Cite and Release Procedures.** An arresting officer may make a non-custodial arrest by use of the following procedures:
1. When a person is arrested for any violation of the Criminal Code and/or the Criminal Traffic Code of the Fort McDowell Yavapai Nation, and that person is not immediately taken into custody, the arresting officer shall prepare a quadruplicate written Notice to Appear before a judge of the Fort McDowell Yavapai Nation Court. The notice will contain the name and address of the person charged, the title and the section of the Code to which the person is charged, the time and place where the alleged incident took place, and the date, time, and location to which the person shall appear in Court. Traffic citation forms may be used as such notice.
 2. The arrested person, in order to secure release as provided in this section, will give his or her written promise to appear in Court by signing the original copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear. Thereupon, the officer shall forthwith release the person arrested from custody.
 3. The time specified in the Notice to Appear, will be at least five (5) days after the arrest unless the person arrested waives the five (5) day notice period and requests an earlier hearing.

(Ft. McD. Res. No. 2007-34, ex.(Rule 7), 5-22-2007/8-1-2007)

Rule 8. - Hot pursuit.

Any law enforcement officer who observes any person within the exterior boundaries of the Fort McDowell Yavapai Nation committing an offense defined by this Code or by federal law or who has probable cause to believe that the person has committed an offense, and has initiated pursuit may continue to pursue and apprehend the person or seize and impound the property in that individual's possession if that individual attempts to flee the officer seeking to detain him or her, within or outside the Fort McDowell Yavapai Nation. Any law enforcement officer shall have the authority to return to the appropriate Court's jurisdiction any alleged violator apprehended after the pursuit.

(Ft. McD. Res. No. 2007-34, ex.(Rule 8), 5-22-2007/8-1-2007)

Rule 9. - Warrant to arrest.

- (a) **Authority to Issue Warrant.** The Court may issue an arrest warrant if it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, and/or if:
1. There is reasonable cause to believe that the defendant will not appear in response to a summons;
 2. That arrest is necessary to prevent serious bodily harm to the accused or another person;

3. A person summoned fails to appear in response to the summons or if service cannot be readily served or delivered, a warrant for his or her arrest may be issued;
 4. That there is a violation of conditions of release or terms and conditions of probation; or
 5. That there is a failure to comply with a court order.
- (b) **Contents of Warrant.** The contents of the arrest warrant will include:
1. The signature of a judge of the Fort McDowell Court;
 2. The name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
 3. A description of the offense charged in the complaint;
 4. A command to law enforcement officers that the defendant be arrested and brought before the nearest available judge of the Fort McDowell Yavapai Nation Court.
- (c) **Process of Executing Arrest Warrants.** An arrest warrant shall be executed by the arrest of the defendant by an officer of the Fort McDowell Police Department or any authorized law enforcement officer. The warrant may be executed at any place within the exterior boundaries of the Fort McDowell Yavapai Nation or any other jurisdiction that will honor the warrant. The officer need not have the warrant at the time of the arrest, but upon arrest the officer shall inform the defendant of the offense charged and of the fact that a warrant has been issued and shall present to the defendant a copy of the warrant as soon as possible.
- (d) **Return.** The officer executing a warrant shall complete a return of the warrant, which shall then be delivered to the judge before whom the defendant is brought to his or her Arraignment.
- (e) **Suspension of Per Capita Payments Pending Outstanding Warrant.** Whenever a judge of the Fort McDowell Court issues a warrant, if the offender is a member of the Fort McDowell Yavapai Nation and may be receiving per capita payments from the Fort McDowell Yavapai Nation, the Nation may request, or the Court may on its own motion order a suspension of per capita payments to the offender until such time as the offender surrenders himself or herself to the police and/or has appeared before the Court. Such request will be pursuant to all administrative actions passed by Tribal Council addressing per capita suspension.

(Ft. McD. Res. No. 2007-34, ex.(Rule 9), 5-22-2007/8-1-2007)

Rule 10. - Summons.

If it appears from the complaint or from an affidavit filed that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the judge may order service of the complaint upon the defendant by criminal summons.

- (a) **Form.** The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a judge of the Fort McDowell Yavapai Nation at a stated date, time, and location.
- (b) **Service.** The summons will be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling, house or usual place of abode with some person of suitable age and discretion residing therein; or by certified mail return receipt requested if unable to serve the defendant personally.
- (c) **Return.** The person serving a summons shall make return thereof to the Court before the defendant appears for his or her Arraignment.

(Ft. McD. Res. No. 2007-34, ex.(Rule 10), 5-22-2007/8-1-2007)

Rule 11. - Search warrants.

- (a) **Definition.** A search warrant is a written order, signed by a judge, directing a law enforcement officer to conduct a search of a person or property and seize property specified in the warrant.
- (b) **Persons or Property which may be Seized with a Warrant.** A warrant may be issued to search for and seize any of the following:
 - 1. Any property found in plain view that constitutes evidence of the commission of a criminal or criminal traffic offense, including any contraband, fruits of a crime or things otherwise criminally possessed or property designed or intended for use which is or has been used as the means of committing a criminal or traffic offense;
 - 2. Contraband, the fruits of crime, or things otherwise criminally possessed;
 - 3. Property designed or intended for use or which is or has been used as the means of committing a criminal offense;
 - 4. Hair, DNA, fibers, semen, urine, blood, fingerprints or photograph(s) from an individual;
 - 5. A person for whom there is probable cause for their arrest, and/or;
 - 6. Items that tend to establish ownership or control of property or premises.
- (c) **Authority to Issue Warrant.** Every judge of the Fort McDowell Court has the authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court. No warrant of search and seizure will be issued except upon a presentation of a written affidavit or oral testimony to a judge based upon probable cause, supported by oath or affirmation, and alleging the commission of an offense in violation of the Fort McDowell Law and Order Code. The finding of probable cause may be based upon credible and reliable hearsay evidence in whole or in part. Before ruling on a request for a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses the affiant may produce, provided that such proceeding shall be recorded and made part of affidavit.
- (d) **Contents.** The warrant will:
 - 1. Direct a law enforcement officer of the Fort McDowell Yavapai Nation or other authorized officers, to conduct the search within a specified period of time, but not to exceed seven (7) days of the date of issuance;
 - 2. The warrant must describe the person, property or specific place to be searched and must describe the property to be seized;
 - 3. The warrant must be served in the daytime between the hours of 6:00 a.m. and 10:00 p.m. unless the Court for reasonable cause shown specifies in the warrant its execution at times other than daytime hours;
 - 4. The signature of the judge and the exact time when the warrant was ordered.
- (e) **Oral Requests for the Issuance of a Warrant.** If the circumstances make it reasonable to dispense, in whole or in part, with a written affidavit, a judge may issue a warrant based upon sworn testimony communicated by telephone or other appropriate means, including facsimile transmission. However, oral requests for the issuance of a warrant must be audio recorded.
- (f) **Application.** The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is so read to such judge on a document to be known as the original warrant. The judge may direct that the warrant be modified.
- (g) **Recording and Certification of Testimony.** When a caller informs the judge that the purpose of the call is to request a warrant an audio record of the call will be made. The judge shall immediately place under oath each person who offers testimony for the basis of issuing a warrant. The voice recording can be made either by the judge or the person requesting the warrant. The voice recording

will be filed with the Court on the next Court business day and preserved for inspection by the defendant, defense counsel, and Nation unless a verbatim transcript is filed with a duplicate and original warrant which shall also be made available for inspection.

- (h) **Issuance.** If, based upon recorded oral testimony, the judge is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the judge shall order the issuance of a warrant to an officer authorized to serve it. The judge will immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.
- (i) **Execution of Warrant.** Service of warrants of search and seizure will be made only by law enforcement officers of the Fort McDowell Police Department or other law enforcement officers with jurisdiction to serve warrants within the exterior boundaries of the Fort McDowell Yavapai Nation.
- (j) **Additional Rule for Execution.** The officer who executes the warrant will enter the exact time of execution on the face of the duplicate original warrant.
- (k) **Receipt; Return with Inventory.** An officer present during the execution of the search warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was seized. If either one is not present, the officer must prepare and verify the inventory of any property seized in the presence of at least one other credible person. The officer taking property under the warrant will give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or will leave the copy and receipt at the place from which the property was taken. The return will be promptly filed with the issuing Court and will be accompanied by a written inventory of any property taken.
- (l) **Return of Papers to Court.** The officer executing the warrant must return the warrant with a copy of the inventory of items seized to the judge issuing the warrant or if the issuing judge is unavailable to the Chief Judge or his or her designee.
- (m) **Motion for Return of Property.** A person may file a written motion to the Court for the return of the property, except contraband, seized on the grounds that such person is lawfully entitled to regain possession of the property and that such property is not going to be used in a future trial, or destroyed upon final verdict of a case in the Fort McDowell Yavapai Nation Court.
- (n) **Motion to Suppress Precluded.** Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit. In addition, the Court shall not exclude evidence otherwise admissible if the Court determines that the evidence was seized by a law enforcement officer as a result of a good faith mistake or technical violation. A good faith mistake is an error concerning facts that if were true would be sufficient to establish probable cause. A technical violation means a reasonable good faith reliance on a statute that is later ruled unconstitutional, a warrant that is later invalidated due to a good faith mistake, a controlling court precedent that is later overruled, unless the Court overruling the precedent orders the new precedent to be applied retroactively.

(Ft. McD. Res. No. 2007-34, ex.(Rule 11), 5-22-2007/8-1-2007)

Rule 12. - Confidentiality of executed or unexecuted warrants or summons.

Upon application of the Nation or the defendant in a particular case, the Court, in its discretion and for good cause, may order that any or all of the following documents be sealed and held confidential until further order of the Court:

- (a) Complaints;

- (b) Applications for search warrants, arrest warrants or summons;
- (c) Arrest warrants, summons or search warrants; or
- (d) Any other document or exhibit submitted in support of the foregoing.

(Ft. McD. Res. No. 2007-34, ex.(Rule 12), 5-22-2007/8-1-2007)

Rule 13. - Unexecuted warrants or summons.

At the request of the Nation made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or summons returned unserved or a duplicate thereof may be delivered by the Clerk of the Court to the Fort McDowell Police Department or other authorized person for execution of service.

(Ft. McD. Res. No. 2007-34, ex.(Rule 13), 5-22-2007/8-1-2007)

Rule 14. - Computing and extending time.

- (a) **Computing Time.** The following rules apply in computing any period of time specified in these rules, any local rule, or any Court order.
 - 1. **Day of the Event Excluded.** Exclude the day of the act, event, or default that begins the period.
 - 2. **Exclusion from Brief Periods.** Exclude intermediate Saturdays, Sundays, Tribally recognized or declared holidays and days when the Tribal Council closes the governmental business operations, when the period is less than eleven (11) days.
 - 3. **Last Day.** Include the last day of the period unless it is a Saturday, Sunday, Tribally recognized or declared holiday or day when the Tribal Council has closed governmental business or day on which weather or other conditions make the clerk's office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, Tribally recognized or declared holiday or day when the Tribal Council has closed governmental business or day when the Clerk's office is inaccessible.
- (b) **Extending Time.** When an act must or may be done within a specified period, the Court on its own may extend the time, or for good cause may do so on a party's motion made:
 - 1. Before the originally prescribed or previously extended time expires; or
 - 2. After the time expired if the party failed to act because of excusable neglect.
- (c) **Exceptions.** The Court may not extend the time to take any action except as stated in these rules.
- (d) **Additional Time after Service.** When these rules permit or require a party to act within a specified period after a notice or a paper has been served on that party, three (3) days are added to the prescribed period, if service made by mailing to the last known address of the person served.

(Ft. McD. Res. No. 2007-34, ex.(Rule 14), 5-22-2007/8-1-2007)

III. - CRIMINAL COURT PROCEEDINGS.

Rule 15. - Arraignment.

- (a) Within forty-eight (48) hours after an arrest, excluding Friday afternoons, Saturdays, Sundays, Tribally recognized or declared holiday or day when the Tribal Council has closed governmental business, or when a criminal complaint has been filed with the Court naming the individual to have

violated section(s) of the Fort McDowell Law and Order Code, the defendant shall be brought before a judge for an Arraignment hearing. A defendant may also be arraigned by video conferencing, if available and if the defendant consents.

(b) **Purpose.** An Arraignment hearing is held for the following purposes:

1. To verify a defendant's personal information including name, address and if necessary to amend the complaint to reflect any changes to such information;
2. Inform the defendant of the charges filed against him or her and the possible penalties pursuant to the Fort McDowell Law and Order Code;
3. Inform the defendant of his or her right to counsel, his or her right to a trial by jury, his or her right to confront all witnesses against him or her, and his or her right not to be compelled to testify against himself or herself;
4. Provide to the defendant a copy of the complaint or citation for his or her review before entering a plea;
5. Ascertain the defendant's desire to be represented by legal counsel;
6. Enter a plea from the defendant to the charges alleged;
7. Set the next court date;
8. Appoint legal counsel, if the defendant is eligible;
9. Determine the conditions of release in accordance to Rule 17 of these rules and considering any statements by any victim on the issue of release.

(c) **Process.**

1. The Court will advise the defendant of his or her legal rights and plea options.
2. The Court will read to the defendant the charge in which the defendant is alleged to have violated and the possible penalties for such charge pursuant to the Fort McDowell Law and Order Code.
3. If necessary, the Court will explain the charge in language the defendant can understand.
4. The Court will ascertain whether the defendant wants legal counsel, has legal counsel or prefers to communicate with legal counsel prior to entering a plea.
5. The Court will call on the defendant to enter a plea to the charges. If no plea is entered by the defendant the Court will enter a plea of "Not Guilty" on the defendant's behalf.
6. If the defendant enters a "Guilty" plea to the charges, the Court will establish a factual basis before accepting a defendant's Guilty plea and will ensure that the plea was made knowingly, intelligently, voluntarily, and without threat or force. The Court will also obtain written waivers of legal counsel and a waiver of trial by jury.
7. If the Court determines the "Guilty" plea is entered knowingly, intelligently, voluntarily and without threat or force, the Court will accept the plea. After accepting the "Guilty" plea, the Court will enter a judgment of guilt to each charge for which the defendant pleads guilty and set the matter for a Sentencing hearing and, if necessary, set conditions of defendant's release pending the Sentencing hearing, considering any position offered by the victim(s) on the issue of release.
8. If the defendant pleads "Not Guilty" to the charges filed against him or her; the Court will establish conditions of release pursuant to Rule 17 of these rules, and considering any statements by any victim on the issue of release.
9. In the event the Court cannot find that a "Guilty" plea was entered knowingly, intelligently, voluntarily and without threat or force, or if the Court cannot find a factual basis, the Court will enter a "Not Guilty" plea on the defendant's behalf, set the matter for the next hearing and

determine conditions of release pursuant to Rule 17 of these rules, and considering any statements by an victim(s) on the issue of release.

(Ft. McD. Res. No. 2007-34, ex.(Rule 15), 5-22-2007/8-1-2007)

Rule 16. - Defendant's waiver of reading the rights, complaint, Code section, and penalties.

If a defendant is represented by legal counsel, the defendant may request the Court to waive the reading of the defendant's rights, the complaint, the code section, and the penalties during that individual's Arraignment hearing, but the defendant will still be permitted to enter a plea to the charges. If a defendant is *Pro Se*, the Court shall advise the defendant of the defendant's rights, and the minimum and maximum penalties the defendant faces. A *Pro Se* defendant may knowingly waive a reading of the complaint and still be permitted to enter a plea to the charges.

(Ft. McD. Res. No. 2007-34, ex.(Rule 16), 5-22-2007/8-1-2007)

Rule 17. - Release prior to trial.

- (a) ***In General.*** At a defendant's appearance before the Court on an offense, the Court shall determine whether the defendant may be released prior to trial and, if so, under what conditions. A defendant may;
1. Be released on his or her own recognizance; or
 2. Be released upon payment of a cash bond to ensure the defendant's appearance at future hearings and compliance with all conditions of release imposed; or
 3. Be ordered to comply with a condition or any combination of conditions under subsection (c) of this Rule.
 4. Be temporarily detained to permit the revocation of conditional release; or
 5. Detained pursuant to subsection (e) of this Rule.
 6. There shall be no third party release in adult criminal matters.
- (b) ***Release on Own Recognizance or Appearance Bond.*** The Court shall order the pretrial release of the defendant on his or her own recognizance, or upon payment of an appearance bond in an amount specified by the court, subject to the condition that the defendant not commit any criminal offenses in any jurisdiction and comply with any and all release conditions imposed during the period of release, unless the Court determines that such release will not reasonably assure the appearance of the defendant or the defendant is not able to comply with the release conditions imposed or such release will endanger the safety of any other person or the community.
- (c) ***Release on Conditions.*** If the Court determines that the release described in subsection (b) of this Rule will not reasonably assure the defendant's appearance as required or will endanger the safety of any other person or the community, the Court will order the pretrial release of the defendant with the mandatory conditions outlined in subsection (1) below as well as any further conditions, including but not limited to those outlined in subsection (2) below or combination of conditions that the Court determines as reasonably necessary to assure the defendant's appearance as required and the safety of any other person and the community:
1. **Mandatory Conditions:**
 - a. That the defendant not commit any criminal offenses in any Federal, state, local or tribal jurisdiction during the period of release;
 - b. That the defendant appear for all future proceedings;

- c. That any failure to appear for future hearings may result in a forfeiture of any bail or bond posted on behalf of or by the defendant; and
- d. That the defendant keep the Court apprised at all times of the person's residence and contact information and any change in such information.

2. Other Conditions:

- a. Restrictions on the defendant's travel, associations or place of abode during the period of release;
- b. No contact or no negative contact with specified individuals, as may be appropriate;
- c. Psychological or psychiatric assessment for the sole purpose of determining whether the person is a danger to him or herself or others;
- d. Maintain employment, or if unemployed, actively seek employment;
- e. Maintain or commence an educational program;
- f. avoid all contact with an alleged victim of the crime and with a potential witness who may testify about the offense;
- g. Report on a regular basis to a designated agency, including law enforcement and/or probation;
- h. Comply with a specified curfew;
- i. Refrain from possessing a firearm, destructive device, or other dangerous weapon;
- j. Refrain from the use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. section 802, et seq.), without a prescription by a licensed medical practitioner;
- k. Undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in the specified institution if required for that purpose;
- l. Satisfy any other condition that is reasonably necessary to assure the defendant's appearance as required and to assure the safety of any other person or the community.

3. Limitations: The Court may not impose a financial condition that results in the pretrial detention of the defendant.

4. Amendment of Conditions: The Court may, at any time with hearing, amend the order to impose additional or different conditions of release.

(d) **Temporary Detention to Permit Revocation of Conditional Release.** If the Court determines that the defendant:

- 1. Is, and was at the time the offense was committed:
 - a. On release pending trial from any Federal, State, local or tribal jurisdiction; or
 - b. On release pending imposition or execution of sentence, appeal of a sentence or conviction or completion of sentence in any Federal, state, local or tribal jurisdiction; or
 - c. Is on probation or parole in any jurisdiction; and
- 2. The defendant may flee or pose a danger to any other person or the community; the Court shall order the defendant detained, for a period of not more than ten (10) days, excluding intermediate Saturdays, Sundays, Tribally recognized or declared holiday or days when the Tribal Council has closed governmental business and direct the Nation to notify the appropriate Court, probation or parole official or appropriate law enforcement official. If the official fails or declines to take such person into custody during that ten (10) day period, the defendant shall be treated in accordance with other provisions of this section.

- (e) **Detention.** The Court shall hold a detention hearing to determine whether any condition(s) set forth in this Rule will reasonably assure the defendant's appearance and the safety of any other person or the community upon motion of the Nation. If the Court finds that no condition or combination of conditions will reasonably assure the defendant's appearance or that the defendant will not comply with release conditions as required and the safety of any other person and the community, the Court shall order that the defendant be detained pretrial. A rebuttable presumption arises that no condition or combinations thereof will reasonably assure the appearance of the defendant and/or compliance with any conditions of release and/or the safety of any other person or the community if the Court finds one of the following apply:
1. The defendant has been convicted of a Federal offense or an offense in a State, local, or tribal jurisdiction that would have been a Federal offense had the circumstances rendered Federal jurisdiction appropriate under the following conditions:
 - a. A crime of violence, or an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of ten (10) years or more is prescribed;
 - b. A crime for which the maximum sentence is life imprisonment or death;
 - c. A crime for which the maximum term of imprisonment of ten (10) years or more is prescribed in the Controlled Substances Act (21 USC section 801 et seq.), the Controlled Substances Import and Export Act (21 USC section 951 et seq.) or the Maritime Drug Law Enforcement Act (46 USC App. 1901 et seq.);
 - d. Any felony if such person has been convicted of two (2) or more offenses described in subparagraphs (a) through (c) of this paragraph or two (2) or more state, local, or tribal offenses that if Federal jurisdiction had been appropriate would have been an offense described in subsections (a) through (c) above, or a combination of such offenses; or
 - e. Any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device, or any other dangerous weapon, or involved a failure to register under 18 USC 2250; or
 2. The offense committed in paragraph (1) of this subsection was committed while the defendant was on release pending trial in any jurisdiction; and
 3. A period of not more than five (5) years has elapsed since the date of conviction, or the release of the defendant from imprisonment for the offense described in subsection (1) of this paragraph, whichever is later.
- (f) **Detention Hearing.** The Court shall hold a hearing to determine whether any condition or combination of conditions will reasonably assure the defendant's appearance as required and the safety of any other person and the community:
1. Upon motion of the Nation in any case that involves an offense as described in subsection (e) above; or
 2. Upon motion of the Nation or upon the Court's own motion in a case that involves:
 - a. A serious risk that the defendant will flee; or
 - b. A serious risk that the defendant will obstruct or attempt to obstruct justice, threaten, injure, intimidate, harass or attempt to threaten, injure, intimidate or harass a prospective witness or juror.

The facts the Court uses to support a finding that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The detention hearing shall be held immediately upon the defendant's first appearance before the Court unless the defendant or the Nation seeks a continuance. Except for good cause, a continuance on defendant's motion may not exceed five (5) days (not including the intermediate Saturdays, Sundays, Tribally recognized or declared holiday or days when the Tribal Council has closed governmental business) and on motion of the Nation, a continuance may not exceed three (3) days, (not including the intermediate Saturdays, Sundays, Tribally recognized or declared holiday or days when the

Tribal Council has closed governmental business). During a continuance, the defendant shall be detained, and the Court, on motion from the Nation or *sui sponte*, may order that, while in custody, a defendant who appears to be a narcotics addict, receive a medical examination to determine whether such person is an addict. At the hearing, the defendant has the right to be represented by legal counsel. The defendant shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and the consideration of information at the hearing. The defendant may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the Court, at any time before trial if the Court finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community.

(g) **Factors to be Considered.** In determining whether there are conditions of release that will reasonably assure the defendant's appearance as required and the safety of any other person and the community, the Court will consider the available information regarding the following:

1. The nature and circumstance of the offense charged, including whether the offense is a crime of violence, or involves a minor victim or a controlled substance, firearm, explosive or destructive device;
2. The weight of the evidence against the defendant;
3. The history and characteristics of the defendant, including but not limited to:
 - a. The defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court proceedings; and
 - b. Whether, at the time of the current offense or arrest, the defendant was on probation, on parole or on other release pending trial, sentencing, appeal, or completion of sentence for an offense in any jurisdiction; and
4. The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

(h) **Contents of Release Order.** In a release order, the Court shall:

1. Include a written statement that sets forth all the conditions to which the release is subject to, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct.
2. Advise the defendant of the penalties for violating a condition of release, including penalties for committing an offense while on pretrial release and the immediate issuance of a warrant for the defendant's arrest.

(i) **Contents of Detention Order.** In any detention order issued, the Court shall:

1. Include written findings of fact and a written statement of the reasons for the detention;
2. Direct the defendant to be remanded to the custody of the Fort McDowell Yavapai Nation pending the next hearing;
3. Direct that the defendant be afforded reasonable opportunity to consult privately with legal counsel;
4. Direct that the Fort McDowell Yavapai Nation transport the defendant to the next court hearing.

(j) **Presumption of Innocence.** Nothing in this Rule shall be construed as modifying or limiting the presumption of innocence.

Rule 18. - Modifying release conditions.

The Court may upon written motion by any party and after hearing, with notice provided to the opposing party, modify the conditions of release after giving the parties an opportunity to respond to the proposed modification.

(Ft. McD. Res. No. 2007-34, ex.(Rule 18), 5-22-2007/8-1-2007)

Rule 19. - Review of conditions of release; revocation of release.

- (a) When there is probable cause to believe that the defendant violated a federal, state, local or tribal law, or there is clear and convincing evidence that the defendant has violated any other condition of release, the Court may on its own initiative or on motion of the Nation, issue a warrant for the defendant's arrest to secure the defendant's presence in Court at a review hearing addressing the defendant's compliance of his or her conditions of release.
- (b) If at the review hearing, the Court determines that the conditions should be modified or the release revoked, it shall so order. If revoked, the defendant may be held without bond pending the next hearing. The Court may initiate contempt proceedings.
- (c) If the defendant is found to have breached a condition of bond or release, the Court shall order forfeiture of any bond posted in the pending matter.
- (d) A record of the review hearing shall be made, and the rules of evidence will not apply to such hearing.

(Ft. McD. Res. No. 2007-34, ex.(Rule 19), 5-22-2007/8-1-2007)

Rule 20. - Return of bond.

If a case is dismissed or otherwise adjudicated, and the defendant has complied with all the terms and conditions of the pretrial release, the bond shall be returned to the person posting such bond unless the person posting the bond agrees in writing that the bond may be applied toward payment of fines or fees ordered to be paid by the defendant.

(Ft. McD. Res. No. 2007-34, ex.(Rule 20), 5-22-2007/8-1-2007)

Rule 21. - Pleas.

A defendant may plead *guilty* or *not guilty*, to the charges filed against him or her. If a defendant does not or is unable to enter a plea, the Court will enter a plea of not guilty on behalf of the defendant.

- (a) **Not Guilty.** If the defendant enters a plea of "not guilty", the Court will set the matter for Pretrial Hearing.
- (b) **Guilty Plea.** If defendant pleads "guilty", the Court, before accepting the plea, will address the defendant personally in open Court and determine that the defendant understands the following:
 - 1. The nature of the charges to which that person plead, the mandatory minimum and maximum penalty provided by law, if any, including the effect of any sentencing provisions. In addition, the Court will advise the defendant that he or she may be ordered to make restitution to any victim of the offense, may be ordered to pay surcharges on fines, may order the defendant to pay jail costs or if sentenced to treatment to pay the cost of such treatment.

2. If the defendant is not represented by legal counsel, he or she has the right to assistance of legal counsel at every stage of the proceedings. That by entering a guilty plea, he or she is giving up the right to be represented by legal counsel. The Court will obtain a written waiver of the right to legal counsel.
 3. Inform the defendant that he or she has the right to plead "not guilty," the right to be tried by a jury if the penalty involves a possible jail term, the right to call witnesses in his or her own behalf, the right to confront and cross-examine prosecution witnesses, and that he or she cannot be compelled to testify against him or her self, and the privilege against self incrimination. The Court will obtain a written waiver of a jury trial from both the Nation and the defendant.
 4. Inform the defendant that he or she is giving up his or her right to an appeal.
 5. Pleas of No Contest or *Nolo Contendere* shall not be allowed in adult criminal cases.
- (c) **Accepting a Plea of "Guilty".** If the Court accepts the plea of guilty, there will no further trial of any kind. The Court will inform the defendant that by pleading guilty the defendant waives all of his or her legal rights, including the right to be represented by legal counsel and the right to a trial and to appeal; and
1. If the Court intends to question the defendant, under oath about the offense to which the defendant has entered a plea of guilty, the Court will also advise the defendant that the defendant's statements may only be used against the defendant in a prosecution for perjury or false statement should the Court decline to accept the plea of guilty; and
 2. If the guilty plea is entered pursuant to a plea agreement, the Court will question the defendant to ensure that the defendant has read the plea agreement, understands the terms of the agreement and that the Court is not bound to impose the sentence recommendations of the parties and may impose a sentence different from the sentence recommended, subject to either party's right to right to withdraw from the plea agreement.
- (d) **Insuring that Waiver of Legal Counsel is Voluntary.** The Court will not accept a plea of guilty where the defendant enters such plea without first addressing the defendant personally, in open Court and determining that the waiver of legal counsel was made knowingly, intelligently, voluntarily and not the result of force or threats or other promises made. If the Court finds that there is a knowing, intelligent and voluntary waiver of legal counsel, the Court will obtain a written waiver of legal counsel from the defendant.
- (e) **Insuring that the Plea is Voluntary.** The Court will not accept a plea of guilty without first addressing the defendant personally in open Court and determining that the plea is voluntary and not the result of force or threats or promises apart from the recommendations contained within the plea agreement.

(Ft. McD. Res. No. 2007-34, ex.(Rule 21), 5-22-2007/8-1-2007)

Rule 22. - Plea agreement procedures.

- (a) The parties may negotiate and reach an agreement on the charges filed in the defendant's case. Upon the defendant's entering a plea of guilty to a charged offense or to a lesser or included offense, the Nation may:
1. Move to dismiss or not file other charges related to the case(s); or
 2. Recommend or agree not to oppose the defendant's request for a particular sentence; or
 3. Agree that a specific sentence is the appropriate disposition of the case; or
 4. Recommend release conditions; or
 5. Any other appropriate action.

- (b) **Plea Agreement Reached.** When a plea agreement has been reached by the parties, the Court will on record, require the disclosure of the agreement in open Court or in camera at the time the plea is offered. The Court may accept or reject the agreement, or may defer its decision until sentencing or until there has been an opportunity to consider any Pre-Sentence Report or until the victim has had an opportunity to be heard.
- (c) **Rejection of a Plea Agreement.** If the Court rejects the agreement, the Court will on the record, inform the parties of this fact, advise the defendant personally in open Court or in camera, that the Court is not bound by the plea agreement, afford the defendant or the Nation the opportunity to then withdraw from the plea agreement, and advise the defendant that if the defendant persists in a guilty plea the disposition of the case may be less favorable to the defendant or to the Nation than that contemplated by the plea agreement.
- (d) **Time Limit on Plea Agreement.** Either party shall notify the Court of the existence of a plea agreement shall be given by either party at the pretrial or at such other time prior to trial, or any other time deemed necessary by the Court.
- (e) **Determining Accuracy of Plea/Factual Basis.** Notwithstanding the acceptance of a plea of guilty, the Court shall not enter a judgment upon such plea without first establishing a factual basis for the plea.
- (f) **Record of Proceedings.** A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty, the record shall include the Court's advice to the defendant; the voluntariness of the plea including any plea agreement; and the inquiry into the factual basis supporting a guilty plea.
- (g) **Confidentiality and Disclosure.** If no agreement is reached, or if the agreement is revoked, rejected by the Court, or withdrawn or if the judgment is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea or judgment, nor statements made at a hearing on the plea, nor any discussions or statements made in relation to the Pre-Sentence Report, nor discussions or statements made to probation officers for the purposes of the pre-sentencing investigation shall be admissible against the defendant in any criminal or civil action or administrative proceeding.
- (h) **Withdrawal of Plea.** The Court may, for good cause and in its discretion, allow withdrawal of a plea of guilty prior to sentencing. Upon withdrawal, the charges against the defendant as they existed before any amendment, reduction, or dismissal made as part of a plea agreement, will be reinstated automatically.
- (i) **Automatic Change of Judge.** If a plea is withdrawn after submission of the presentence report, the judge, upon request of the defendant shall disqualify himself or herself, but no additional disqualification of judges under this rule shall be permitted.

(Ft. McD. Res. No. 2007-34, ex.(Rule 22), 5-22-2007/8-1-2007)

Rule 23. - Pretrial motion practice.

Any defense, objection, or request that is capable of determination without the trial of the general issue, may be raised by motion.

- (a) **Time Requirements and Limitations.** All motions shall be made no later than twenty (20) days prior to trial, or in accordance with the deadlines established by the Court. The responding party may file a written response to the motion within seven (7) days from service of a motion, unless otherwise ordered by the Court. Service is deemed complete upon personal service or if mailed, upon posting. Rebuttal responses may be filed within three (3) days of the service of a response to a motion. However, these time requirements may not be used by either party to render an issue moot and in no manner impairs or impedes the Courts authority to make an immediate decision on an issue should the circumstances so require.

- (b) **Format.** All motions and responses will be typewritten, double spaced on 8.5 × 11 inch paper or presented in a fully completed Court form and shall contain the correct case number(s), a short, concise statement of the precise nature of the relief requested, shall be accompanied by a brief memorandum stating the specific factual grounds therefore and indicating the precise legal points, statutes and authorities relied upon, and shall be served upon all parties.
- (c) **Motion Date.** The Court may at any time set a time for the making of pretrial motions or requests and, if required, a later date of hearing.
- (d) **Failure to Respond to Motion; Exception.** If no response is filed to a motion, the motion shall be deemed submitted on the record before the Court, except a motion alleging lack of jurisdiction. The Court may hear a claim alleging lack of jurisdiction at any time during the pendency of the proceedings.
- (e) **Oral Arguments.** Upon the request of any party, or on its own motion, the Court may set any motion for hearing.
- (f) **Record.** A verbatim record will be made of all proceedings at the hearing, including such findings of fact and conclusions of law made orally.
- (g) **Mandatory Motions, Defenses or Objections Made Prior to Trial.** The following, unless otherwise ordered by the Court, must be raised prior to trial:
 1. Defenses and objections based on defects in the initiation of prosecution; or
 2. Defenses and objections based on defects in the complaint, not including lack of jurisdiction of the Court or failure to charge an offense which such objections will be noticed by the Court at any time during the pendency of the proceedings; or
 3. Motions to suppress evidence;
 4. Requests for discovery; or
 5. Requests for joinder or severance of charges or defendants.
- (h) **Effect of Failure to Make Motions, Raise Defenses, Objections or Requests in Timely Manner.** Any motion, defense, objection or request not timely raised under this rule shall be precluded, unless the basis therefore was not known and could not have been known through the exercise of due diligence and the motion, defense, objection or request is raised promptly once the party learns of it.
- (i) **Ruling on Motions.** A motion made before trial shall be determined before trial unless the Court, for good cause, orders that it be deferred for determination at the trial or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved, the Court will state its findings of fact, conclusions of law, and holding in writing or on the record.
- (j) **Finality of Pretrial Decisions.** An issue determined by the Court shall not be subject to reconsideration, except for good cause or as otherwise permitted by these rules.

(Ft. McD. Res. No. 2007-34, ex.(Rule 23), 5-22-2007/8-1-2007)

Rule 24. - Competency of defendant.

- (a) **Prohibition.** A person will not be tried, convicted, sentenced or punished for an offense, while he or she suffers from a mental illness or defect and the person is unable to understand the proceedings against him or her or is unable to assist in his or her own defense.
 1. Factors to be considered. Factors relevant in determining whether a competency hearing is necessary may include, but is not limited to evidence of irrational behavior, demeanor at any hearing and any prior medical opinion on competency to stand trial.

2. Intoxication. Intoxication means a diminished ability to act with full mental and physical capabilities because of alcohol or drug consumption.
 3. Mental Illness or Defect. Mental illness or defect means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including but not limited to congenital mental conditions and conditions resulting from injury or disease. The presence of a mental illness or defect alone is not grounds for finding a defendant incompetent to stand trial.
- (b) **Examination of Defendant.** If the Court is informed by either party or if the Court on its own determines that there is bonafide doubt as to the defendant's competency to enter a plea or stand trial, then the Court will require an initial competency screening to determine whether the defendant has sufficient ability to consult with counsel with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceeding against him or her. Such initial screening may be made by the Court, a physician, a mental health professional or another person deemed by the Court as competent to make an initial competency screening. If the initial competency screening reveals that there is reason to conduct additional assessment, the Court will order a competency assessment of the defendant by a licensed psychologist or psychiatrist to determine the defendant's mental competency to stand trial.
- (c) **Release and/or Dismissal.** In the event that an initial competency screening cannot be completed within forty-eight (48) hours of the order for screening and the defendant is in custody, the defendant may be released from custody and scheduled for an arraignment, unless the Nation can demonstrate good cause to continue to detain a defendant. In the event that an initial competency screening cannot be obtained within seventy-two (72) hours or in the event that competency cannot be established, for whatever reason, the Court shall release a defendant from custody and may dismiss the charges without prejudice.
- (d) **Hearing.** The Court may hold a competency hearing to determine the final nature of the defendant's mental state and to determine if he or she is deemed competent to enter a plea and stand trial on the charges filed against him or her.
- (e) **Findings.** If the Court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within twenty-one (21) months of the date found incompetent, it may upon request of any party:
1. Appoint a guardian.
 2. Remand defendant to the Department of Health Services to begin Court ordered civil commitment proceedings pursuant to Title 36, Chapter 5 of the Arizona Revised Statutes and Title 12, section 136 of the Arizona Revised Statutes.
 3. The Court may order competency restoration treatment unless there is clear and convincing evidence that defendant will not regain competency within fifteen (15) months.
 4. The Court will determine whether the defendant should be subject to involuntary treatment and may extend the treatment for six (6) months beyond the fifteen (15) month limit, if it finds defendant is making progress toward restoration of competency.
- (f) **Treatment Orders.** All treatment orders shall specify the place where any treatment will occur; whether the treatment is inpatient or outpatient, the order will list transportation information to and from the treatment site; the length of treatment; and it shall specify that the Court shall be notified if the defendant regains competency before the expiration of the order of commitment. The Court may modify any order at any time.
- (g) **Failure to Comply.** If the defendant fails to give notice of an intent to assert incompetency or insanity as a defense when required under this rule or to submit to an examination when ordered under this rule, the Court may in its discretion, exclude the testimony of any expert witness offered by the defendant on the issue of the defendant's competency. The Court may also impose less severe sanctions at the competency hearing.
- (h) **Inadmissibility of Defendant's Statements.** No evidence of any kind including statements made or fruits of statements made obtained as a result of any screening or examination under these rules

shall be admissible at any proceeding to determine guilt or innocence of pending charges or offenses arising out of the same transaction or occurrence, unless such evidence is introduced or raised by the defendant to rebut the presumption of sanity.

(Ft. McD. Res. No. 2007-34, ex.(Rule 24), 5-22-2007/8-1-2007)

Rule 25. - Discovery.

The language of this rule is intended to impose the same duties relating to discovery on both parties.

- (a) The disclosing party must notify the other parties that material and information to be disclosed is ready for their inspection and may be examined and reproduced by them at a designated place during specified reasonable times. However, the disclosing party is not required to make copies of documents at its own expense, or to deliver the materials to the other parties. Nor is the disclosing party required to supply the facilities or materials required to carry out tests of disclosed items. The parties may, by mutual consent, make any other or additional arrangements.
- (b) **Operation of Disclosure.** The various parts of Rule 26, 27 and 28 are intended to function together as follows: The disclosure required by Rule 26(a) and Rule 27(a) and (b) are to be made automatically by the Nation and the defendant. All information falling within the scope of these sections is to be disclosed in full unless a party files a written motion and after a hearing obtains a Court order barring, deferring, or regulating discovery of the information.
- (c) **Discretion of the Court to Authorize Excision.** Whenever the Court finds, on motion of any party, that only a portion of a document or other material is discoverable under these rules, it may authorize the party disclosing it to excise that portion of the material which is non discoverable and disclose the remainder.
- (d) **Discretion of the Court to Deny, Defer or Regulate Discovery.** Upon motion of any party showing good cause, and after a hearing on the matter, the Court may at any time order that the discovery or inspection be barred, restricted, deferred, or make such other orders regulating discovery of the information.
- (e) **Failure to Comply with a Request.** If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this rule, the Court may order such party to permit the discovery or inspection; grant a continuance; prohibit the party from introducing evidence not disclosed; hold a witness, party or counsel in contempt; or declare a mistrial when necessary to prevent a miscarriage of justice.

(Ft. McD. Res. No. 2007-34, ex.(Rule 25), 5-22-2007/8-1-2007)

Rule 26. - Disclosure by the Nation.

- (a) No later than the Pretrial Hearing, or at such time as the Court may direct, the Nation will make available to the defendant for examination and reproduction of the following material and information within the Nation's possession or control:
 - 1. Witnesses: The names and addresses of all persons whom the Nation will call as witnesses in the case-in-chief together with their relevant written or recorded statements. However the addresses of any victims, including child victims protected by an Order of Protection or Injunction against harassment or victims, including child victims as protected by victims rights as outlined in the Law and Order Code or these rules may be excluded;
 - 2. Statements of the defendant: All statements of the defendant and of any person who will be tried with the defendant;

3. **Expert Witnesses:** The names and addresses of experts who have personally examined a defendant or any evidence in the particular case, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case. If the Nation intends to introduce expert testimony, the Nation shall disclose to the defendant a written summary of testimony of the experts that the Nation intends to use at trial. This summary shall describe the witnesses' opinions, the basis and reasons for those opinions, and the witnesses' qualifications;
 4. **Documents and tangible objects:** A list of all books, papers, documents, photographs or tangible objects which the Nation expects to use at trial or which were obtained from or purportedly belong to the defendant;
 5. **Prior Convictions:** A list of all prior convictions of the defendant which the Nation expects to use at any hearing including trial, guilty plea proceedings or sentencing and specifying whether the defendant was represented by legal counsel for those proceedings;
 6. **Prior Acts:** A list of all prior acts of the defendant which the Nation expects to use to prove motive, intent, or knowledge or otherwise use at trial;
 7. **Other material information:** All material or information which tends to mitigate or negates the defendant's guilt as to the offense charged or which would tend to reduce the defendant's punishment therefore, including all prior felony convictions of witnesses whom the Nation expects to call at trial;
 8. **Reports, Photographs, Recordings:** All reports, photographs, recordings, and other tangible or audio or video materials or transcriptions thereof prepared by any witness who the Nation expects to call as a witness at trial. These include, but are not limited to, police reports, medical reports, photographs of injuries, photographs of crime scenes, tape or visually recorded witness statements, and similar items.
- (b) ***Additional Disclosure upon Request and Specification.*** The Nation, upon written request, shall disclose to the defendant a list of the prior convictions of a specified defense witness which the Nation expects to use to impeach the witness at trial, and make available to the defendant for examination, testing and reproduction any specified items contained in the list submitted under this rule. The Nation may impose reasonable conditions, including any appropriate stipulation(s) concerning chain of custody, to protect physical evidence produced under this section.
- (c) ***Disclosure by Order of the Court.*** Upon motion of the defendant showing that he or she has substantial need in the preparation of his or her case for additional material or information not covered by this rule, and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the Court in its discretion may order any person to make it available to him or her. The Court may upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or result in undue hardship.
- (d) ***Disclosure of Rebuttal Evidence.*** Upon receipt of the notice of defenses as required by Rule 27, the Nation shall disclose the names and addresses of all persons whom the Nation intends to call as rebuttal witnesses together with relevant written or recorded statements.

(Ft. McD. Res. No. 2007-34, ex.(Rule 26), 5-22-2007/8-1-2007)

Rule 27. - Disclosure by defendant.

- (a) ***Notice of Defense.*** Within ten (10) days of the Nation's disclosure or at such other time as the Court may direct, if the defendant is represented by legal counsel, the defendant shall provide the Nation with a written notice specifying all defenses as to which the defendant will introduce evidence at trial including but not limited to alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. The notice shall specify for each defense the persons, including the defendant, whom the defendant intends to call as witnesses

at trial in support thereof. It may be signed by either the defendant or defendant's counsel, and shall also be filed with the Court.

- (b) **Failure to Notice Defense(s).** If a defendant fails to provide a written notice specifying all defense(s) for which the defendant will introduce evidence at trial, the Court may exclude the testimony of any undisclosed witness regarding the defense for which that witness was called to testify. However, for good cause shown as to why a defense was not disclosed, the Court, in its discretion, may grant an exception. Provided, that nothing in this rule shall prohibit or restrict a defendant's right to testify.
- (c) **Other Disclosure.** Simultaneously with the notice of defenses submitted under Rule 27(a), the defendant shall make available to the Nation for examination and reproduction the following:
 - 1. Witnesses: The names and addresses of all persons, other than that of the defendant, who he or she intends to call as witnesses at trial, together with all statements made by them in connection with the particular case;
 - 2. Expert Witnesses: The names and addresses of experts whom the defendant intends to call at trial, together with the results of the defendant's physical examinations and of scientific tests, experiments, or comparisons, including all written reports and statements, made by them in connection with the particular case. If the defendant intends to introduce expert testimony, the defendant shall disclose to the Nation a written summary of testimony of the experts that the defendant intends to use at trial. This summary shall describe the witnesses' opinions, the basis and reasons for those opinions, and the witnesses' qualifications.
 - 3. Documents and tangible objects: A list of all books, papers, documents, photographs or tangible objects which the defendant intends to use at trial.
 - 4. Reports, Photographs, Recordings: All reports, photographs, recordings, and other tangible or audio or video materials or transcriptions thereof prepared by the defendant or any witness who the defendant intends to call as a witness at trial.
- (d) **Additional Disclosure upon Request and Specification.** The defendant, upon written request, shall make available to the Nation for examination, testing, and reproduction any specified items contained in the list submitted under Rule 27(c)(3) and (4).
- (e) **Information Not Subject to Disclosure.** Except as to scientific or medical reports, this rule does not authorize the discovery or inspection or reports, memoranda, or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by the Nation's or defense witnesses, or by prospective Nation's or defense witnesses, to the defendant's attorney.
- (f) **Disclosure by Order of the Court.** Upon motion of the Nation showing that he or she has substantial need in the preparation of his or her case for additional material or information not otherwise covered by this rule, that the Nation is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the defendant's constitutional rights, the Court in its discretion may order any person to make such material or information available to him or her. The Court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(Ft. McD. Res. No. 2007-34, ex.(Rule 27), 5-22-2007/8-1-2007)

Rule 28. - Continuing duty to disclose.

If at any time after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had the information or material then been known, such party shall promptly notify all other parties of the existence of such additional material, and shall make any appropriate disclosure.

(Ft. McD. Res. No. 2007-34, ex.(Rule 28), 5-22-2007/8-1-2007)

Rule 29. - Subpoena.

- (a) **For Attendance of Witnesses; Form; Issuance.** Upon request of any party, a subpoena will be issued and signed by the Clerk of the Court. It will state the name of the Court and title of the proceeding, and will command each person to whom it is directed to, to attend and give testimony on the date, time, at the location specified in the subpoena. The Court may set the time when the parties must file a subpoena list with the Court.
- (b) **For Production of Documentary Evidence and of Objects.** A subpoena may command the person to whom it is directed to produce the objects listed within the subpoena. The Court on motion may quash or modify the subpoena if compliance would be unreasonable or oppressive. The Court may direct that the objects designated in the subpoena be produced before the Court at a time prior to the trial or prior to the time when they are to be offered into evidence and may upon their production permit the objects or portions thereof to be inspected by the parties and their counsel.
- (c) **Multiple Subpoena Requests.** When the Court receives an application for a subpoena from more than one (1) party, the Court will issue subpoenas for each party with notice to contact the calling party the day before the appearance time to determine if his or her presence is still needed. The Clerk of the Court will place an application by any other party in the Court's file.
- (d) **Party Not to Call a Witness.** If a party requesting a subpoena determines not to use a witness after a subpoena has been issued and or served, that party must notify the Court and other party if it is their intent not to call the witness to testify.
- (e) **Service.** A subpoena may be served by a law enforcement officer or by any other person authorized by the Court who is not a party to the litigation and who is eighteen (18) years of age or older. Service of a subpoena will be made by delivering a copy of it to the person named on the subpoena or by leaving the subpoena at the last known address of the person named with an individual of suitable age.
- (f) **Place of Service.** A subpoena may be served by the Court, the Police or another individual authorized by the Court to serve process at any place within the territorial jurisdiction of the Fort McDowell Yavapai Nation. A party may also seek comity in state Courts or other tribal jurisdictions for service of a subpoena if the person to be served is located within that jurisdiction.
- (g) **Continuances.** In the event that a hearing date is continued, the Court will automatically issue new subpoenas with the new court date to the same witnesses and/or for the same evidence or objects as previously requested.
- (h) **Contempt.** Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 29), 5-22-2007/8-1-2007)

Rule 30. - Subpoena or summons of members of tribal council, tribal government employees and tribal enterprises.

- (a) **Application for Subpoena and/or Summons—Official Capacity.** An application for a subpoena or a summons for a member of Tribal Council, a tribal government employee, or a tribal enterprise employee will state whether the witness is being called in their official capacity as a Tribal Council member, tribal government employee or as an individual with information unrelated to their elected or employment status. Any such application shall include a brief summary of expected testimony or identify the subject matter to avoid unnecessary interviews or depositions by the parties and should be attached to the written summons or subpoena.
- (b) **Written Interrogatories.** Written interrogatories shall be served upon Tribal Council members and Tribal government or Tribal enterprise employees prior to any depositions if the testimony sought is derived or arises from their elected or employment status.

- (c) ***Procedure for Serving Subpoenas and/or Summons.*** A copy of a subpoena issued to a member of the Tribal Council, to an employee of the tribal government, or to an employee of a tribal enterprise, will be served on the individual along with a copy served to the Office of General Counsel.
- (d) ***Service upon Employees of Tribal Enterprises Employed at the Fort McDowell Yavapai Materials and/or Fountain Hills Concrete.*** Service of process upon any individual employee of the Tribally owned enterprise, employed at the Fort McDowell Yavapai Materials and/or Fountain Hills Concrete, may be served on the Enterprise General Manager, or in his absence the Enterprise Controller, who shall serve as the Statutory Agent for the service of process from the Court.
1. The Enterprise General Manager and Controller shall develop and adopt procedures to document the delivery of process and documenting the date and time that process was served on the named individual.
 2. These procedures shall be coordinated and approved by the Chief Judge of the Court and shall include a procedure for providing the Court documentation of the service of process the following Court day.
- (e) ***Office of General Counsel Authority to Contest Subpoena and/or Summons.*** The Office of General Counsel will have standing to contest a summons or subpoena issued to a member of the Tribal Council, a tribal government employee, or an employee of a tribal enterprise summoned or subpoenaed based upon their elected or employment status. The Court recognizes that the Tribal Council is the legislative and executive authority for the Fort McDowell Yavapai Nation and that Council members serve in the traditional role of counselors to tribal members. The Court recognizes that Tribal Council has executive and legislative privileges, individually or as the Council and in their role as counselors enjoy a limited privilege with regard to disclosure requiring a showing of necessity.
- (f) ***Exemption for Certain Employees who Regularly Testify in Court.*** All employees of the Police Department, Fire Department, Wassaja Family Services and security personnel of Fort McDowell Yavapai Nation enterprises who, based upon their regular job duties are called to testify in Court are exempt from this Rule and may be subpoenaed as any other witness.

(Ft. McD. Res. No. 2007-34, ex.(Rule 30), 5-22-2007/8-1-2007)

Rule 31. - Pretrial hearings.

- (a) ***Purpose.*** At any time after the filing of the complaint the Court may order one (1) or more Pretrial Hearings to consider such matters as will promote a fair and expeditious trial. The purpose of the Pretrial Hearing is:
1. To provide a forum and procedure for the fair, orderly and just disposition of cases without trial;
 2. To permit the parties, without prejudice to their rights to trial, to engage in disclosure and conduct negotiations for disposition without trial;
 3. To provide an opportunity for complying with the requirement of discovery as required by these rules and by constitutional law;
 4. To eliminate the need for setting for trial cases which may be disposed of without trial; and
 5. In all cases which cannot be fairly disposed of without trial, to enable the Court to set a date certain for trial.
- (b) ***Procedure.*** At the final Pretrial Hearing the Nation and the defendant shall:
1. Finalize the list of witnesses to be called at trial. After the Pretrial Hearing, additions to the list may be allowed upon a showing to the Court that the existence of the witnesses or the content of the witness' proposed testimony could not have been discovered earlier;

2. Specify what pretrial motions will be filed;
 3. Explore the possibility of a negotiated plea. If a plea agreement is entered, no trial shall be set.
- (c) **Powers of the Court.** The Court may designate the types of cases to be made subject to the Pretrial Hearing, designate the persons who are required to attend the Pretrial Hearings, provide for sanctions in the event of failure to attend, and establish other procedures and regulations that are reasonable and necessary for the conduct of the Pretrial Hearings and for carrying out the purpose of the Pretrial Hearings.

(Ft. McD. Res. No. 2007-34, ex.(Rule 31), 5-22-2007/8-1-2007)

IV. - TRIAL.

Rule 32. - Trial procedure.

- (a) **Reading of Complaint; Choice to Change Plea or Stand Trial.** On the day of trial the defendant will be brought before the Court with witnesses as subpoenaed. The complaint will be read to the defendant and he or she will be afforded an opportunity by the Court to:
1. Change his or her plea. If the defendant changes his or her plea from "not guilty" to "guilty," then a sentence may be imposed and the case closed; or
 2. The defendant may stand trial.
- (b) **Swearing in of Witnesses; Presentation of Evidence.** If the defendant chooses to stand trial, the judge shall require the witnesses to be sworn in before they provide testimony to the Court.
- (c) **Conduct of Trial and Order of Proceedings.** The trial shall proceed in the following order unless the parties agree to any other method of proceeding and so long as it is so directed by the Court:
1. The Nation may make an opening statement.
 2. The defendant may then make an opening statement or may defer such opening statement until the close of the prosecution's evidence.
 3. The Nation will offer the evidence in support of the charge.
 4. The defendant may then make an opening statement if it was deferred, and offer evidence in his or her defense.
 5. Evidence in rebuttal will then be offered unless the Court upon a showing of good cause allows a case-in-chief to be re-opened.
 6. The parties may present closing arguments. The Nation will make closing arguments first, to be followed by the defendant's closing argument, if any, which will be followed by the Nation's rebuttal, if any.
 7. If the matter is tried by a jury, the judge will then charge the jury and allow the jury to deliberate. If the matter is not tried by jury, the judge will deliberate and may announce his or her findings.
- (d) **Exclusion of Witnesses.** The Court may, and at the request of either party exclude prospective witnesses from the Courtroom during opening statements and the testimony of other witnesses. The Court shall also direct them not to communicate with each other until all have testified. If the Court finds that a party's claim that a person is a prospective witness is not made in good faith, the person will not be excluded from the Courtroom but may be precluded from testifying. Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the witness may be allowed to remain in the Courtroom unless the Court finds, upon application of a party or witness, that the presence of the witness would be prejudicial to a fair trial. Notwithstanding the foregoing, the victim, as defined in the Law and Order Code, shall have the right to be present at all proceedings at which the defendant had such right.

- (e) **Exclusion of Spectators.** All proceedings shall be open to the public, including representative of the news media, unless the Court finds, upon application of the defendant, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial jury. A complete record of any closed proceeding shall be kept and made available to the public following the completion of trial or disposition of the case without trial.
- (f) **Protection of Witnesses.** The Court may in its discretion exclude all spectators during the testimony of a witness whenever reasonably necessary to prevent embarrassment or emotional disturbance of the witness.
- (g) **Investigator.** If an exclusion order is entered, both the Nation and the defendant shall nevertheless be entitled to the presence of one (1) investigator at counsel table.

(Ft. McD. Res. No. 2007-34, ex.(Rule 32), 5-22-2007/8-1-2007)

Rule 33. - Trial in absentia.

A defendant may be tried *in absentia* in accordance with Rule 95 of these rules.

(Ft. McD. Res. No. 2007-34, ex.(Rule 33), 5-22-2007/8-1-2007)

Rule 34. - Jury trial; waiver.

- (a) Every person prosecuted for any criminal offense or any alleged violation of any provisions of the Fort McDowell Law and Order Code punishable by imprisonment shall have the right to a trial by jury upon request. All requests for a jury trial must be made in writing no later than seven (7) calendar days after the Pre Trial hearing.
- (b) All waivers of the right to a trial by jury shall be made in writing, with the consent of the prosecution and contain a brief statement that the defendant understands that he or she has a right to be tried by a jury, that he or she voluntarily gives up the right to be tried by a jury and the decision to waive the right to be tried by a jury was not the result of threats, promises, force or duress. All such statements shall be signed by the defendant, defendant's legal counsel, if any and the Nation and filed with the Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 34), 5-22-2007/8-1-2007)

Rule 35. - Jury panel.

- (a) **Number of Jurors.** A jury shall consist of six (6) persons plus one (1) or more alternates selected from a pool of jurors randomly selected from a list of eligible jurors maintained by the Clerk of the Court.
- (b) **Eligible Jurors.** Every enrolled Fort McDowell tribal member who has reached the age of twenty-one (21) years, and every employee of the tribal government and all tribal enterprises whose regular work location is within the exterior boundaries of the Nation and who has reached the age of twenty-one (21) years, shall be eligible for jury service provided such person is not otherwise disqualified for jury service according to the standards established by the Tribal Council. The elected members of the Tribal Council the General Manager, employees of the Nation's Police Department, Nation's Office of the Prosecutor and the Court are exempt from jury service due to the inherent conflict arising from their positions.
- (c) **Preparation of List.** No later than five (5) days following the beginning of each calendar quarter, the Tribal Enrollment Office, the Tribal Human Resources Department and the Human Resources Official of each tribal enterprise shall submit to the Clerk of the Court a list of persons eligible for jury

service pursuant to subsection (b) of this Rule. Such list shall include the names and mailing addresses or employee department of each tribal member or employee.

- (d) **Drawing of Names.** The Clerk of the Court, using the Full Court Jury Module software or another Court approved system for random selection of jurors from the current jury list, shall select a minimum of fifty (50) persons for jury service. The persons so selected shall be summoned by the Clerk of the Court to appear for jury service.
- (e) **Challenge to the Panel.** Any party may challenge the panel on the ground that there has been an error in the procedure used in selecting or summoning the prospective jurors. Challenges to the panel shall specify the facts on which the challenge is made, and shall be made and decided before any individual prospective juror is examined.
- (f) **Oath and Examination.** The Court will administer an oath or examination of all prospective jurors that they will answer truthfully all questions concerning their qualifications and eligibility for jury service.
- (g) **Examining the Jurors.** The Court will initiate the examination of the prospective jurors by identifying the parties and their counsel, briefly outlining the nature of the case, and explaining the purpose of the examination.
- (h) **Voir Dire Examination.** The Court will conduct the voir dire examination, putting to the jurors all appropriate questions regarding each prospective juror's qualifications, including questions requested by any party or their counsel which the Court deems appropriate. The Court may permit a party or his counsel to examine a prospective juror.

(Ft. McD. Res. No. 2007-34, ex.(Rule 35), 5-22-2007/8-1-2007)

Rule 36. - Challenges for cause; peremptory challenges and good cause.

- (a) **Challenges for Cause.** Any party in an action may challenge a prospective juror for cause. Challenges for cause shall be tried by the Court. Challenges to prospective jurors for cause may be taken on any one (1) or more of the following grounds:
 - 1. Standing in relation of guardian and ward, master and servant, supervisory employee and employee, or principle and agent to any party; or being a partner in business with any party; or a member of the immediate family of any party, subject to the provisions of subsection (a)(4) of this section.
 - 2. Having served as a juror or been a witness in previous civil or criminal trial regarding the basis or the subject matter of the present litigation.
 - 3. Having been a party adverse to any instant party in a civil action, or having complained against or been accused by any instant party in a criminal action.
 - 4. Having formed or expressed an unqualified opinion or belief as to the merits of the action, or showing a state of mind that will preclude the juror from rendering a just verdict. The fact that a person called as a juror has formed an opinion or impression based only upon rumor or news media statements will not disqualify that person to serve as a juror in the action if the person, upon oath, states that he believes he can fairly and impartially render a verdict therein in accordance with the law and evidence, and the Court is satisfied with such assertion.
 - 5. The existence of a state of mind evidencing hostility or bias for or against any party or a subpoenaed witness to the case.
 - 6. Lack of any qualifications pursuant to Rule 35(b) to render a person competent as a juror.
- (b) **Peremptory Challenges to Individual Prospective Jurors.** Each party will be entitled to two (2) peremptory challenges to excuse prospective jurors. The challenging party using a peremptory challenge need not provide any reason to excuse a prospective juror.

- (c) **Good Cause.** The Court may for good cause, excuse a prospective juror.
- (d) **Order.** At any time that cause for disqualifying a juror appears, the Court will excuse the juror before the parties are called upon to exercise their peremptory challenges. Following the examination of jurors and disqualification of jurors for cause, the parties shall exercise their peremptory challenges on the clerk's list of remaining jurors, by alternating strikes, beginning with the Nation, until the peremptory challenges have been exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of the party's remaining challenges but shall not deprive the other party of his or her full number of challenges. If the parties fail to exercise the full number of challenges allowed them, the clerk shall strike the jurors on the bottom of the list until only the number to serve, plus alternates, remain.
- (e) **Selection of Jury.** The individuals remaining in the jury box or on the list of the panel of prospective jurors shall constitute the jurors for the trial. Immediately prior to the jury retiring to deliberate, the clerk shall, by lot and in open court, determine the juror(s) to be designated as alternates. The alternate(s) will be physically excused by the Court but shall be instructed to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury discharged. In the event that a deliberating juror is excused due to inability or disqualification to perform required duties, the Court may substitute an alternate juror, choosing from among the alternates in the order previously designated, unless disqualified, to join in the deliberations. If an alternate juror joins the deliberations, the jury shall be instructed to begin deliberations anew.

(Ft. McD. Res. No. 2007-34, ex.(Rule 36), 5-22-2007/8-1-2007)

Rule 37. - Bench trial.

In a case tried without a jury the Court shall make findings of fact along with rendering a verdict. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Ft. McD. Res. No. 2007-34, ex.(Rule 37), 5-22-2007/8-1-2007)

Rule 38. - Taking of testimony.

- (a) In all trials the testimony of witnesses will be taken orally in open Court, unless otherwise provided for by these rules, by the Fort McDowell Law and Order Code, or by permission of the Court.
- (b) Cross-examination of a witness is not limited to matters brought out on direct examination of the witness.
- (c) Re-direct examination of a witness is limited to matters brought out on cross-examination of the witness unless otherwise permitted by the Court.
- (d) No re-cross examination of any witness is permitted unless otherwise permitted by the Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 38), 5-22-2007/8-1-2007)

Rule 39. - Evidence.

The Federal Rules of Evidence or Rules as adopted by the Court, if any will govern the admission of evidence and testimony.

(Ft. McD. Res. No. 2007-34, ex.(Rule 39), 5-22-2007/8-1-2007)

Rule 40. - Lesser offense.

The jury or the Court may find the defendant guilty of a lesser offense necessarily included in the offense charged, without the necessity of having been formally charged with the lesser offense, provided that the Nation or the defendant requests deliberation and instruction on the lesser included offense(s).

(Ft. McD. Res. No. 2007-34, ex.(Rule 40), 5-22-2007/8-1-2007)

Rule 41. - Judgment of acquittal.

On motion of a defendant or on its own initiative and if there is no substantial evidence to warrant a conviction, the Court will enter a judgment of acquittal of one (1) or more offenses charged in the complaint or citation, after the evidence on either side is closed.

(Ft. McD. Res. No. 2007-34, ex.(Rule 41), 5-22-2007/8-1-2007)

Rule 42. - Reservation of decision on motion.

The Court may reserve decision on a motion for judgment of acquittal, proceed with the trial, where the motion is made before the close of all the evidence, and decide the motion at the close of the evidence and only upon the basis of the evidence at the time the ruling was reserved. The decision on a reserved ruling should be made with all possible speed.

(Ft. McD. Res. No. 2007-34, ex.(Rule 42), 5-22-2007/8-1-2007)

Rule 43. - Closing argument.

After the closing of evidence, the Nation shall open the argument. The defense shall be permitted to reply, and the Nation shall then be permitted to reply in rebuttal.

(Ft. McD. Res. No. 2007-34, ex.(Rule 43), 5-22-2007/8-1-2007)

Rule 44. - Speedy trial.

- (a) **Setting of Trial for all Defendants.** Every person against whom a complaint has been filed shall be tried within one hundred fifty (150) days of the date of his or her Arraignment.
- (b) **Exception; Complex Cases/Concurrent Prosecution.** The Court may, upon motion of the Defense or the Nation and a showing of complexity and/or concurrent prosecution in another jurisdiction, grant a continuance of a trial date for a longer period of time, not to exceed two hundred seventy (270) days from the date of Arraignment.
- (c) **Speedy Trial Excluded Periods.** The following periods shall be excluded from the computation of the time limits set forth in calculating the defendant's right to a speedy trial:
 - 1. Delays occasioned by or on behalf of the defendant, including, but not limited to delays caused by an examination and hearing to determine competency, the defendant's absence or incompetence, or his or her inability to be arrested or taken into custody in the Fort McDowell Yavapai Nation.
 - 2. Delays necessitated by congestion of the trial calendar, but only when the congestion is attributable to extraordinary circumstances.
 - 3. Delays resulting from continuances but only for the time periods prescribed therein.

4. Delays resulting from joinder for trial with another defendant as to whom the time limits have not run when there is good cause for denying severance. In all other cases, severance should be granted to preserve the applicable time limits.
- (d) **Duty of Defense Counsel, Exception.** It shall be the responsibility of defense counsel, if any, to advise the Court of any impending expiration of time limitations. However, if the defendant has waived his or her right to counsel, this responsibility shall shift to the Nation.

(Ft. McD. Res. No. 2007-34, ex.(Rule 44), 5-22-2007/8-1-2007)

Rule 45. - Continuances.

- (a) **Form.** A motion for a continuance of trial must be in writing and state with specificity the reason(s) justifying the continuance.
- (b) **Grounds.** The Court may grant a continuance of any trial date upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice and may only be granted so long as is necessary to serve the interests of justice. In making any ruling on a motion to continue a trial, the Court shall consider the rights of the defendant to a speedy trial and to any victim(s). In the event a continuance is granted, the Court shall include, on the record, its specific reasons for granting a continuance.

(Ft. McD. Res. No. 2007-34, ex.(Rule 45), 5-22-2007/8-1-2007)

Rule 46. - Instructions.

- (a) **Requests for Instructions and Forms of Verdict.** At a time as the Court directs, counsel for each party may submit to the Court written requests for instructions and forms of verdict and shall furnish copies to the other parties prior to the start of trial.
- (b) **Conference.** The Court will confer with counsel and inform them of its proposed action upon requests for instructions and forms of verdict prior to final argument to the jury. The Court will either give or refuse the instruction as requested, or may modify the instruction indicating on the record the modifications made, and give it as modified.
- (c) **Jurors' Copies.** The Court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to the jury after being read by the Court and at the time the jury retires to deliberate.
- (d) **Procedure; Waiver of Error.** The Court may instruct the jury before or after the closing arguments are completed. No party may assign as error any portion of the charge or omission thereof unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which that party objects and the grounds of the objection. The objection shall be made and heard out of the presence of the jury.

(Ft. McD. Res. No. 2007-34, ex.(Rule 46), 5-22-2007/8-1-2007)

Rule 47. - Materials used during deliberation.

Upon retiring for deliberation the jurors shall take with them the following:

- (a) Forms of verdict approved by the Court;
- (b) Copies of written or recorded instructions;
- (c) Juror's notes; and
- (d) Such tangible evidence admitted into evidence as the Court in its discretion shall direct.

(Ft. McD. Res. No. 2007-34, ex.(Rule 47), 5-22-2007/8-1-2007)

Rule 48. - Further review of evidence and additional instructions.

After the jurors have retired to consider their verdict, if they desire to have any testimony repeated, or if they request additional instructions, the Court, after consultation with counsel and in the presence of counsel and the parties, may recall the jury to the Courtroom and order the testimony played back or give appropriate additional instructions. The Court may also order other testimony played back or give other instructions, so as not to give undue prominence to the particular testimony or instructions requested.

(Ft. McD. Res. No. 2007-34, ex.(Rule 48), 5-22-2007/8-1-2007)

Rule 49. - Assisting jurors at impasse.

If the jury advises the Court that it has reached an impasse in its deliberations, the Court may, in the presence of counsel, inquire of the jurors to determine whether and how Court and counsel can assist them in their deliberative process. After receiving the juror's responses, if any, the judge may direct that further proceedings occur as appropriate and if legally and practically possible. Provided however, that any such inquiry should not be coercive, suggestive or unduly intrusive. Additional assistance may be in the form of giving additional instructions, clarifying earlier instructions, or a combination thereof.

(Ft. McD. Res. No. 2007-34, ex.(Rule 49), 5-22-2007/8-1-2007)

Rule 50. - Verdict forms.

A verdict form shall be submitted to the jury containing all offenses necessarily included in the offense charged, an attempt to commit the offense charged or an offense necessarily included therein, if such attempt is an offense. The defendant may not be found guilty of any offense for which no form of verdict has been submitted to the jury.

(Ft. McD. Res. No. 2007-34, ex.(Rule 50), 5-22-2007/8-1-2007)

Rule 51. - Verdict.

- (a) **Return.** The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.
- (b) **Several Defendants.** If there are two (2) or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot return a verdict on a defendant or defendants, the Court may declare a mistrial in accordance with Rule 52 of these Rules.
- (c) **Conviction of a Lesser Offense.** The defendant may be found guilty of a lesser offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense provided by law and the jury was instructed by the Court that they may do so.
- (d) **Verdict of Not Guilty.** If the defendant is found "not guilty," the defendant shall be released forthwith.
- (e) **Verdict of Guilty.** If the defendant is found "guilty," the Court will determine if there is good cause why sentencing should not immediately be imposed. The Court may, if requested by either party and for good cause shown, defer sentencing in accordance with Rule 56.

- (f) **Poll of Jury.** After a verdict is returned but before the jury is discharged, the Court will on a party's request, or may on its own motion, poll the jurors individually. If the poll reveals a lack of unanimity, the Court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

(Ft. McD. Res. No. 2007-34, ex.(Rule 51), 5-22-2007/8-1-2007)

Rule 52. - Mistrial.

- (a) **In General.** Upon learning that the jury has reached an impasse, the Court will attempt, if legally and practically possible, to assist the jury in accordance with Rule 49 of these Rules. The Court cannot order a mistrial unless there is a specific finding of a manifest necessity for a mistrial. However, before ordering a mistrial, the Court will provide an opportunity to the Nation and for each defendant to comment on the propriety of the order, including whether such party consents or objects to a mistrial, and to suggest alternatives.
- (b) **Prosecution Request for New Trial.** After the Court has declared a mistrial, the judge will advise the National that the Nation may request a new trial within thirty (30) calendar days of the date of trial.

(Ft. McD. Res. No. 2007-34, ex.(Rule 52), 5-22-2007/8-1-2007)

V. - POST-CONVICTION PROCEDURES.

Rule 53. - Motion for new trial.

When a defendant motions the Court for a new trial, the Court may grant such request if the interests of justice so require. If trial was by the Court without a jury, the Court may, vacate the judgment, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on newly discovered evidence may be made only within six (6) months after the verdict or finding of guilt. But if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial on any other grounds may be made only within ten (10) days after the verdict or finding of guilt or within such extended time as the Court may fix.

(Ft. McD. Res. No. 2007-34, ex.(Rule 53), 5-22-2007/8-1-2007)

Rule 54. - Pre-sentence.

- (a) **In General.** The Court may order that a Pre-Sentence Investigation and Report be completed prior to sentencing. Sentencing should take place without unnecessary delay following completion of the Pre-Sentence Investigation process.
- (b) **Presence of Counsel.** On request, the defendant's counsel is entitled to notice and an opportunity to attend any interview of the defendant by a probation officer in the course of a Pre-Sentence Investigation.
- (c) **Pre-Sentence Investigation and Report.** If ordered by the Court, at the request of a party or upon its own motion, the probation officer shall conduct a Pre-Sentence Investigation and submit a report to the Court and the parties a minimum of two (2) days before the sentencing date. The report shall only be distributed to the sentencing judge, the Nation, the defendant, defendant's counsel, and if appropriate the Domestic Violence Advocate. The report will contain the following:
1. Information about the defendant's history and characteristics, including any prior criminal record, financial condition, and any circumstances that may affect the defendant's behavior and may be helpful in imposing the sentence;

2. Each offense to which the defendant was convicted and the sentencing range for each offense;
 3. Verified information, stated in a non-argumentative style, containing the financial, social, psychological, and medical impact on any individual against whom the offense has been committed;
 4. Information about the nature and extent of programs and resources available for the incarceration, treatment, counseling and monitoring of the defendant;
 5. In appropriate cases, information sufficient for the Court to enter an order of restitution; and
 6. Any other information required by the Court, which may include sentencing recommendations.
- (d) **Exclusions to the Pre-Sentencing Investigation and Report.** The following information must be excluded from the Pre-Sentencing Report:
1. Any diagnostic opinions that if disclosed, might seriously disrupt a program of rehabilitation;
 2. Sources of information obtained upon a promise of confidentiality; or
 3. Any other information that if disclosed, might result in harm, physical or otherwise, to the defendant or other persons.
- (e) **Supplemental Information to Pre-Sentencing Report.** Any party may supplement the Pre-Sentence Report by filing a party supplement to the report. The information must contain relevant information that the Court should consider when imposing the sentence. A party may object to any information contained in or omitted from the Pre-Sentencing Report. If an objection is made, the Court may continue the Sentencing Hearing to allow the corrections to be made or may set the case for a hearing to allow the objecting party to present information in support of the objection, or after receiving objections, the probation officer may meet with the defendant, the defendant's counsel, and the Nation to discuss the objections. The probation officer may also conduct a further investigation and revise the Pre-Sentence Report as may be appropriate.
- (f) **Findings of Fact.** The Court may, at the Sentencing Hearing, accept the Pre-Sentence Report as its findings of fact. The Court may allow an objection to be raised at any time before imposing a sentence.
- (g) **Objecting to the Report.** Prior to the day of the sentencing hearing, the parties must state in writing any objections, including objections to material information and sentencing recommendations.
1. **Serving Objections.** An objecting party must provide a copy of its objections to the opposing party and to the probation officer.
 2. **Revising the Pre-Sentencing Report.** If the Court sustains an objection to the Pre-Sentence Report, the Court may take the action it deems appropriate under the circumstances, including, but not limited to, excising the objectionable language or sections of the report; ordering the completion of a new Pre-Sentence Report with specific directions and/or instructions, including the direction that a different probation officer, if any prepare the new report; or ordering the objectionable portion(s) of the report sealed, as may be appropriate.

(Ft. McD. Res. No. 2007-34, ex.(Rule 54), 5-22-2007/8-1-2007)

Rule 55. - Special duty of the nation.

The Nation shall disclose any information in the Nation's possession or control, not already disclosed, which would tend to reduce the punishment to be imposed.

(Ft. McD. Res. No. 2007-34, ex.(Rule 55), 5-22-2007/8-1-2007)

Rule 56. - Sentencing.

- (a) **Time Limitations.** A sentence shall be imposed within thirty (30) days of entry of judgment. However, the Court may extend the time for sentencing if the Court orders a Pre-Sentence Investigation and Report or for other good cause. The Court may suspend all or any part of the fine or sentence imposed upon a person found guilty of violating any provisions of the Fort McDowell Law and Order Code unless specifically prohibited by the Fort McDowell Law and Order Code.
- (b) **Sentencing Hearing.** At the Sentencing Hearing, the Nation, counsel for the defendant and the defendant will have an opportunity to comment on the probation officer's recommendations and on other matters relating to the appropriate sentence. The Court will rule on any unresolved objections to the Pre-Sentencing Report. The Court may, in its discretion, permit the parties to introduce testimony or other evidence on the objections. For each matter objected to, the Court must make either a finding on the allegation or a determination that no finding is necessary because the matter in disagreement will not be taken into account in or will not affect sentencing.
- (c) **Presence Required at Sentencing.** A defendant is required to be present at his or her Sentencing Hearing.
- (d) **Imposition of Sentence.** Before imposing a sentence, the Court will:
1. Afford the National an opportunity to speak on behalf of the Nation and victims, if any;
 2. Verify that the defendant and defendant's counsel have read and discussed the Pre-Sentence Report if any, and give the defendant and the defendant's counsel an opportunity to comment on the contents of the Pre-Sentence Report;
 3. Afford the defendant's counsel an opportunity to speak on behalf of the defendant;
 4. Address the defendant personally and determine whether the defendant wishes to make a statement or to present any information that he or she deems relevant for sentencing purposes; and
 5. If sentencing is to be imposed for a crime that involves a victim, address the victim personally if the victim is present at the Sentencing Hearing and determine if the victim wishes to make a statement or present any information in relation to the sentence.
- (e) **Sentencing Considerations.** In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the defendant has attempted to make amends, the defendant's financial resources, the needs of the defendant's dependents, the defendant's criminal history, and statements made by the victim, if any.
- (f) **Sentencing Lesser Offenses.** In the event that a defendant is found guilty of a lesser offense than that charged pursuant to Rule 40 of these rules, any sentence imposed may not exceed the maximum sentence allowed for that offense.
- (g) **Liability for Restitution.** In addition to any penalty or sentence issued in any case where a victim as incurred a loss as a direct or proximate result of defendant's actions, the Court shall order the defendant to make restitution to the victim of the offense or if the victim is deceased, to the victim's estate subject to Rule 57.
- (h) **Liability for Payment of Fines.** In the event a person is granted an installment plan for the payment of a fine, the Court will set a reasonable time for the payment of said fine. In the event the defendant does not comply with the installment plan, the Clerk of Court will advise the judge and a bench warrant will be issued for the arrest of said defendant.
- (i) **Liability for Incarceration/Treatment Expenses.** In the event that the defendant is ordered to pay to the Nation the expenses relating to his/her incarceration or Court ordered treatment, the Court will, upon the defendant's release schedule a hearing to determine the amount of incarceration or treatment expenses the defendant is liable for. If the defendant is a tribal member of the Fort McDowell Yavapai Nation and is otherwise eligible to receive per capita distribution, if any, the Court will order that such sum be deducted from defendant's per capita distribution. If the defendant is not

a tribal member of the Fort McDowell Yavapai Nation, the Court will establish an acceptable payment plan, if necessary.

- (h) ***In Camera Proceedings.*** Upon motion by the defendant or the Nation, the Court may hear the statements made under this section in camera. However, the Court will make a record of any decision made for appellate purposes.
- (i) ***Notification of Right to Appeal.*** After imposing sentence in a case, the Court will advise the defendant of the right to appeal and the time period within which the appeal must be filed.
- (j) ***Application of Custom and Tradition.***
 - 1. Notice to Opposing Party. A party who intends to raise, use, rely on or argue the application of the unwritten customs, traditions, practices or beliefs of the Yavapai people as to an appropriate sentence will give notice thereof to the opposing party ten (10) days prior to sentencing. The Court, in determining the unwritten customs, traditions, practices or beliefs of the Yavapai people may consider any material or source, including testimony, whether or not submitted by a party.
 - 2. Qualifying Traditional Leaders. When a question or issue arises as to custom and or tradition, a judge may qualify at least two (2) individuals residing in or recognized in the Community as *traditional leaders or elders*.
 - 3. Testimony. Any testimony received from such individuals will be taken under oath. Questions will be asked in a manner that elicits a response that would have a general application. Cross-examination will be allowed.
 - 4. Witnesses. Either party may call other traditional leaders as their own witnesses. Such witnesses may be cross-examined.
 - 5. Courts Ruling. The Court's determination will be treated as a ruling on a question of law.
- (k) ***Pronouncement of Judgment and Sentence.***
 - 1. Pronouncement of Judgment. The Court shall set forth the defendant's plea or verdict, the offense of which the defendant was convicted or found guilty, and the sentencing classification for each offense.
 - 2. Sentence. In announcing the sentence to be imposed, the Court will:
 - a. Give the defendant an opportunity to speak on his or her own behalf;
 - b. Indicate that it has considered any time the defendant has spent in custody on the current charge;
 - c. Explain the terms of the sentence and/or probation; and
 - d. Specify the commencement date for any term of incarceration imposed and a computation of time to be credited for any time served.
- (l) ***Duty to Notify Defendant of Right to Appeal.*** In pronouncing judgment and sentence, the Court shall:
 - 1. Inform the defendant of his or her right to appeal from the judgment and/or sentence and advise the defendant that failure to file a timely appeal will result in the loss of appellate rights; and
 - 2. Provide the defendant with a written notice of his or her appellate rights and the procedures the defendant must follow to exercise them, receipt of which shall be shown on the record.

(Ft. McD. Res. No. 2007-34, ex.(Rule 56), 5-22-2007/8-1-2007)

Rule 57. - Fines and restitution.

- (a) **Time for Payment.** The Court may permit the payment of any fine or restitution, or both, to be made within a specified period or in specified installments.
- (b) **Method of Payment.** The payment of a fine, restitution or both shall be made to the Court, unless the Court directs otherwise. The Court may order deduction of fines, restitution or both from defendant's per capita distribution, if any. The Court will then cause any restitution paid to be forwarded to the appropriate party.
- (c) **Action on Failure to Pay a Fine or Restitution.** In any case where the defendant is ordered to pay a fine and the defendant fails to do so, the Court may issue a warrant and an order suspending per capita distribution and, if the defendant is on probation, provide notice to the assigned probation officer. If a defendant is ordered to pay restitution, is on probation and fails to pay restitution, the Court will notify the defendant's assigned probation officer. The Court may also issue an order to show cause against the defendant to show cause why he or she should not be held in contempt of Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 57), 5-22-2007/8-1-2007)

Rule 58. - Judgment.

- (a) **In General.** A judgment of conviction will set forth the plea or the verdict and the sentence imposed. If the defendant is found not guilty, or is for any other reason entitled to be discharged, the judgment must reflect so. The judgment must be signed by the judge and entered by the Clerk of the Court.
- (b) **Criminal Forfeiture.** If a verdict contains a finding that property is subject to forfeiture, or if a defendant enters a guilty plea subjecting property to forfeiture, the Court may only enter an order of forfeiture after giving notice to the defendant and any third parties who may have an interest in the property, an opportunity to be heard in accordance with the forfeiture provisions contained in the Chapter 6 of the Fort McDowell Law and Order Code and if the requirements of Rule 6 of these rules have been met.

(Ft. McD. Res. No. 2007-34, ex.(Rule 58), 5-22-2007/8-1-2007)

Rule 59. - Correction or reduction of sentence.

The Court will correct, modify or change a sentence that is later determined to have been imposed in violation of law, or that is contrary to a written plea agreement that was imposed as a result of arithmetical, technical or other clear error, or upon remand back to the Court from the Supreme Court of the Fort McDowell Yavapai Nation.

(Ft. McD. Res. No. 2007-34, ex.(Rule 59), 5-22-2007/8-1-2007)

VI. - PROBATION AND PROBATION REVOCATION PROCEDURES.

Rule 60. - Probation.

"Probation" shall mean the release by the Court with or without imprisonment of a person found guilty or responsible of an offense upon verdict or plea and subject to the supervision of the Probation Department. Probation conditions may include, among other conditions, a term of incarceration or detention, including but not limited to house arrest.

(Ft. McD. Res. No. 2007-34, ex.(Rule 60), 5-22-2007/8-1-2007)

Rule 61. - Imposing probation.

When a defendant is sentenced to a term of probation, the Court may impose terms and/or conditions of probation to promote rehabilitation. In addition to any standard terms and/or conditions of probation applicable to all individuals on probation, the Court may impose additional regulations or specialized terms and/or conditions of probation appropriate for the offense for which the defendant is convicted and consistent with the rehabilitation of the defendant, including the date which probation will start and terminate. All terms and/or conditions will be explained in writing and the defendant and his or her counsel, if any, will be required to sign the probation agreement that will include standardized and special terms and conditions. The defendant will be provided a copy of the signed probation agreement.

(Ft. McD. Res. No. 2007-34, ex.(Rule 61), 5-22-2007/8-1-2007)

Rule 62. - Standard terms and/or conditions of probation.

Standard terms and/or conditions of probation applicable in all cases shall include the following:.

- (a) Probationer agrees to remain a law abiding citizen at all times;
- (b) Probationer is to report all contact with law enforcement of any jurisdiction to his or her assigned probation officer within forty-eight (48) hours of the contact;
- (c) Reside at a residence approved by the assigned probation officer and not move without the prior consent of the assigned probation officer;
- (d) Report to the probation officer within twenty-four (24) hours upon release from custody or as otherwise ordered by the Court for initial instructions and abide by all reasonable directives of the probation officer;
- (e) Not associate with any person known to be a possessor, user or trafficker of controlled substances;
- (f) Not associate with any person who is a substantiated gang member;
- (g) Not associate with any unrelated person on probation or parole from any jurisdiction;
- (h) Not possess nor use or have in control any alcohol or controlled substances or any drug related paraphernalia unless medically prescribed;
- (i) Immediately report any medically prescribed use of any controlled substance to the probation officer;
- (j) Submit to immediate search by the probation officer of probationer's person, motor vehicle, automobile, residence, including but not limited to surrounding premises, garage, storage area(s) and personal property and leased property, with or without reasonable cause;
- (k) Submit to any test of blood, breath, saliva, DNA, or urine or any combination thereof and to any reasonable physical tests at the request of the probation officer for the detection of use of controlled substances and/or alcohol;
- (l) Seek gainful employment and/or attend an education or vocational program;
- (m) Not own or possess or have under their control any firearm or deadly weapon or related paraphernalia;
- (n) Pay the actual costs of all drug and/or alcohol testing completed as a part of probation;
- (o) Shall not leave the state of Arizona without the prior written permission of the probation officer; and
- (p) Waives extradition proceedings should the probationer be arrested in another jurisdiction.

(Ft. McD. Res. No. 2007-34, ex.(Rule 62), 5-22-2007/8-1-2007)

Rule 63. - Special terms and/or conditions of probation for domestic violence cases.

In the event that a defendant is placed on probation for any conviction involving an act of domestic violence, the standard terms and conditions of probation shall include the following:

- (a) If the offense involved the use, threatened use or possession of any firearm, a lifetime prohibition from carrying a firearm;
- (b) Payment of child support, if ordered and must remain current on child support payment(s);
- (c) Payment of all fines and/or restitution; and
- (d) Mandatory domestic violence counseling.

(Ft. McD. Res. No. 2007-34, ex.(Rule 63), 5-22-2007/8-1-2007)

Rule 64. - Term of probation.

The term of probation commences on the day that the sentence of probation is imposed unless otherwise ordered by the Court. A term of probation does not run while a defendant is incarcerated or detained for any offense in any jurisdiction. Multiple terms of probation imposed at the same time will run concurrent to each other. Multiple terms imposed at different times will run consecutive to each other.

(Ft. McD. Res. No. 2007-34, ex.(Rule 64), 5-22-2007/8-1-2007)

Rule 65. - Modification, clarification or extension of probation, terms and/or conditions.

The sentencing Court may modify, clarify, or extend any term or condition of probation at any time prior to absolute discharge upon hearing. A probationer, probationer's legal counsel, probation officer or the Nation may request the Court to modify, clarify or extend any term or condition of probation. A written copy of any modification or extension shall be provided to the probationer.

(Ft. McD. Res. No. 2007-34, ex.(Rule 65), 5-22-2007/8-1-2007)

Rule 66. - Early termination of probation.

At any time during the term of probation and upon motion of the probation office or upon its own motion, the Court may, after notice and response by the Nation, terminate probation and discharge the probationer from further supervision in the matter.

(Ft. McD. Res. No. 2007-34, ex.(Rule 66), 5-22-2007/8-1-2007)

Rule 67. - Order and notice of discharge.

Upon expiration of probation or upon early termination of a term of probation, the Court shall order the probationer to be discharged from probation in the matter and the Clerk of the Court shall furnish the probationer, the Nation and the Police Department with a notice of discharge.

(Ft. McD. Res. No. 2007-34, ex.(Rule 67), 5-22-2007/8-1-2007)

Rule 68. - Revocation; tolling of probationary period.

A probationer's term of probation tolls upon the filing of a petition to revoke, modify or re-impose probation. The Court may revoke a sentence of probation for a violation of a term or condition of probation after the expiration of the term of probation, if prior to its expiration, a petition to revoke probation has been filed with the Court alleging a violation of a term or condition of probation.

(Ft. McD. Res. No. 2007-34, ex.(Rule 68), 5-22-2007/8-1-2007)

Rule 69. - Initiation of revocation proceedings.

If there is reasonable cause to believe that a probationer has violated a term or condition of probation during the probationary period, the probation officer or the Nation, may cause to be filed a Petition to Revoke, Modify or Reimpose probation.

(Ft. McD. Res. No. 2007-34, ex.(Rule 69), 5-22-2007/8-1-2007)

Rule 70. - Securing probationer's appearance.

Upon the filing of a Petition to Revoke, Modify or Reimpose Probation, the Court may issue a summons directing the Probationer to appear for a revocation hearing or may issue a warrant for the probationer's arrest.

(Ft. McD. Res. No. 2007-34, ex.(Rule 70), 5-22-2007/8-1-2007)

Rule 71. - Arraignment.

- (a) **Upon Arrest.** A probationer arrested on a warrant for a violation of probation shall be notified of the Petition to Revoke, Modify or Reimpose Probation and shall be taken to the Court from which the warrant was issued for Arraignment in accordance with Rule 15 of these rules.
- (b) **Summons.** A Revocation Arraignment shall be held no more than ten (10) business days after service of summons.
- (c) **Advisement.** At the Revocation Arraignment, the probationer shall be advised of his or her legal rights, including the right to be represented by legal counsel and, if applicable the right to legal counsel at no expense. The probationer shall be advised of the possible penalties that could be imposed if an admission is entered. The probationer shall be informed that any statement made prior to the revocation hearing may be used against him or her. The probationer shall also be informed that if the violation involves a criminal offense, any statements made during the course of the proceedings may be used against him or her at trial for the criminal offense.
- (d) **Plea; Violation Hearing; Release Conditions.** The probationer shall enter a plea of denying or admitting for each allegation. If no admission is made or if an admission is not accepted, the Court will set a violation hearing unless both parties agree that a violation hearing may proceed forthwith. If a violation hearing is set, the Court will determine release conditions, if any. However, a defendant may be released on bond or held without bond for an alleged violation of probation.

(Ft. McD. Res. No. 2007-34, ex.(Rule 71), 5-22-2007/8-1-2007)

Rule 72. - Violation hearing; burden of proof.

If no admission is made and unless waived, a hearing shall be held to determine whether the probationer violated a term(s) and/or condition(s) of probation as alleged in the Petition to Revoke Modify or Reimpose Probation. Each party may present evidence and shall have the right to cross-examine witnesses who testify. The Court may receive any reliable evidence, not legally privileged, including hearsay evidence. The burden of proof by which a violation of probation must be proven is by a preponderance of the evidence. If the Court finds that a violation of a term(s) or condition(s) of probation has occurred, it shall set a disposition hearing within ten (10) business days, unless both parties agree that a disposition hearing may proceed forthwith.

(Ft. McD. Res. No. 2007-34, ex.(Rule 72), 5-22-2007/8-1-2007)

Rule 73. - Disposition.

In the event that the Court makes a determination that a violation of a term(s) or condition(s) of probation has occurred, the Court may revoke, modify or reimpose probation. If the probation is revoked, the Court shall pronounce sentence. Probation shall not be revoked for a violation of a term(s) or condition(s) of probation that was not provided to the probationer in writing, unless the probation violation occurred after sentencing but prior to the probationer signing his or her probationary pledge.

(Ft. McD. Res. No. 2007-34, ex.(Rule 73), 5-22-2007/8-1-2007)

Rule 74. - Determination of guilt in offense; disposition.

If there is a plea of guilty or a verdict or finding of guilty to a subsequent offense that served as the basis for the filing of the Petition to Revoke Modify or Reimpose Probation, no violation hearing is necessary. The Court may simply set the matter for Disposition at the time set for entry of judgment on the subsequent criminal offense.

(Ft. McD. Res. No. 2007-34, ex.(Rule 74), 5-22-2007/8-1-2007)

Rule 75. - Admission of probationer.

Prior to accepting any admission, the Court shall determine that the Probationer wishes to forgo announced rights, including a waiver of legal counsel if appearing without legal counsel, that the admission and waiver of legal counsel if the Probationer appears without legal counsel is voluntary and not the result of force, threats or promises and that there is a factual basis for the admission.

(Ft. McD. Res. No. 2007-34, ex.(Rule 75), 5-22-2007/8-1-2007)

Rule 76. - Hearing required.

A Petition to Revoke, Modify or Extend Probation may only be filed during the probationary period and may only be decided upon at a hearing with all parties present, unless a hearing is waived, or the requirements for trial in absentia have been met in accordance with Rule 95, or if the relief sought is favorable to the probationer and does not extend the term of probation or supervised release, or the Nation has received notice of the relief sought, has had reasonable opportunity to object and has not done so. A Petition to Revoke, Modify or Extend Probation tolls the running of the period of probation as does a warrant for arrest on a Probation Violation as outlined in Rule 68 of these Rules.

(Ft. McD. Res. No. 2007-34, ex.(Rule 76), 5-22-2007/8-1-2007)

Rule 77. - Victims' rights.

Victims' rights as outlined in these rules apply to Probation Revocation matters.

(Ft. McD. Res. No. 2007-34, ex.(Rule 77), 5-22-2007/8-1-2007)

Rule 78. - Mandatory revocation; exceptions.

(a) There shall be mandatory revocation for any offense in which it is alleged as follows:

1. Possession of a controlled substance or drug paraphernalia;
2. Possessed a firearm or deadly instrument;
3. Repeated refusal to comply with an alcohol and/or drug test;
4. Repeated positive tests for alcohol, illegal substances or prescribed medications at a level that would indicate misuse of prescribed medications.

(b) **Exceptions.** Individuals participating in the Wellness Court programs as part of a pre-adjudicatory diversion program may be exempt from mandatory revocation for rules 1, 3 and 4 above, subject to the discretion of the Wellness Court Committee. Individuals who test positive for substance on any test administered as a part of their participation in Wellness Court shall be sanctioned in accordance with the Wellness Court Policies, which may include a recommendation to the assigned probation officer that probation be violated.

(Ft. McD. Res. No. 2007-34, ex.(Rule 78), 5-22-2007/8-1-2007)

Rule 79. - Fines/fees.

Termination of Probation and discharge of the probationer does not relieve the probationer of his or her responsibility to pay criminal and/or civil charges, penalties or costs, including restitution, incarceration or treatment expenses.

(Ft. McD. Res. No. 2007-34, ex.(Rule 79), 5-22-2007/8-1-2007)

VII. - DIVERSION PROGRAMS EXCLUDING WELLNESS COURT.

Rule 80. - Nation's discretion.

In any case in which the Nation believes that justice is better served by diverting a case from formal criminal prosecution to diversion, the Nation shall have the discretion to offer diversion program(s) to a defendant so long as the program offered is appropriate to address the underlying charges.

(Ft. McD. Res. No. 2007-34, ex.(Rule 80), 5-22-2007/8-1-2007)

Rule 81. - When offered.

The Nation has the discretion to offer diversion program(s) at any reasonable point prior to trial.

(Ft. McD. Res. No. 2007-34, ex.(Rule 81), 5-22-2007/8-1-2007)

Rule 82. - Tolling of time; speedy trial.

When diversion is offered for the benefit of a defendant, time is tolled for purposes of speedy trial calculations so long as the offer for diversion participation is made in good faith and not for purposes of delay.

(Ft. McD. Res. No. 2007-34, ex.(Rule 82), 5-22-2007/8-1-2007)

Rule 83. - Entry of guilty plea; deferred acceptance of plea.

In any case wherein diversion is offered, the defendant will be required to enter a plea of guilty to the charges. The Court will make a determination whether the plea was entered knowingly, intelligently and voluntarily and, if possible find a factual basis. However, the Court will defer acceptance and entry of the guilty plea onto the record and order the defendant to the diversion program(s) for successful completion. The Court shall advise the defendant that if he or she fails to successfully complete the diversion program(s), the Court will, upon notification and at hearing, formally accept the guilty plea and set the matter for sentencing. In addition, the Court will also advise the defendant that if he or she fails to successfully complete the diversion program, the Court could impose contempt charges and penalties in addition to the underlying charge and penalty for failure to obey a lawful order of the Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 83), 5-22-2007/8-1-2007)

VIII. - WELLNESS COURT.

Rule 84. - Wellness Court eligible cases.

- (a) **Referral.** In any case wherein the facts of the case and the defendant meet the legal criteria for Wellness Court participation as outlined in the Wellness Court Program, the Nation may refer such case and defendant to the Wellness Court Committee for consideration in accordance with Wellness Court Policies and Procedures.
- (b) **Information to Defendant.** In any case referred to the Wellness Court Committee for consideration, the Court will provide information to the defendant about the Wellness Court and refer the defendant to the Wellness Court Coordinator and/or Wellness Court Case Manager to answer questions, and if appropriate, to execute a limited consent form so that the Wellness Court Committee may consider the defendant's admission to the program.

(Ft. McD. Res. No. 2007-34, ex.(Rule 84), 5-22-2007/8-1-2007)

Rule 85. - Offer for Wellness Court is made/declined.

If the Wellness Court Committee accepts a defendant into the Wellness Court Program and the defendant declines participation or fails to accept participation within ten (10) business days of program acceptance, the Nation has sole discretion to offer Wellness Court as a diversion program at any point prior to trial.

(Ft. McD. Res. No. 2007-34, ex.(Rule 85), 5-22-2007/8-1-2007)

Rule 86. - Tolling of time; speedy trial.

When Wellness Court participation is offered for the benefit of a defendant prior to trial, time is tolled for purposes of speedy trial calculations so long as the offer for Wellness Court participation is made in good faith and is not for purposes of delay.

(Ft. McD. Res. No. 2007-34, ex.(Rule 86), 5-22-2007/8-1-2007)

Rule 87. - Entry of guilty plea; deferred acceptance of plea.

In any case wherein Wellness Court is offered, the defendant will be required to enter a plea of guilty to the charges. The Court will make a determination whether the plea was entered knowingly, intelligently and voluntarily and, if possible find a factual basis. However, the Court will defer acceptance and entry of the guilty plea onto the record and order the defendant to the Wellness Court program(s) for successful completion. The Court shall advise the defendant that if he or she fails to successfully complete the

Wellness Court program, the Court will, upon notification and at hearing, formally accept the guilty plea and set the matter for sentencing. In addition, the Court will also advise the defendant that if he or she fails to successfully complete the Wellness Court program, the Court could impose contempt charges and penalties in addition to the underlying charge and penalty for failure to obey a lawful order of the Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 87), 5-22-2007/8-1-2007)

IX. - GENERAL PROVISIONS.

Rule 88. - Interpreters.

The Court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter.

(Ft. McD. Res. No. 2007-34, ex.(Rule 88), 5-22-2007/8-1-2007)

Rule 89. - Clerical mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

(Ft. McD. Res. No. 2007-34, ex.(Rule 89), 5-22-2007/8-1-2007)

Rule 90. - Judge; disability.

- (a) ***During Trial.*** If for any reason the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge of the Fort McDowell Court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.
- (b) ***After Verdict or Finding of Guilt.*** If for any reason the presiding judge whom the defendant has been tried before is unable to perform the necessary duties after a verdict or finding of guilt, any other judge of the Fort McDowell Court may perform those duties. The judge taking over the case may also declare a mistrial as may be appropriate.

(Ft. McD. Res. No. 2007-34, ex.(Rule 90), 5-22-2007/8-1-2007)

Rule 91. - Appeals.

All appeals shall be governed by the Rules of Appellate Procedure found in the Fort McDowell Law and Order Code.

(Ft. McD. Res. No. 2007-34, ex.(Rule 91), 5-22-2007/8-1-2007)

Rule 92. - Stay of execution.

Upon written motion, the Court may grant a stay, regarding any of the following provisions of the sentence during the pendency of any appeal:

- (a) ***Incarceration.*** Incarceration may be stayed and the defendant released upon such terms as the Court deems proper.

- (b) **Fines and Restitution.** A fine or restitution may be stayed upon such terms as the Court deems proper. The Court may require the defendant to deposit the whole or any part of the fine and restitution with the Court.
- (c) **Probation.** A sentence of probation may be stayed upon such terms as the Court deems proper.
- (d) **Any Part of the Judgment and Sentence.** Any other sanction imposed as part of the sentence may be stayed as the Court finds appropriate and upon such terms as the Court deems proper. The Court may issue such orders as may be necessary to ensure the compliance with the sanction upon disposition of the appeal including the entering of a restraining order or an injunction or requiring a deposit in whole or in part of the monetary amount involved with the Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 92), 5-22-2007/8-1-2007)

Rule 93. - Violation of promise to appear.

Any person willfully violating his or her written promise to appear in Court, pursuant to this rule, may face additional penalty pursuant to the Fort McDowell Law and Order Code.

- (a) **Defendants.** If a defendant willfully violates a written promise to appear in Court, the Court may, in its discretion issue an order to show cause and/or a bench warrant to bring the defendant before the Court for further proceedings.
- (b) **Witnesses.** If a witness willfully violates a Court order or subpoena to appear duly issued and properly served upon a witness, the Court may, in its discretion issue appropriate orders to show cause and/or a bench warrant.
- (c) **Legal Counsel.** If counsel of record fails to appear for any proceeding for which he or she has received proper notice, the Court may, in its discretion issue an order to show cause for further proceedings and may refer the legal counsel for sanction either to the Chief Judge of the Fort McDowell Yavapai Nation and/or the licensing authorities of the jurisdictions in which legal counsel has been authorized to practice law.

(Ft. McD. Res. No. 2007-34, ex.(Rule 93), 5-22-2007/8-1-2007)

Rule 94. - Criminal contempt.

- (a) **Summary Disposition.** The Court may summarily hold a person in contempt of court if he or she commits a criminal contempt in the actual presence of the court by immediately notifying the person of such finding. The judge shall prepare and file a written order reciting the facts which constituted the contempt charge and specifically including a statement that the judge saw or heard the conduct. In announcing punishment, the Court shall inform the person charged of the specific conduct on which the contempt charge was based and give the person an opportunity to present evidence or argument relevant to the punishment to be imposed. No decision regarding the punishment shall be imposed during the course of the contempt proceeding unless prompt punishment is imperative.
- (b) **Disposition upon Notice and Order To Show Cause Hearing.** Any other criminal contempt except as provided in subdivision (a) of this rule will be prosecuted on notice. The notice will state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and will state the essential facts constituting the criminal contempt charged and described it as such. The notice shall be given by an order to show cause. The defendant is entitled to all rights afforded to a person charged with any other section of the criminal code. If the contempt charged involves gross disrespect or a personal attack upon the character of the judge, or if the judge's conduct is so integrated with the contempt that the judge contributed to or was otherwise involved in it, unless prompt punishment is imperative, the citation shall be referred to a other judge who shall hold a

hearing to determine guilt and impose punishment in accordance with the Fort McDowell Law and Order Code.

(Ft. McD. Res. No. 2007-34, ex.(Rule 94), 5-22-2007/8-1-2007)

Rule 95. - Defendant's presence; waiver; forfeiture; trial in absentia.

- (a) **Presence Required.** A defendant must be present at all court proceedings unless the defendant is represented by legal counsel or is an organizational client represented by legal counsel who is present or if the Court has determined, on the record, that the defendant's presence is waived in accordance with this Rule.
- (b) **Failure to Appear; Waiver of Right to be Present.**
 - 1. A defendant may waive his or her right to be present at any proceeding after the Initial Appearance or Initial Arraignment by voluntarily absenting himself or herself from the proceeding, including the trial or any portion of the trial, after the trial has begun. The Court may infer an absence to be voluntary if the defendant had personal notice of the date and time of the proceeding, the right to be present at such proceeding, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear. In the event a defendant fails to appear at trial, so long as the defendant was warned that the trial would proceed in his or her absence, the trial may proceed to completion, including verdict.
 - 2. A defendant may waive his or her right to be present at any proceeding after the Initial Appearance or Initial Arraignment by submitting a written waiver of such right, if represented by legal counsel, by filing a signed and written waiver of such right through counsel of record.
- (c) **Forfeiture of Right to be Present.** A defendant who engages in conduct that is disruptive to the Court or in disorderly conduct after having been warned by the Court that such conduct will result in the defendant's expulsion from a proceeding forfeits his or her right to be present in that proceeding. A defendant may be allowed to return to the proceeding after providing the Court with assurances of good behavior. Subsequent disruptive conduct will result in the defendant's forfeiture of his or her right to be present without additional warning. If a defendant is excluded from the courtroom for disruptive conduct, the Court will take steps to enable the defendant to be informed of the course of the proceedings and to consult with his or her legal counsel at regular and reasonable intervals.
- (d) **Trial in Absentia.** A defendant may be tried in absentia so long as the Court finds a voluntary waiver of the right to be present under Rule 95(b) or (c) above. The Court may find a defendant's absence to be voluntary if the defendant had personal and written notice of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his/her absence should he or she fail to appear and that such notice is signed by the defendant, defendant's counsel, if any and the Nation.

(Ft. McD. Res. No. 2007-34, ex.(Rule 95), 5-22-2007/8-1-2007)

Rule 96. - Retention/destruction of records.

- (a) **Retention of Records and Evidence.** The Clerk of the Court is responsible to receive and maintain all papers, documents and records filed and all evidence admitted in criminal cases.
- (b) **Destruction of Certain Records.** Originals of documents, instruments, books, papers, depositions, and transcripts in any criminal case may be destroyed when the case is no longer subject to modification, provided that the clerk shall maintain records of such documents so as to preserve the record on a permanent basis.
- (c) **Subject to Modification.** Cases that are no longer subject to modification include the following:
 - 1. Cases in which a defendant has been acquitted or the charges are dismissed with prejudice;

2. One (1) year after exhaustion of all tribal appellate remedies if no action is filed in federal Court or after the exhaustion of all federal remedies if action has been initiated in federal Court.

(Ft. McD. Res. No. 2007-34, ex.(Rule 96), 5-22-2007/8-1-2007)

Rule 97. - Disposition of evidence.

- (a) **When disposed.** The Nation or a law enforcement agency shall dispose of any item lawfully seized or otherwise obtained for use in a criminal prosecution once the case for which the items was seized or obtain is no longer subject to modification.
- (b) **Manner of Disposition.** Items shall be returned to the seizing or acquiring agency for disposition. However, when private possession of the item is not prohibited or otherwise prescribed by law, it shall be returned to the legal owner unless the owner's whereabouts are unknown or the owner is unwilling to accept it. When return is not possible, after reasonable attempts, the item may be sold or disposed of in a manner allowed by law.
- (c) **Notice of Disposal.**
 1. Record. Before disposing of any item under this rules, the law enforcement agency shall notify the Nation who may request that the item be photographed, reproduced or otherwise identified; transcribe all serial numbers, identification numbers or other identifying markings and that such record be certified by the person preparing it. The law enforcement agency shall be responsible to maintain all records prepared on a permanent basis as a regular business record.
 2. Notice to Owner and/or Defendant. At least ten (10) days prior to disposal of an item under this rule, the law enforcement agency shall serve notice of disposal along with a copy of the record of disposal made under subsection 1, on any person and his or her legal counsel against whom the item has been used as evidence and upon the legal owner of such item. Within ten (10) days of receipt of such notice, the defendant and/or legal owner may request a stay of disposal to examine, test or analyze or make his or her own record of the item. The prosecution may impose any reasonable conditions on examination, testing or analysis concerning chain of title.
 3. Stay. A Court having jurisdiction of the case may, on request of any party or on its own initiative, stay disposal of any items for a reasonable time.
 4. Record Admissible. All records of disposal made pursuant to this rule shall be admissible at any later Court proceeding for any purpose for which the item itself would be admissible.

(Ft. McD. Res. No. 2007-34, ex.(Rule 97), 5-22-2007/8-1-2007)

Rule 98. - Dismissal.

- (a) **By the Nation.** With leave of the Court, the Nation may dismiss a complaint. However, the Nation may not dismiss the prosecution during trial without the defendant's consent.
- (b) **By the Court.** The Court may dismiss a complaint if there is unnecessary delay in the filing of a complaint against a defendant or in bringing a defendant to trial.

(Ft. McD. Res. No. 2007-34, ex.(Rule 98), 5-22-2007/8-1-2007)

X. - CRIME VICTIMS' RIGHTS.

Rule 99. - Definitions.

- (a) **Victim.** As used in this section, a "victim" is a person against whom a criminal offense as defined by the Fort McDowell Yavapai Nation Law and Order Code has allegedly been committed, or the spouse, parent, lawful representative, or child of someone killed or incapacitated by the alleged criminal offense, except where the spouse, parent, lawful representative or child is also the accused. With regards to the rights to be notified and to be heard pursuant to this section, a person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this section is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the Court. A victim not in custody may exercise his or her legal right to be heard pursuant to this section by appearing personally or, where legally permissible and in the discretion of the Court, by submitting a written statement, an audiotape or videotape. The victims' rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.
- (b) **Criminal Offense.** As used in this section, a "criminal offense" is defined as conduct that give a peace officer or Nation probable cause to believe that an adult or juvenile, pursuant to Chapter 11 has violated any one of the ordinances in Chapter 6 and/or the criminal traffic offenses outlined in Chapter 16 of the Fort McDowell Law and Order Code.
- (c) **Criminal Proceedings.** As used in this section, a "criminal proceeding" is defined as a trial, hearing (including hearing before trial), oral argument, or other matter scheduled and held before a trial Court at which the defendant has the right to be present, or any post-conviction proceeding.
- (d) **Custodial Agency.** As used in this section, a "custodial agency" is defined as a law enforcement officer, or other detention facility having custody of a person who is arrested or is in custody for a criminal offense.

(Law & Order Code 2006, § 5-2; Ft. McD. Res. No. 2000-144, eff. 12-13-2000; Res. No. 2007-34, ex.(Rule 99), 5-22-2007/8-1-2007)

Rule 100. - Victims' rights.

These provisions shall be construed to preserve and protect a victim's rights to justice and due process. This section does not limit any rights guaranteed in chapter 11. Of the Fort McDowell Law and Order Code. A victim shall have and be entitled to assert each of the following rights:

- (a) **Notice, Case Status and Opportunity to be Heard.** Victims have the right to be notified of the status of any criminal proceedings and the right to be heard at such proceedings. The crime victim advocate must inform the victim of rights available.
- (b) **Notice of Arraignment.** The victim has the right to be notified of the date, time and place of the defendant's Arraignment Hearing.
- (c) **Notice of Terms and Conditions of Release.** Upon request, the custodial agency or the Nation shall give the victim notice of the terms and conditions of release of the accused.
- (d) **Pretrial Notice.** The Victim's Advocate or Nation shall give the victim notice of his or her victims' rights, the charge(s), the procedural steps, what the victim must do and a contact person. If the Nation decides to drop the case, the Nation must notify the victim and inform him or her of the reasons behind the decision not to pursue charges. The victim can request to confer with the Nation prior to the dismissal of any charge(s).
- (e) **Notice of Criminal Proceedings.** The Victim's Advocate or Nation shall pass on notice of proceedings as received from the Court.
- (f) **Notice of Conviction, Acquittal or Dismissal and Impact Statement.** Within fifteen (15) days of the conviction, acquittal or dismissal, the Victim's Advocate or Nation shall notify the victim. If the defendant is convicted, the Nation shall notify the victim of the right to submit an impact statement and what it should contain.

- (g) **Notice of Post Conviction Review and Appellate Proceedings.** Within fifteen (15) days of sentencing, the Victim's Advocate or Nation shall notify the victim of the sentence and give them a form to request release information. Any change in the sentence due to post-conviction proceedings or appellate review must be passed on to the victim.
- (h) **Notice of Release on Bond or Escape.** The custodial agency shall, on request, notify the victim of release or escape and recapture of the defendant.
- (i) **Notice of Prisoner Status.** The custodial agency shall, on request, notify the victim of the prisoner's scheduled release date.
- (j) **Notice of Post Conviction Release.** The victim has, on request, a right to be notified of any post conviction release.
- (k) **Notice of Probation Modification.** *The victim has, on request, a right to be notified of any probation revocation hearing.*
- (l) **Notice of Release, Discharge or Escape from Mental Health Treatment Agency.** Upon notice of such release, discharge, or escape, the tribal agency or victim advocate must, on request, give the victim ten (10) days advance notice of the release or immediate notice of the escape of a patient.
- (m) **Victim's Property.** The victim's property that is being used as evidence shall be returned as soon as possible after final disposition of the criminal proceeding.
- (n) **Privileged Information.**
 - 1. A victim advocate shall not disclose as a witness or otherwise any communication except compensation or restitution information between herself and the victim unless the victim consents in writing to the disclosure.
 - 2. Unless the victim consents in writing to the disclosure, a victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda, except compensation or restitution information, that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on the communication between the victim and the advocate.
- (o) **Victim Protections.** The Court shall provide appropriate safeguards to minimize contact between the victim and the accused. The protection extends to witnesses and family and covers the defendant's family and witnesses as well. The victim can petition to revoke the bond of the accused if he or she is harassing the victim or the victim's immediate family. The victim has the right to refuse an interview with the defendant or his or her attorney or to set limits on the interview. After charges are filed, defense initiated requests to interview the victim shall be communicated through the Nation. At any interview or deposition to be conducted by defense counsel, the victim has the right to specify a reasonable date, time, duration and location of the interview or deposition, including a requirement that the interview or deposition be held at the victim's home, at the Nation's Prosecutor's Office or in an appropriate location in the Courthouse. The victim does not have to divulge his or her address, phone number, employment or other locating information in Court.

(Law & Order Code 2006, § 5-2; Ft. McD. Res. No. 2000-144, eff. 12-13-2000; Res. No. 2007-34, ex.(Rule 100), 5-22-2007/8-1-2007)

Rule 101. - Victim's responsibility.

In order for victims' rights to apply, the victim is obligated to maintain an updated address and/or contact information with the relevant agency.

(Law & Order Code 2006, § 5-2(2)(a); Ft. McD. Res. No. 2000-144, eff. 12-13-2000; Res. No. 2007-34, ex.(Rule 101), 5-22-2007/8-1-2007)

Secs. 5-31—5-49. - Reserved.

ARTICLE IV. - RECEIVERS

Sec. 5-50. - Application for appointment.

Application for the appointment of a receiver shall be in the form of a verified petition filed in the Fort McDowell Tribal Court. The petition shall set forth the facts supporting the application. The petition shall be accompanied with affidavits concerning the debts of the entity that is the subject of the receivership.

(Law & Order Code 2006, § 5-50)

Sec. 5-51. - Hearing on application.

The Fort McDowell Tribal Court shall hold a public hearing within thirty (30) days of the filing of the petition. Notice of the hearing shall be given to all interested parties by registered mail or in such other manner as the court may by order provide.

(Law & Order Code 2006, § 5-51)

Sec. 5-52. - Findings of fact.

The Chief Judge of the Fort McDowell Yavapai Nation presiding at the hearing shall make findings of fact concerning the eligibility of the receiver, the scope of the receiver's duties, any bond required to be posted by the receiver, compensation to the receiver and requirements concerning periodic accountings to the Tribal Court.

(Law & Order Code 2006, § 5-52)

Sec. 5-53. - Qualifications of receiver.

- A. The Tribal Court shall not appoint as a receiver a member of the immediate family of any owner of the subject matter of the receivership, any employee or officer of the Fort McDowell Yavapai Nation, or any person otherwise interested in the subject matter of the receivership except under the provisions of subsection B of this section.
- B. After such notice as the Tribal Court shall find is adequate, and if no party shall have objected, the court may appoint a person interested in the subject matter of the receivership if the court finds the subject matter of the receivership has been abandoned or that the duties of the receiver will consist chiefly of physical preservation of the property (including crops growing thereon), collection of rents or the maturing, harvesting, and disposition of crops then growing thereon.

(Law & Order Code 2006, § 5-53)

Sec. 5-54. - Bond.

Before entering upon his duties, the receiver, if the Tribal Court so requires, shall file a bond to be approved by the Tribal Court. The bond shall be in the amount fixed by the order of appointment and conditioned that the receiver shall faithfully discharge his duties and obey orders of the Tribal Court. The

receiver shall make an oath to the same effect, which oath shall be endorsed on the bond. The clerk of the Tribal Court shall thereupon deliver to the receiver a certificate of his appointment. The certificate shall contain a description of the property involved in the action.

(Law & Order Code 2006, § 5-54)

Sec. 5-55. - Removal or suspension of receiver; termination of receivership.

- A. **Dismissal of action.** An action wherein a receiver has been appointed shall not be dismissed except by order of the Tribal Court.
- B. **Termination of receivership.** A receivership may be terminated upon motion served with at least ten (10) days notice upon all parties who have appeared in the proceedings. In the notice of hearing the Tribal Court shall require that a final account and report be filed and served upon all parties served with the notice. The final account and report shall include an audit of the books and records of receivership. An opportunity for written objections to said account shall be provided. In the termination proceedings the court shall take such evidence as is appropriate and shall make such order as is just concerning its termination, including all necessary orders in regard to the fees and costs of the receivership.
- C. **Suspension; removal of receiver.** The Tribal Court may at any time suspend a receiver and may, upon notice, remove a receiver and appoint another.

(Law & Order Code 2006, § 5-55)

Secs. 5-56—5-60. - Reserved.

ARTICLE V. - RULES OF PROCEDURE FOR THE RECOGNITION OF FOREIGN JUDGMENTS

[**HISTORICAL NOTE:** Art. V. was enacted by Resolution No. Ft. McD. 2002-3, effective January 11, 2005.]

Sec. 5-61. - Applicability.

These rules shall govern the procedures for recognition and enforcement by the courts of the Fort McDowell Yavapai Nation (A Nation of civil judgments of any tribal, state or local government or judgments from any other foreign governments). Determinations regarding recognition and enforcement of foreign judgments pursuant to these rules shall have no effect upon the independent authority of that foreign judgment. To the extent that they are not inconsistent with these rules, the general procedural laws of the Nation shall apply.

These rules do not apply to Foreign judgments for which federal law requires that the Nation grant full faith and credit recognition, or for which the Nation's law mandates a different treatment.

Nothing in these rules shall be deemed or construed to expand or limit the jurisdiction of a Foreign or local government. Nothing in these rules shall be deemed or construed to be a waiver of the sovereign immunity of the Nation.

(Law & Order Code 2006, § 5-61; Ft. McD. Res. No. 2002-3, eff. 1-11-2005)

Sec. 5-62. - Definitions.

As used throughout these rules:

- A. A **Foreign court** means any court or other tribunal of any other federally recognized Indian tribe, a State or local government of the United States, or any other foreign government.
- B. A **Foreign judgment** means any final written judgment, decree or order of any other federally recognized Indian tribe, a State or local court of the United States, or any other foreign government, duly authenticated in accordance with the laws and procedures of the Foreign court.

(Law & Order Code 2006, § 5-62; Ft. McD. Res. No. 2002-3, eff. 1-11-2005)

Sec. 5-63. - Filing procedures.

- A. **Documents to be filed.** A copy of any Foreign judgment may be filed in the office of the clerk of the Nation's court.
- B. **Notice of Filing.** The person filing the Foreign judgment shall make and file with the clerk of the Nation's court an affidavit setting forth the name and last known address of the party seeking enforcement and the responding party. Promptly upon the filing of the Foreign judgment and the affidavit, the enforcing party shall:
 - 1. Serve upon the responding party a notice of filing of the Foreign judgment, together with a copy of the judgment, or
 - 2. Shall mail by certified mail, return receipt requested, the notice of filing and a copy of the judgment to the responding party at the last known address.

If the responding party is the Fort McDowell Yavapai Nation, or any of its officers, employees, departments, agencies, boards, or commissions, the notice of filing shall be mailed to the Nation's Office of the General Counsel and to any others required to be served when a Complaint is filed (See e.g., Sec. 5-13(i)). The enforcing party shall file proof of service or mailing with the clerk. The notice of filing shall include the name and address of enforcing party and the enforcing party's attorney, if any, and shall include the text of Sec. 5-64 and Sec. 5-65(a) and (b) of this Article.

(Law & Order Code 2006, § 5-63)

Sec. 5-64. - Responses.

Any objection to the enforcement of a Foreign judgment shall be filed within twenty (20) days of service or of receipt of the mailing of the notice of filing the judgment, or within twenty-five (25) days of the date of mailing, whichever last occurs. If an objection is filed within this time period, the tribal court may, in its discretion, set a time period for replies and/or set the matter for hearing.

(Law & Order Code 2006, § 5-64)

Sec. 5-65. - Recognition of judgments.

- A. **Enforcement of Foreign Judgments.** A Foreign judgment, unless objected to in accordance with Sec. 5-64, shall be recognized and enforced by the courts of this Nation to the same extent and shall have the same effect as any judgment, order, or decree of a court of the Nation.
- B. **Certification by Clerk of Court.** If no objections are timely filed, the clerk shall issue a certification that no objections were timely filed, and the Foreign judgment shall be enforced in the same manner as if issued by a Court of this Nation.
- C. **Mandatory Considerations Following Objection.** A Foreign judgment shall not be recognized and enforced if the objecting party demonstrates to the court at least one (1) of the following:

1. The court did not have personal or subject matter jurisdiction.
 2. The defendant was not afforded due process.
- D. **Discretionary Considerations Following Objection.** The tribal court may, in its discretion, recognize and enforce or decline to recognize and enforce a Foreign judgment on equitable grounds, including:
1. The Foreign judgment was obtained by extrinsic fraud.
 2. The Foreign judgment conflicts with another final judgment that is entitled to recognition.
 3. The Foreign judgment is inconsistent with the parties' contractual choice of forum.
 4. Recognition of the Foreign judgment or the cause of action upon which it is based is against fundamental public policy of the United States or the Fort McDowell Yavapai Nation.
- E. **Discretionary Authority for Orders of Garnishment or Attachment.** The tribal court has discretion to determine an equitable rate or percentage against the assets of the responding party for garnishment or attachment requests, taking into consideration all relevant factors (e.g., child support obligations).

(Law & Order Code 2006, § 5-65)

Sec. 5-66. - Stay.

If the objecting party demonstrates to the tribal court that an appeal from the Foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the Foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(Law & Order Code 2006, § 5-66)

Sec. 5-67. - Contacting foreign courts.

The Nation's trial court shall, after notice to the parties, attempt to resolve any issues raised regarding a Foreign judgment under Sec. 5-63 or Sec. 5-65 of these rules by contacting the Foreign court Chief Judge who issued the judgment.

(Law & Order Code 2006, § 5-67)

Secs. 5-68—5-69. - Reserved.

Chapter 6 - CRIMINAL CODE

ARTICLE I. - IN GENERAL

Sec. 6-1. - Eligible age for court jurisdiction.

The Fort McDowell Tribal Court shall have no jurisdiction to try any person under the age of eighteen (18) years as an adult, unless the juvenile court finds that the interests of the Nation or of the juvenile in question would be served better if a juvenile sixteen (16) years of age or older were tried as an adult.

(Law & Order Code 2006, § 6-1)

Sec. 6-2. - Classification of crimes; sentencing ranges.

The particular classification of each offense in the Fort McDowell Criminal Code is expressly designated in the subsection defining it.

For purposes of penalty, offenses are designated as Class I, Class II, Class III, Class IV or Class V.

The following are presumptive sentencing ranges for terms of incarceration for each class of offense. When sentencing an offender the Court shall impose a term of incarceration within the minimum and maximum terms of incarceration for each class of offense. Except to the extent that a provision of this Code specifically prohibits suspension, the court may suspend imposition of all or a portion of a sentence of incarceration.

Class I - A Class I offense shall carry a minimum term of incarceration of six (6) months (one hundred eighty (180) days) and a maximum term of one (1) year (three hundred sixty-five (365) days). In addition to the term of incarceration, a person convicted of a Class I offense may also be required to pay a fine of not more than five thousand dollars (\$5,000.00).

Class II - A Class II offense shall carry a minimum term of incarceration of three (3) months (ninety (90) days) and a maximum term of incarceration of nine (9) months (two hundred seventy (270) days). In addition to a term of incarceration, a person convicted of a Class II offense may also be required to pay a fine of not more than three thousand dollars (\$3,000.00).

Class III - A Class III offense shall carry a minimum term of incarceration of sixty (60) days and a maximum term of incarceration of six (6) months (one hundred eighty (180) days). In addition to a term of incarceration, a person guilty of a Class III offense may also be required to pay a fine of not more than one thousand dollars (\$1,000.00).

Class IV - A Class IV offense shall carry a minimum term of incarceration of not less than thirty (30) days and a maximum term of incarceration of three (3) months (ninety (90) days). In addition to a term of incarceration, a person guilty of a Class IV offense may also be required to pay a fine of not more than seven hundred fifty dollars (\$750.00).

Class V - A Class V offense shall carry a maximum term of incarceration of thirty (30) days. In addition to a term of incarceration, a person guilty of a Class V offense may also be required to pay a fine of not more than five hundred dollars (\$500.00).

(Law & Order Code 2006, § 6-2)

Sec. 6-3. - Definitions.

In this chapter, unless the context otherwise requires:

Court means any tribal judge, judge pro tempore, administrative judge or Supreme Court justice or any other person acting in those capacities under authority of the Nation or the Tribal Council of the Nation.

Dangerous instrument means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

Establishment means business of any type in any location including but not limited to: store, booth, table or kiosk.

Firearm means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.

Intentionally or with the intent to means, with respect to result or to conduct described by a provision of this chapter defining an offense, that a person's objective is to cause that result or to engage in the conduct.

Knowingly means, with respect to conduct or to a circumstance described by a provision of this chapter defining an offense that a person is aware or believes that his or her conduct is of a nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

Law Enforcement Officer or Official means, a person acting in his or her official capacity as an employee of a law enforcement agency.

Minor means, for the purpose of this Chapter, age eighteen (18) years of age unless a specific offense provision of this Chapter defines it differently.

Nation's Officer or Official means, a person acting in his or her official capacity in an elected or appointed position of the Nation.

Negligently means, with respect to conduct or to a circumstance described by a provision of this chapter defining an offense that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Physical injury means the impairment of physical condition.

Reasonable means that degree of care which a person of ordinary prudence would exercise in the same or similar circumstances to avoid a foreseeable harm to another or oneself.

Recklessly means, with respect to a result or to a circumstance described by a provision of the chapter defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

Restrain means to confine or to hold back from acting, proceeding or moving.

Serious physical injury includes physical injury that creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss, break or impairment of the function of any bodily organ, limb or body part.

Voluntary Intoxication means intoxication resulting from the voluntary ingestion, consumption, inhalation, or injection of alcohol, an illegal or controlled substance prohibited under Article 6 of this Code, other psychoactive substances or the abuse of prescription medications is not a defense for any criminal act or requisite state of mind and does not constitute insanity.

Willfully means, with respect to a result, to conduct or to a circumstance described by a provision of this chapter defining an offense that a person's objective is to cause that result or circumstance or to voluntarily engage in the conduct, without justifiable excuse.

(Law & Order Code 2006, § 6-3)

Sec. 6-4. - Aiding or abetting.

- A. A person is guilty of aiding and abetting another person in the commission of a crime if with knowledge that it will promote or facilitate the commission of a crime, the person: solicits, commands, encourages or requests such other person to commit it; or aids or agrees to aid such other person in planning or committing it; or his or her conduct is expressly declared by law to establish his or her complicity.

- B. Aiding and Abetting is a Class V offense if the underlying crime is a Class V, or IV offense or a Class III offense if the underlying crime is a Class III, II or I offense.

(Law & Order Code 2006, § 6-4)

Sec. 6-5. - Solicitation.

- A. A person is guilty of solicitation to commit an offense when, with intent to promote or facilitate the commission of an offense, the person offers to give money or other thing of value to another to engage in specific conduct which is proscribed as a crime in Chapter 6 of the Code.
- B. Solicitation is a Class V offense if the underlying crime is Class V or IV offense or a Class III offense if the underlying crime is a Class III, II or I offense.

(Law & Order Code 2006, § 6-5)

Sec. 6-6. - Attempt.

- A. A person is guilty of attempt to commit a crime if, with the intent to commit a specific crime proscribed in Chapter 6 of the Code, the person does any act which is a substantial step toward the commission of that crime.
- B. If the conduct in which a person engages constitutes an attempt to commit a crime, it is no defense to the prosecution of such attempt that the offense charged to have been attempted was, under the circumstances, factually or legally impossible of commission.
- C. Attempt is a Class V offense if the underlying crime is a Class V, IV or III offense or a Class II offense if the crime is a Class II or I offense.

(Law & Order Code 2006, § 6-6)

Sec. 6-7. - Conspiracy.

- A. A person commits conspiracy if, with the intent to promote or aid the commission of an offense, such person agrees with one (1) or more persons that at least one (1) of them or another person will engage in conduct constituting the offense and one (1) of the parties commits an overt act in furtherance of the offense, except that an overt act shall not be required if the object of the conspiracy was to commit an offense proscribed in Chapter 6, Article III or IV of the Code.
- B. If the person guilty of conspiracy, as defined in subsection A of this section, knows or has reason to know that a person with whom such person conspires to commit an offense has conspired with another person or persons to commit the same offense, such person is guilty of conspiring to commit the offense with such other person or persons, whether or not such person knows their identity.
- C. A person who conspires to commit a number of offenses is guilty of only one (1) conspiracy if the multiple offenses are the object of the same agreement or relationship and the degree of the conspiracy shall be determined by the most serious offense conspired to.
- D. Conspiracy is an offense of the same class as the most serious offense that is the object of or result of the conspiracy.

(Law & Order Code 2006, § 6-7)

Sec. 6-8. - Renunciation of aiding or abetting, attempt, solicitation and conspiracy.

- A. In a prosecution for aiding or abetting, attempt or conspiracy, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his or her criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the aiding or abetting, attempt or conspiracy.
- B. In a prosecution for solicitation, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent completed both the following acts: Notified the person solicited. Gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.
- C. A renunciation is not voluntary and complete within the meaning of this section if it is motivated in whole or in part by:
 - 1. A belief that circumstances exist which increase the probability of immediate detection or apprehension of the accused or another participant in the criminal enterprise or which render more difficult the accomplishment of the criminal purpose; or
 - 2. A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim, place or another but similar objective.
- D. A warning to law enforcement authorities is not timely within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not reasonable within the meaning of this section unless the defendant makes a substantial effort to prevent the conduct or result.

(Law & Order Code 2006, § 6-8)

Secs. 6-9—6-14. - Reserved.

ARTICLE II. - OFFENSES AGAINST PUBLIC ADMINISTRATION

Sec. 6-15. - False arrest.

- A. A person is guilty of false arrest who willfully or knowingly makes or causes to be made the unlawful arrest, detention or imprisonment of another person.
- B. False arrest is a Class IV offense.

(Law & Order Code 2006, § 6-15)

Sec. 6-16. - Disorderly conduct.

- A. A person is guilty of disorderly conduct who, in a public or private place, disrupts the peace and quiet of a neighborhood, family or person, by engaging in fighting, violent or seriously disruptive behavior, or who uses or employs abusive, profane language or gestures or makes unreasonable noise.
- B. Disorderly conduct is a Class IV offense.

(Law & Order Code 2006, § 6-16)

Sec. 6-17. - Resisting arrest.

- A. It shall be unlawful for any person to willfully resist, with or without force, any law enforcement officer from effecting an arrest or detention of any person.

- B. "Resist" as used in this section means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person or that justifies or requires substantial force to overcome.
- C. Resisting arrest is a Class II offense. If injuries are sustained by the police officer as a result of the offense, a mandatory minimum jail sentence of thirty (30) days shall not be suspended.

(Law & Order Code 2006, § 6-17)

Sec. 6-18. - Escape.

- A. A person is guilty of escape who, having been arrested for, charged with or convicted of a crime, shall escape or attempt to escape from detention or physical custody or who shall permit or assist or attempt to permit or assist another person in escaping under the same circumstance.
- B. Escape is a Class I offense. A mandatory minimum jail sentence of thirty (30) days shall not be suspended.

(Law & Order Code 2006, § 6-18)

Sec. 6-19. - Impersonation of law enforcement officer or Nation officer.

- A. A person is guilty of impersonation of a law enforcement officer or Nation officer who falsely impersonates a law enforcement officer or any other appointed or elected officer of the Nation in either his or her private or official capacity, and in such assumed character receives money or property, knowing that it is intended to be delivered to the individual so impersonated, with intent to convert the money or property to his or her own use or that of another person, or to deprive the true owner thereof, or who in such assumed character does any other act whereby any benefit might accrue to the party impersonating or to any other person.
- B. A person is guilty of impersonation of a law enforcement officer who falsely impersonates a law enforcement officer and in such assumed character knowingly allows another person to rely upon that characterization to his or her detriment.
- C. Impersonation of a law enforcement officer or Nation officer is a Class II offense.

(Law & Order Code 2006, § 6-19)

Sec. 6-20. - Obstructing justice.

- A. A person is guilty of obstructing justice if:
 - 1. Without lawful excuse he or she refuses or knowingly fails to make or furnish any report or information lawfully requested of him or her by a public official or law enforcement officer; or
 - 2. In any such statement or report knowingly makes any untrue statement to a public official or law enforcement officer; or
 - 3. Knowingly misrepresents a fact to a law enforcement agency of this Nation, or an employee of such agency, for the purpose of (1) interfering with the orderly operation of the law enforcement agency, or (2) misleading a law enforcement officer.
- B. Obstructing justice is a Class III offense.

(Law & Order Code 2006, § 6-20)

Sec. 6-21. - False reporting.

- A. A person is guilty of false reporting if such person initiates or circulates a report of a bombing, fire, crime, offense or other emergency knowing that such report is false and intending:
 - 1. That it will cause action of any sort by an official or volunteer agency organized to deal with emergencies; or
 - 2. That it will place a person in fear or imminent serious physical injury; or,
 - 3. That it will prevent or interrupt the occupation of any building, room, place of assembly, public place or means of transportation.
- B. False reporting is a Class III offense. In addition to any other sentence, the Court may order reasonable restitution to the Nation or any other agency for the cost of responding to a call based upon a false report.

(Law & Order Code 2006, § 6-21)

Sec. 6-22. - Contempt of Court.

- A. A person is guilty of contempt of court who, without legal excuse, engages in any of the following conduct:
 - 1. Disorderly, contemptuous or insolent behavior committed in the presence of the court and directly tending to interrupt its proceedings or to impair respect due to authority.
 - 2. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of a court.
 - 3. Willful disobedience of process or an order lawfully issued by a court.
 - 4. Resistance willfully offered to the lawful order or process of a court.
 - 5. The unlawful refusal to be sworn as a witness, or when so sworn, refusal to answer a material question.
- B. Contempt of court is a Class III offense.

(Law & Order Code 2006, § 6-22)

Sec. 6-23. - Disobedience to lawful orders of Court.

- A. A person is guilty of disobedience to lawful orders of court who shall willfully disobey an order, subpoena, warrant or command duly issued, made or given by the Fort McDowell Tribal Courts.
- B. Disobedience to lawful orders of court is a Class III offense.

(Law & Order Code 2006, § 6-23)

Sec. 6-24. - Destroying, disposing of or concealing evidence.

- A. A person is guilty of destroying, disposing of or concealing evidence if such person, with the intent to prevent the use of evidence in any judicial proceeding, willfully or knowingly destroys, disposes of or conceals such evidence.
- B. Destroying, disposing of or concealing evidence is a Class II offense.

(Law & Order Code 2006, § 6-24)

Sec. 6-25. - Perjury.

- A. A person is guilty of perjury who shall, willfully or intentionally, falsely swear or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or produce another person to do so in any judicial proceeding in any court of the Fort McDowell Yavapai Nation.
- B. Perjury is a Class II offense.

(Law & Order Code 2006, § 6-25)

Sec. 6-26. - Harboring a fugitive.

- A. A person is guilty of harboring a fugitive if, knowing that the individual is wanted by a law enforcement agency or court, and such person renders assistance to that fugitive with the intent to hinder apprehension, prosecution, conviction or punishment of that fugitive for any offense or for violation of probation, parole or any other form of any Court ordered supervision.
- B. A person renders assistance under this Section by:
 - 1. Concealing the other person or the identity of the other person or;
 - 2. Providing the other person with money, transportation, a weapon, a place to stay, a disguise or other similar means of avoiding discovery, apprehension, prosecution or conviction or;
 - 3. Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of the other person or;
 - 4. Suppressing by an act of concealment, alteration or destruction any physical evidence that might aid in the discovery, apprehension, prosecution or conviction of the other person.
- C. Harboring a fugitive is a Class II offense.

(Law & Order Code 2006, § 6-26)

Sec. 6-27. - Tampering with a juror.

- A. A person commits Tampering with a Juror if, directly or indirectly, with the intent to influence a juror's vote, opinion, decision or action as a juror, such person knowingly
 - 1. Offers, confers or agrees to confer anything of value upon a juror;
 - 2. Uses or attempts to use threats, force, violence or intimidation upon a juror; or
 - 3. Communicates or attempts to communicate with a juror other than as part of the proceedings in the trial of the case.

Tampering with a Juror is a Class II offense except that if the underlying case alleges domestic violence or Participating in a Criminal Street Gang (§6-132), it is a Class I offense.

(Ft. McD. Res. No. 2012-4, ex. A, effective 1-31-2012)

Sec. 6-28. - Tampering with a witness.

- A. A person commits Tampering with a Witness if, directly or indirectly, such person knowingly threatens or induces a witness in any official proceeding or a person he or she believes may be called as a witness to:
 - 1. Unlawfully withhold any testimony or evidence;
 - 2. Testify falsely;
 - 3. Avoid legal process summoning him or her to testify or supply evidence; or
 - 4. Absent himself or herself from any official proceeding to which he or she has been legally summoned.
- B. Tampering with a Witness is a Class II offense except that if the underlying case alleges domestic violence or Participating in or Assisting a Criminal Street Gang (§6-132), it is a Class I offense.

(Ft. McD. Res. No. 2012-5, ex. A, effective 1-31-2012)

Secs. 6-29—6-34. - Reserved.

ARTICLE III. - OFFENSES AGAINST PERSONS

Sec. 6-35. - Assault.

- A. A person commits assault by:
 - 1. Intentionally, knowingly or recklessly causing any physical injury to another person; or
 - 2. Intentionally placing another person in reasonable fear of imminent physical injury by some action or conduct; or
 - 3. Knowingly touching another person with the intent to injure, insult or provoke such person.
- B. Assault is a Class II offense.

(Law & Order Code 2006, § 6-35)

Sec. 6-36. - Aggravated assault.

- A. A person commits aggravated assault if such person commits assault as defined in §6-35 under any of the following circumstances:
 - 1. If such person causes serious physical injury to another.
 - 2. If such person uses deadly weapon or dangerous instrument.
 - 3. If such person is eighteen (18) years of age or more and commits the assault upon a minor the age of fifteen (15) years or under.
 - 4. If the assault is committed upon a person fifty-five (55) years of age or older and the perpetrator is ten (10) or more years younger than the victim.
 - 5. If such person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to effectively resist is substantially impaired.
 - 6. If the assault is committed upon a member of Tribal Council or their staff, a law enforcement officer or other Police Department employee, a firefighter, an emergency medical technician or paramedic, a teacher or other school employee, a health care practitioner or other health clinic employee, a social worker, a behavioral health counselor or other Wassaja Family Services employee, a judge, probation officer or other Court employee, a prosecuting attorney or other

Office of the Prosecutor employee, a defense attorney or legal advocate, or an attorney or other employee of the Office of General Counsel while engaged in the execution of any official duties.

7. If such person intentionally, knowing or recklessly impedes the normal breathing or circulation of blood of another person by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument.
- B. Aggravated Assault is a Class I offense. Any person convicted pursuant to subsection (4) shall be sentenced to a mandatory minimum jail sentence of ten (10) days that shall not be suspended by the court, in addition to any other sentence.

(Law & Order Code 2006, § 6-36; Ft. McD. Res. No. 2005-104, ex. A, eff. 8-2-2005; Ft. McD. Res. No. 2010-5, ex. A, adopted 1-28-2010, eff. 1-28-2010; Ft. McD. Res. No. 2014-66, ex. A, adopted 9-16-2014)

Sec. 6-37. - Endangerment.

- A. A person commits endangerment by recklessly engaging in any conduct that places another person at substantial risk of imminent death or physical injury.
- B. Endangerment is a Class II offense.

(Law & Order Code 2006, § 6-37)

Sec. 6-38. - Threatening or intimidating.

- A. A person commits threatening or intimidating if such person, with the intent to terrify or in reckless disregard of the risk of terrifying, threatens by word or conduct to cause physical injury to another person or serious damage to property of another and that other person is reasonably threatened or intimidated by the person's word or conduct.
- B. A person commits intimidating if such person threatens by word or conduct to cause physical injury to another person or damage to the property of another with the intent to induce another to do an act against his or her will or to refrain from doing a lawful act.
- C. Threatening or intimidating is a Class II offense.

(Law & Order Code 2006, § 6-38)

Sec. 6-39. - Homicide.

- A. A person commits homicide by intentionally, knowingly or recklessly causing the death of another person.
- B. Homicide is a Class I offense. A person convicted of homicide shall serve a mandatory minimum jail sentence of six (6) months and shall not be eligible for suspension of jail sentence, probation, pardon or release from custody on any basis until the jail sentence imposed is fully served.

(Law & Order Code 2006, § 6-39)

Sec. 6-40. - Harassment.

- A. A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

1. Anonymously or otherwise communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses.
 2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.
 3. Repeatedly commits an act or acts that harass another person.
 4. Surveys or causes another person to survey a person for no legitimate purpose.
 5. On more than one occasion makes a false report to a law enforcement, credit or social service agency.
 6. Interferes with the delivery of any public or regulated utility to a person.
- B. For purposes of this section, "harassment" means conduct directed at a specific person, which would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person.
- C. Harassment is a Class V offense.

(Law & Order Code 2006, § 6-40)

Sec. 6-41. - Use of telephone to commit offense.

- A. A person is guilty of use of telephone to commit offense when such person, with intent to terrify, intimidate, threaten, harass, annoy or offend, uses a telephone and:
1. Uses any obscene, lewd or profane language.
 2. Suggests any lewd or lascivious act.
 3. Threatens to inflict injury or physical harm to the person or property of any person.
- B. Makes repeated telephone calls that reasonably disturb the peace and quiet or right to privacy of any person at the place where the telephone calls are received.
- C. The use of obscene, lewd or profane language or the making of a threat or statement as set forth in subsection A of this section shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.
- D. Any offense committed by use of a telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.
- E. Use of telephone to commit offense is a Class IV offense.

(Law & Order Code 2006, § 6-41)

Sec. 6-42. - Stalking.

- A. A person commits stalking if the person intentionally or knowingly engages in a course of conduct that is directed toward another person if that conduct either:
1. Would cause a reasonable person to fear for that person's safety or the safety of that person's immediate family and that person in fact fears for their safety or the safety of that person's immediate family.
 2. Would cause a reasonable person to fear imminent physical injury or death to that person or that person's immediate family and the person in fact fears imminent physical injury or death to that person or that person's immediate family.

B. For the purpose of this section:

1. "Course of conduct" means maintaining visual or physical proximity to a specific person or directing verbal or written threats, whether express or implied, to a specific person on two (2) or more occasions over a period of time, however short, but does not include activity protected under the Indian Civil Rights Act, 215 U.S.C. Sec. 1302.
2. "Immediate family" means a spouse, parent, child or sibling or any other person who regularly resides in a person's household or resided in a person's household within the past six (6) months.

C. Stalking is a Class II offense.

(Law & Order Code 2006, § 6-42)

Sec. 6-43. - Kidnapping.

A. A person commits kidnapping by knowingly restraining another person with the intent to:

1. Hold the victim for ransom, as a shield or hostage; or
2. Hold the victim for involuntary servitude; or
3. Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a crime; or
4. Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or such third person.
5. Interfere with the performance of a governmental or political function.
6. Prevent them from contacting a law enforcement officer or agency.

B. For purposes of this section, "restraining" means to confine or to hold back from acting, proceeding or moving.

C. Kidnapping is a Class I offense. Any person convicted of kidnapping shall serve a mandatory minimum jail sentence of ninety (90) days and shall not be eligible for suspension of the jail sentence, probation, pardon or release from custody on any basis until the jail sentence imposed by the court has been fully served.

(Law & Order Code 2006, § 6-43)

Sec. 6-44. - Unlawful imprisonment.

A. A person commits unlawful imprisonment by knowingly restraining another person.

B. For purposes of this section, "restraining" means to confine or to hold back from acting, proceeding or moving.

C. In any prosecution for unlawful imprisonment, it is a defense that:

1. The restraint was accomplished by a peace officer, physician, hospital intern or resident, surgeon, dentist, osteopath, chiropractor, podiatrist, county medical examiner, nurse, psychologist, school personnel, social worker, parent, counselor, clergyman or priest acting in good faith in the lawful performance of their duty.
2. The restraint was accomplished by any person acting in good faith whose intent is to assume lawful custody or protect the person being restrained from harm or harming another and without intent to cause physical injury.
3. Unlawful imprisonment is a Class II offense.

(Law & Order Code 2006, § 6-44)

Sec. 6-45. - Robbery; definitions.

- A. In this section, unless the context otherwise requires:
 - 1. **Dangerous instrument** means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.
 - 2. **Deadly weapon** means anything designed for lethal use. The term includes a firearm.
 - 3. **Firearm** means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.
 - 4. **Force** means power, violence or pressure directed against a person or thing.
 - 5. **In the course of committing a robbery** includes any of the defendant's acts beginning with the initiation and extending through the immediate flight from a robbery.
 - 6. **Property of another** means property owned by the Nation or property in which any person other than the defendant has an interest or which the defendant is not privileged to infringe, including property in which the defendant also has an interest. Property in possession of the defendant is not deemed property of another person who has only a security interest in the property, even in legal title is in the creditor pursuant to a security agreement.
 - 7. **Threat** means a verbal or physical menace of imminent physical injury to a person.

(Law & Order Code 2006, § 6-45)

Sec. 6-46. - Robbery.

- A. A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce the surrender of property or to prevent resistance to the taking or retaining of the property.
- B. Robbery is a Class I offense. If, in the course of committing robbery, as defined herein, a person is aided by one (1) or more accomplices actually present when the robbery was committed shall be sentenced to a mandatory minimum jail sentence of thirty (30) that shall not be suspended.

(Law & Order Code 2006, § 6-46)

Sec. 6-47. - Aggravated robbery.

- A. A person commits armed robbery if, in the course of committing robbery, such person or an accomplice:
 - 1. Is armed with a deadly weapon or a simulated deadly weapon; or
 - 2. Uses or threatens to use a deadly weapon or dangerous instrument or a simulated deadly weapon; or
 - 3. Actually imposes physical force on another person in the course of the robbery.
- B. Armed Robbery is a Class I offense. Any person convicted of armed robbery shall serve a mandatory minimum jail sentence of ninety (90) days and shall not be eligible for suspension of sentence, probation, pardon, or release from custody on any basis until the jail sentence imposed by the Court has been fully served.

(Law & Order Code 2006, § 6-47)

Secs. 6-48—6-54. - Reserved.

ARTICLE IV. - SEXUAL OFFENSES

Sec. 6-55. - Definitions.

In this chapter, unless the context otherwise requires:

- A. **Child or Minor** means any person who has not attained the age of eighteen (18) years, unless specifically defined otherwise herein.
- B. **Oral sexual contact** means oral contact with the penis, vulva, anus or female breast.
- C. **Producing** means financing, directing, manufacturing, distributing, publishing or advertising for pecuniary gain.
- D. **Sexual conduct** means:
 - 1. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.
 - 2. Penetration, however slight, of the vagina or rectum by any part of the body or by any object except if done in furtherance of a lawful medical practice.
 - 3. Masturbation, for the purpose of sexual stimulation of the viewer.
 - 4. Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
 - 5. Exhibition of the genitals, pubic or rectal areas of any person for the purposes of sexual stimulation of the viewer.
 - 6. Defecation or urination for the purpose of sexual stimulation of the viewer.
- E. **Sadomasochistic abuse** means the infliction of force, pain or violence upon a person for the purpose of sexual gratification.
- F. **Sexual intercourse** means penetration by the penis, or into the vulva or anus, by any part of the body or by any object, or masturbatory contact with the penis or vulva.
- G. **Sexual contact** means any direct or indirect fondling or manipulating of, or contact with any part of the penis, vulva, anus, or female breast or other erogenous zone by any part of the body or by any object
- H. **Sexual act** includes sexual intercourse, sexual contact, sexual conduct or any other sexual activities as defined herein.
- I. **Simulated sexual conduct** means any depicting of the genitals or rectal areas which gives the appearance of sexual conduct or incipient sexual conduct.
- J. **SORNA** means The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 *et. seq.* , as amended.
- K. **Tribal Sex Offender Registration Code** refers to Fort McDowell Yavapai Nation Law and Order Code, Chapter 25, Art. I.
- L. **Without consent** includes any of the following:
 - 1. The victim is coerced by the imminent or immediate use or threatened use of force against a person or property; or

2. The victim is incapable of consent by reason of mental disorder or defect, drugs, alcohol, sleep, unconsciousness, or any other similar impairment of awareness and such condition is known or reasonably should have been known to defendant; or
3. The victim is intentionally deceived as to the nature of the act or the identity of the individual committing the act.
4. The victim is in custody of law enforcement or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim.

M. Visual or print medium means:

1. Any film, photograph, videotape, negative, slide, digital image; or
2. Any book, magazine or other form of publication or photographic reproduction containing or incorporating in any manner any film, photograph, videotape, negative or slide.

(Law & Order Code 2006, § 6-55; Ft. McD. Res. No. 2011-17, ex. A(§ 6-55), 4-19-2011)

Sec. 6-56. - Sexual assault.

- A. A person commits sexual assault by knowingly or intentionally engaging in sexual intercourse, sexual contact or oral sexual contact with any person, without consent of that person.
- B. For purposes of this section, a person fifteen (15) years old or younger cannot legally consent.
- C. Sexual assault is a Class I offense.

(Law & Order Code 2006, § 6-56; Ft. McD. Res. No. 2011-17, ex. A(§ 6-56), 4-19-2011)

Sec. 6-57. - Aggravated sexual assault.

- A. **By force or threat.** A person commits aggravated sexual assault by knowingly causing another person to engage in sexual conduct by:
 1. Using force or coercion against that other person; or
 2. Threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so; or
 3. Committing the act during the commission, or attempted commission, whether alone or with one (1) or more persons, of armed robbery, robbery, kidnapping, homicide, aggravated assault, assault, arson, escape, threatening or intimidating, illegal entry or trespass.
- B. **By other means.** A person commits aggravated sexual assault by knowingly:
 1. Rendering another person unconscious and thereby engages in sexual conduct with that other person; or
 2. Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby:
 - a. Substantially impairs the ability of that other person to appraise or control conduct; and
 - b. Engages in sexual conduct with that other person; or attempts to do so; or
- C. **With Children.** A person commits aggravated sexual assault who knowingly engages in sexual conduct with:
 1. A person under the age of thirteen (13) years; or
 2. A person at least thirteen (13) years of age but less than sixteen (16) years of age and the person committing the sexual conduct is the child's parent, stepparent, adoptive parent, legal

guardian, foster parent or stands in loco parentis within the household of the child or is related to the child victim by blood or affinity to the third degree; or the person committing the sexual conduct has supervisory or disciplinary authority over the child victim.

- D. **Incapacitated or Impaired Victim.** A person commits aggravated sexual assault who knew or should have known that the victim was physically helpless, mentally defective or mentally incapacitated at the time of the act.
- E. **State of Mind Proof Requirement.** In a prosecution under subsection C of this section, the Nation need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of thirteen (13) years.
- F. **Penalty.** Aggravated Sexual Assault is a Class I offense.
 - 1. A person convicted of aggravated sexual assault pursuant to section 6-57, subsection. A or B shall serve an initial mandatory minimum jail sentence of one hundred eighty (180) days and shall not be eligible for suspension of sentence, probation, pardon or release from custody on any basis until the initial jail sentence imposed by the Court has been fully served.
 - 2. A person convicted of aggravated sexual assault pursuant to section 6-57, subsection C shall serve an initial mandatory minimum jail sentence of three hundred sixty-five (365) days and shall not be eligible for suspension of sentence, probation, pardon or release from custody on any basis until the initial jail sentence imposed by the Court has been fully served.

(Law & Order Code 2006, § 6-57; Ft. McD. Res. No. 2011-17, ex. A(§ 6-57), 4-19-2011)

Sec. 6-58. - Sexual assault of a minor or ward.

- A. **Of a Minor.** A person commits sexual assault of a minor who knowingly engages in sexual conduct, sexual contact or oral sexual contact with another person who has not attained the age of eighteen (18) years; and
- B. **Of a Ward.** A person commits sexual assault of a minor who knowingly engages in sexual conduct, sexual contact or oral sexual contact with another person who has not attained the age of eighteen (18) years and the minor is:
 - 1. In official detention; and
 - 2. Under the custodial, supervisory, or disciplinary authority of the person so engaging.
- C. **Defenses.**
 - 1. In a prosecution under subsection A. of this section, it is a defense, which the defendant must establish by a preponderance of the evidence that the defendant reasonably believed that the other person had attained that age of eighteen (18) years.
 - 2. In a prosecution under subsection A. of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the person engaging in the sexual act with the defendant was at that time (1) at least sixteen (16) years of age; (2) within three (3) years of age of the defendant; and (3) consented to the sexual act.
 - 3. In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time legally married to each other.
- D. **State of Mind Proof Requirement.** In a prosecution under subsection A. of this section, the Nation need not prove that the defendant knew (1) the age of the other person engaging in the sexual act; or (2) that the requisite age difference existed between the persons so engaging.
- E. **Penalty.** Sexual Assault of a Minor or Ward is a Class I offense.

1. A person convicted of sexual assault of a minor or ward shall serve a mandatory minimum jail sentence of ninety (90) days and shall not be eligible for suspension of sentence, probation, pardon or release from custody on any basis until the jail sentence imposed by the Court has been fully served and the jail time shall be served consecutively to any other count.
2. A person convicted of sexual assault of a minor for a second or subsequent time shall be sentenced to a mandatory jail sentence of one (1) year (three hundred sixty-five (365) days) and shall not be eligible for suspension of sentence, probation, pardon or release from custody on any basis until the initial one (1) year jail sentence imposed by the Court has been fully served.

(Law & Order Code 2006, § 6-58; Ft. McD. Res. No. 2011-17, ex. A(§ 6-58), 4-19-2011)

Sec. 6-59. - General defenses.

It is a defense to a prosecution pursuant to sections 6-56, 6-57 or 6-58 if the act was done in furtherance of lawful medical practice, or if the act was done by a duly licensed physician, registered nurse or a person acting under his or her direction, or any other person who renders emergency care at the scene of an emergency occurrence, administering a recognized and lawful form of treatment reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in any emergency when the duly licensed physician, registered nurse or a person acting under his or her direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and to which a reasonable person, wishing to safeguard the welfare to the patient, would consent.

(Law & Order Code 2006, § 6-59; Ft. McD. Res. No. 2011-17, ex. A(§ 6-59), 4-19-2011)

Sec. 6-60. - Sex offenses against minors.

A. Sexual Exploitation of a Minor.

1. A person commits sexual exploitation of a minor by knowingly:
 - (a) Recording, filming, photographing, developing or duplicating any visual or print medium in which a minor is engaged in sexual conduct or simulated sexual conduct.
 - (b) Producing, funding, distributing, transporting, exhibiting, receiving, selling, purchasing, possessing or exchanging any visual or print medium in which a minor is engaged in sexual conduct or simulated sexual conduct.
2. If any visual depiction is admitted into evidence, the Court shall seal that evidence at the conclusion of any proceeding, hearing or trial.
3. Sexual Exploitation of a Minor is a Class I offense.

B. Commercial Sexual Exploitation of a Minor.

1. A person commits commercial sexual exploitation of a minor by knowingly:
 - (a) Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct for financial or commercial gain.
 - (b) Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals, the anus, the areola and/or the nipple of the female breast for financial or commercial gain.
 - (c) Permitting a minor under such person's custody or control to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct for financial or commercial gain.

- (d) Transporting or financing the transportation of any minor into the Nation with the intent that such minor engage in prostitution or sexual conduct for the purpose of producing a visual or print medium or live act depicting such conduct for financial or commercial gain.

2. Commercial Sexual Exploitation of a Minor is a Class I offense.

C. Use of an Electronic or Mechanical Device to Facilitate a Child Sex Crime.

- 1. A person is guilty of use of an electronic or mechanical device to facilitate a child sex crime if he or she uses an electronic or mechanical device to:
 - a. Communicate with a child the person believes or has reason to believe is under the age of sixteen (16) years; and
 - b. With the intent to have sexual conduct, sexual contact or oral sexual contact with that child.
- 2. For purpose of this section, "an electronic or mechanical device" includes, but is not limited to, a computer, telephone, mobile or cellular phone, IPOD, Personal Digital Assistants (PDA's), flash memory, hard drives, portable storage devices/chips, video recording instruments, cameras, video games or any other device that is capable of storing, recording, altering, enhancing, transmitting or communicating images or data.
- 3. Use of an Electronic or Mechanical Device to Facilitate a Child Sex Crime is a Class I offense.

D. Possession of Child Pornography.

- 1. A defendant is guilty of possession of child pornography if he or she, knowing the character or content of the material or performance:
 - a. Possesses or exchanges any visual or print medium which depicts actual or simulated sexual conduct, sexual contact, or sexual intercourse involving a minor or contains full or partial nudity of a minor;
 - b. Pays, sells, exchanges, or gives anything of value to obtain visual or print medium that contains any actual or simulated sexual contact, sexual conduct, or sexual intercourse involving a minor or contains full or partial nudity of a minor; or
- 2. For purposes of this section, "nudity" means the lascivious display or discernible depiction of a minor's pubic or genital areas.
- 3. Possession of Child Pornography is a Class I offense.

(Law & Order Code 2006, § 6-60; Ft. McD. Res. No. 2011-17, ex. A(§ 6-60), 4-19-2011)

Sec. 6-61. - Forfeiture of electronic or mechanical devices.

On the conviction of a person for any sex crime involving a minor, the Court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited to the Nation and sold, destroyed or otherwise properly disposed of by the Nation. All electronic mechanical devices, computer equipment and other peripheral devices used in furtherance of any sex crimes against minors shall be subject to immediate seizure and forfeiture to the Nation.

(Law & Order Code 2006, § 6-61; Ft. McD. Res. No. 2011-17, ex. A(§ 6-61), 4-19-2011)

Sec. 6-62. - Prostitution.

- A. A person is guilty of prostitution who practices prostitution or procures a prostitute or prostitutes or who knowingly keeps, maintains, rents or leases any house, room, tent, vehicle or other place for the purpose of prostitution.

- B. For purposes of this section, "prostitution" means engaging in and/or agreeing or offering to engage in sexual contact or intercourse with another person in exchange for money, goods or services with that person or any other person.
- C. Prostitution is a Class III offense.

(Law & Order Code 2006, § 6-62; Ft. McD. Res. No. 2011-17, ex. A(§ 6-62), 4-19-2011)

Sec. 6-63. - Indecent exposure.

- A. A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breasts in the presence of another person and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act.
- B. Indecent exposure does not include an act of breast feeding by a mother.
- C. Indecent exposure is a Class III offense. Indecent exposure to a person under thirteen (13) years of age is a class II offense.

(Law & Order Code 2006, § 6-63; Ft. McD. Res. No. 2011-17, ex. A(§ 6-63), 4-19-2011)

Sec. 6-64. - Incest.

- A. A person commits the act of incest by engaging in sexual conduct, sexual contact or oral sexual contact with another person who is related by blood affinity wherein marriage is prohibited by law.
- B. For purposes of this section, marriage is prohibited by law between people related to each other by degree of kinship closer than second cousins.
- C. Incest is a Class I offense. A person convicted of incest shall serve a mandatory minimum jail sentence of ninety (90) days and shall not be eligible for suspension of the jail sentence, probation, pardon or release from custody on any basis until the jail sentence imposed by the court has been fully served.

(Ft. McD. Res. No. 2011-17, ex. A(§ 6-64), 4-19-2011)

Sec. 6-65. - Bestiality.

- A. A person commits bestiality by engaging in sexual conduct, oral sexual contact or sexual intercourse with an animal.
- B. Bestiality is a Class I offense.

(Ft. McD. Res. No. 2011-17, ex. A(§ 6-65), 4-19-2011)

Sec. 6-66. - Admissibility of evidence of prior sexual conduct.

- A. Opinion and reputation evidence of the victim's prior sexual conduct shall not be admitted in a prosecution under this Code. Evidence of specific instances of the victim's history or sexual activity shall be admissible in a prosecution under this Code only to the extent that a judge finds the evidence is relevant and material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence and only if the evidence is one (1) of the following:
 - 1. Evidence establishing the victim's past sexual behavior with the defendant; or

2. Evidence which supports a claim showing source or origin of semen, pregnancy, disease or trauma, or refute or directly refutes physical or scientific evidence; or, supports a claim that the victim has a motive in accusing the defendant of the crime, or for impeachment when the prosecutor puts the victim's prior sexual conduct in issue or claims of prior false sexual misconduct made by victims against others; and
3. Evidence shall not be referred to in any statements to a jury or introduced at trial without a court order after a hearing on written motions is held to determine the admissibility of the evidence. If new information is discovered during the course of the trial that may make the evidence described in subsection A. admissible, the court may hold a hearing to determine the admissibility of the evidence. The standard for admissibility of evidence under subsection A is by clear and convincing evidence.

(Ft. McD. Res. No. 2011-17, ex. A(§ 6-66), 4-19-2011)

Sec. 6-67. - Registration of sex offenders.

A. **Certain Adult Tribal Convictions.** Persons required to register; procedure:

1. **Registration.** Any person eighteen (18) years of age or older or any person who has been tried as an adult and who has been convicted of a violation of one (1) of the offenses listed in subsection 3. herein or convicted of an attempt or conspiracy to commit any of the said listed offenses shall be subject to registration requirements in the Fort McDowell Yavapai Nation Tribal Sex Offender Registration Code. (Chapter _____ of this Code.)
2. **Acknowledgement.** At the time of sentencing, the person shall sign a form indicating notice of his or her obligation to register as a sex offender pursuant to SORNA. Said notice shall include, at a minimum, the Court's determination of the person's obligation to register under SORNA, the Tier Level under which he or she must register and the date, no later than three (3) days from the date of sentencing that he or she must report to the police department to register under SORNA.
3. **Offenses.** Offenders that have been convicted of any of the following tribal offenses shall be subject to the requirements of the Tribal Sex Offender Registration Code:
 - (a) Sexual Assault pursuant to section 6-56,
 - (b) Aggravated Sexual Assault pursuant to section 6-57,
 - (c) Sexual Assault of a Minor or Ward pursuant to section 6-58,
 - (d) Sex Offense Against Minors pursuant to section 6-60A. Sexual Exploitation of a Minor,
 - (e) Sex Offense Against Minors pursuant to section 6-60B. Commercial Exploitation of a Minor,
 - (f) Sex Offense Against Minors pursuant to section 6-60C. Use of an Electronic or Mechanical Device to Facilitate a Child Sex Crime,
 - (g) Sex Offenses Against Minors pursuant to section 6-60D. Possession of Child Pornography, or
 - (h) Incest pursuant to section 6-64.

B. **Certain Juveniles Tribal Adjudications.** Any juvenile who is fourteen (14) years of age or older and who has been adjudicated and found responsible for committing an offense pursuant to section 6-57 herein, or adjudicated and found responsible for an attempt or conspiracy to commit said offense shall be subject to registration under the Fort McDowell Yavapai Nation Tribal Sex Offender Registration Code.

C. **Violation.** A person who is required to register under the provisions of subsection A or B but fails to register as prescribed, is guilty of Failure to Register as Sex Offender, a Class I offense. A person

not subject to the Nation's jurisdiction who is required to register under the provisions of the Fort McDowell Yavapai Nation's Tribal Sex Offenders Registration Code (Chapter 25, Art. I of this Code) but fails to register as prescribed, is civilly liable to the Nation for a fine of five thousand dollars (\$5,000.00) and may be subject to civil contempt and exclusion.

(Ft. McD. Res. No. 2011-17, ex. A(§ 6-67), 4-19-2011)

Secs. 6-68, 6-69. - Reserved.

ARTICLE V. - OFFENSES AGAINST MINORS AND DEPENDENTS

Sec. 6-70. - Failing to provide for dependant persons.

- A. A person is guilty of failing to provide for dependant persons who, because of intemperance, gambling or for any other reason, refuses or neglects to furnish food, shelter or care to those dependent upon him or her.
- B. Failing to provide for dependent persons is a Class IV offense. A person found guilty of failing to provide for dependent persons may be ordered to pay restitution to the party for the cost of providing care for or pay a specific amount to the party providing care of the dependent(s) in addition to any other sentence.

(Law & Order Code 2006, § 6-70)

Sec. 6-71. - Permitting child's life, health or morals to be imperiled.

- A. A person is guilty of permitting child's life, health or morals to be imperiled who, having the custody of any child, willfully causes or permits the life of such child to be endangered or his or her health to be injured or his or her moral welfare to be imperiled, by neglect, abuse or immoral associates.
- B. Permitting child's life, health or morals to be imperiled is a Class I offense.

(Law & Order Code 2006, § 6-71)

Sec. 6-72. - Contributing to the delinquency or dependency of a child.

- A. A person is guilty of contributing to the delinquency or dependency of a child who by any act causes, encourages or contributes to the dependency or delinquency of a child as defined by Chapter 11, Section 11-1 of the Code.
- B. In order to find a person guilty of violating the provisions of this section, it is not necessary to prove that the child has actually become dependent or delinquent if it appears from the evidence that through any act, neglect or omission of duty or by any improper act of conduct on the part of such person, the dependency or delinquency of a child may have been caused or merely encourage.
- C. Contributing to the delinquency or dependency of a child is a Class III offense.

(Law & Order Code 2006, § 6-72)

Sec. 6-73. - Selling tobacco, paper or wrappers to minors.

- A. A person is guilty of selling tobacco, paper or wrappers to minors who intentionally sells, exchanges, barter, disposes of or gives away to any person under the age of eighteen (18) years any tobacco or cigarette paper or wrapper prepared or designed to be used for filling with tobacco.

B. Selling tobacco, paper or wrappers to minors is a Class V offense.

(Law & Order Code 2006, § 6-73)

Sec. 6-74. - Selling or furnishing spirituous liquor to a person under the age of twenty-one (21) Years.

- A. A person is guilty of selling or furnishing spirituous liquor to a person under the age of twenty-one (21) years who knowingly sells, furnishes, exchanges, barter, disposes or gives away to a person under the age of twenty-one (21) years any spirituous liquor.
- B. Selling or furnishing spirituous liquor to a person under the age of twenty-one (21) years is a Class V offense.

(Law & Order Code 2006, § 6-74)

Sec. 6-75. - Custodial interference.

- A. A person is guilty of custodial interference if:
 - 1. With the intent to deny access to the child by a parent, guardian, institution, agency or other person having lawful right to custody of the child, the person entices, retains, detains or conceals the child from the parent, guardian, institution, agency or other person having lawful right physical custody of such child.
- B. A first conviction of custodial interference is a Class III offense. A second conviction of custodial interference is a Class II offense.
- C. In any prosecution for custodial interference it is a complete defense, if established by the defendant by a preponderance of the evidence, that the defendant's purpose was to protect the child from imminent physical harm, and that belief in the existence of the imminent physical harm was reasonable.
- D. Consent of a child does not constitute a defense to a prosecution for custodial interference.
- E. Custodial interference is a Class III offense.

(Law & Order Code 2006, § 6-75)

Secs. 6-76—6-79. - Reserved.

ARTICLE VI. - OFFENSES AGAINST PROPERTY

Sec. 6-80. - Permissible inferences.

In an action for receiving stolen property or theft:

- 1. Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the person in possession of the property was aware of the risk that it had been stolen or in some way participated in its theft.
- 2. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, may give rise to an inference that the person in possession of the property was aware of the risk that it had been stolen.
- 3. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless

satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

(Law & Order Code 2006, § 6-80)

Sec. 6-81. - Receiving stolen property.

- A. A person is guilty of receiving stolen property who shall receive or conceal, or aid in concealing or receiving any property, knowing the same to be stolen, embezzled or obtained by fraud, false pretense, robbery or burglary.
- B. Receiving stolen property is a Class II offense.

(Law & Order Code 2006, § 6-81)

Sec. 6-82. - Bribery.

- A. A person is guilty of bribery who shall give or offer to give any money, property or service or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct.
- B. A person is guilty of bribery who shall accept, solicit or attempt to solicit any money, property or service or anything else of value to another person with corrupt intent to influence another in the discharge of his or her public duties or conduct.
- C. Bribery is a Class II offense.

(Law & Order Code 2006, § 6-82)

Sec. 6-83. - Cheats and frauds.

- A. A person is guilty of cheats and frauds who, with intent to cheat and defraud, obtains or attempts to obtain from any other person, money, property or a valuable thing, by means or by use of any false or bogus check or by any other printed, written or engraved instrument, or spurious coin or metal, or attempts to obtain money, property or valuable consideration by means or by use of any trick or deception, false or fraudulent representation, statement or pretense, or by any other means.
- B. Cheats and Frauds is a Class II offense.

(Law & Order Code 2006, § 6-83)

Sec. 6-84. - Extortion.

- A. A person is guilty of extortion who compels or induces another person to deliver property to himself or to a third person, business, organization or group by threatening that if the money or property is not delivered, the actor or another will:
 - 1. Cause physical injury to some person; or
 - 2. Cause damage to property; or
 - 3. Accuse some person of a crime or cause criminal charges to be instituted against some person; or
 - 4. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.

B. Extortion is a Class II offense.

(Law & Order Code 2006, § 6-84)

Sec. 6-85. - Forgery.

A. A person is guilty of forgery who shall falsely sign, execute, make or alter any written instrument, with intent to defraud.

B. Forgery is a Class II offense.

(Law & Order Code 2006, § 6-85)

Sec. 6-86. - Embezzlement.

A. A person is guilty of embezzlement who shall, having lawful custody of, or access to, services or property not his or her own, for a limited, authorized term or use, appropriates the same to his or her own use or to another's use for an unauthorized term or use.

B. Embezzlement is a Class II offense.

(Law & Order Code 2006, § 6-86)

Sec. 6-87. - Disposing of property of an estate.

A. A person is guilty of disposing of property of an estate who, without proper authority, sells, trades or otherwise disposes of any property of an estate before determination of the heirs.

B. Disposing of property of an estate is a Class II offense. A person convicted of disposing of property of an estate may be ordered to reimburse the estate for the amount or value of the property disposed of in addition to any other sentence.

(Law & Order Code 2006, § 6-87)

Sec. 6-88. - Theft.

A. A person shall be guilty of theft who:

1. Takes the property of another with the intent to steal, or
2. Takes the property of another without consent and with intent to deprive the owner of the use or possession of the property; or
3. Obtains the property or service of another by means of any material misrepresentation or omission with intent to deprive the owner of the property, services or value of such property or service; or
4. Obtains services or property without paying or agreeing to pay for them, knowing that the services or property were available only for compensation.

B. Theft is a Class II offense.

(Law & Order Code 2006, § 6-88)

Sec. 6-89. - Shoplifting, detaining suspect, defense to wrongful detention.

- A. A person commits shoplifting if, while in an establishment in which merchandise is displayed for sale, such person knowingly obtains such goods of another with the intent to deprive that person, business, organization or group of such goods by:
 - 1. Removing any of the goods from any area designed for the payment and/or check out of merchandise, or from the establishment, without paying the purchase price; or
 - 2. Charging the purchase price of the goods to a fictitious person or any person without that person's authority; or
 - 3. Paying less than the purchase price of the goods by some trick or artifice such as altering, removing, substituting or otherwise disfiguring any label, price tag or marking; or
 - 4. Transferring the goods from one (1) container to another; or
 - 5. Concealment.
- B. Any person who knowingly conceals upon himself or another person unpurchased merchandise of any mercantile establishment while within the mercantile establishment shall be presumed to have the necessary culpable mental state pursuant to subsection A of this section.
- C. A merchant, or a merchant's agent or employee, with reasonable cause, may detain on the premises in a reasonable manner and for a reasonable time any person suspected of shoplifting as defined in subsection A of this section for questioning or summoning a law enforcement officer.
- D. Reasonable cause is a defense to a civil or criminal action against a peace officer, a merchant or an agent or employee of such merchant for false arrest, false or unlawful imprisonment or wrongful detention.
- E. Shoplifting is a Class III offense.

(Law & Order Code 2006, § 6-89)

Sec. 6-90. - Trespass.

- A. A person commits trespass by knowingly entering or remaining upon the Nation's land, leased land, or assigned land within the Fort McDowell Yavapai Nation:
 - 1. Without the consent or permission of the lessee, assignee or his designate, the Tribal Council or its authorized representative, or other person in lawful possession thereof; or
 - 2. After reasonable notice prohibiting entry, including posting and signage; or
 - 3. After a reasonable request to leave by a law enforcement officer, employee or Tribal official acting in his or her official capacity; or the lessee or assignee or his designate or other person in lawful possession thereof and the person does not leave immediately.
- B. As used in this section, assigned land, means any Nation land for which a life estate, an estate for years, or other possessor interest has been assigned to any person by the Tribal Council, any authorized subordinate entity of the Tribal Council, or the Fort McDowell Housing Authority.
- C. Trespass is a Class III offense.

(Law & Order Code 2006, § 6-90)

Sec. 6-91. - Illegal entry.

- A. A person is guilty of illegal entry who enters any house, building, motor vehicle or trailer without first having permission of the owner.
- B. Illegal entry is a Class II offense.

(Law & Order Code 2006, § 6-91)

Sec. 6-92. - Criminal damage.

- A. A person commits criminal damage by intentionally or recklessly:
 - 1. Defacing or damaging property of another person or a business, organization, group or the Nation; or
 - 2. Tampering with property of another person or a business, organization, group or the Nation so as substantially to impair its function or value; or
 - 3. Tampering with the property of a utility.
 - 4. Drawing or inscribing a message slogan, sign or symbol that is made on any public or private building, structure or surface, with any permanent or semi-permanent marker or instrument and that is made without permission of the owner.
- B. Criminal damage is a Class II offense.

(Law & Order Code 2006, § 6-92)

Sec. 6-93. - Joyriding.

- A. A person commits joyriding if, without intent to permanently deprive, such person intentionally or knowingly takes control of another's means of transportation.
- B. Joyriding is a Class II offense.

(Law & Order Code 2006, § 6-93)

Sec. 6-94. - Cutting fence.

- A. A person is guilty of cutting fence who shall willfully and without the owner's permission or other legal authority cut a fence of another person or of the Nation.
- B. Cutting fence is a Class V offense.

(Law & Order Code 2006, § 6-94)

Sec. 6-95. - Destroying native plants without permit.

- A. A person is guilty of destroying native plants identified in Chapter 23, Section 23-106 of the Code, who, without permit, cuts, digs up or removes any timber or vegetation for any purpose without a proper permit or who defaces vegetation.
- B. Destroying native plants without permit is a Class VI offense.

(Law & Order Code 2006, § 6-95)

Sec. 6-96. - Misbranding.

- A. A person is guilty of misbranding who shall knowingly or willfully misbrands or alter any brand or mark on any livestock of another person.
- B. Misbranding is a Class III offense.

(Law & Order Code 2006, § 6-96)

Sec. 6-97. - Illegal burning.

- A. A person commits illegal burning by recklessly or negligently causing a fire or explosion, which results in damage to any structure or property to another person, business, organization, group or the Nation or results in injury to any person.
- B. Illegal burning is a Class II offense. In addition to any other sentence ordered by the Court, a person convicted of illegal burning may be ordered to pay to the Nation or any other agency, service or other entity any or all costs associated with the containment, control and extinguishment of a fire and may be order to pay to the Nation any or all costs associated with the investigation of the offense.

(Law & Order Code 2006, § 6-97)

Sec. 6-98. - Arson.

- A. A person commits arson by knowingly or intentionally causing a fire or explosion that results in damage to any structure or property or injury to any person.
- B. Arson is a Class I offense. In addition to any other sentence ordered by the Court, a person convicted of arson may be ordered to pay to the Nation or any other agency, service or other entity any or all costs associated with the containment, control and extinguishment of a fire and may be order to pay to the Nation any or all costs associated with the investigation of the offense.

(Law & Order Code 2006, § 6-98)

Sec. 6-99. - Fireworks prohibited.

- A. Except as otherwise provided by this article, it is unlawful to sell, offer or expose for sale, use, explode or possess any fireworks.
- B. This section shall not be construed to prohibit or restrict the manufacture or possession, by a qualified pyrotechnic expert, of aerial set pieces designed for use in pyrotechnical displays, or the display of such set pieces in accordance with the terms of this section.
- C. Definitions: In this section, unless the context otherwise requires:
 - 1. Fireworks means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and toy cannons in which explosives are used, the type of balloon which requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, sparklers or other fireworks of like construction, fireworks containing an explosive substance. The term "fireworks" does not include toy pistols, toy canes, toy guns or other devices in which paper caps containing not more than twenty-five hundredths (25/100ths) grains of explosive compound are used if constructed so that the hand cannot come in contact with the cap when in place for the explosion, or toy pistol caps which contain less than twenty-hundredths (20/100ths) grains of explosive mixture, of fixed ammunition or primers therefor. The Tribal Council may adopt reasonable rules and regulations for granting permits for supervised public displays of fireworks within its jurisdiction, by municipalities, fair associations, amusement parks and other organizations and groups.
 - 2. Application for a permit shall be made in writing not less than five (5) days prior to the date of the display. Every display shall be handled by a competent operator, and shall be of a character and located, discharged and fired so that it will not be hazardous to property or endanger any person. Before a permit is granted, the operator, location and handling of the display shall be

approved, after investigation, by the Fire Department. After a permit is granted, the sale, possession, use and distribution of fireworks for the display shall be lawful for that purpose only. No permit is transferable or assignable.

D. Fireworks prohibited is a Class IV offense.

(Law & Order Code 2006, § 6-99)

Sec. 6-100. - Unlawful dumping or burning.

- A. Except as may otherwise be permitted by Chapter 23, a person is guilty of unlawful dumping or burning who:
1. Intentionally or recklessly dump, scatter, store, place or cause to be dumped, scattered or placed, any solid waste or hazardous waste, except in designated receptacles or areas provided for this sole purposes, within the exterior boundaries of the Nation.
 2. Intentionally or recklessly burn or cause to be burned any solid waste or hazardous waste anywhere except in designated receptacles or areas within the exterior boundaries of the Nation;
 3. Intentionally scavenge as defined in Section 23-10 of this code.
- B. All terms shall have the same meaning as defined in Section 23-5 and 23-51 of this Code.
- C. Any person not otherwise subject to the criminal jurisdiction of the Fort McDowell Yavapai Nation who engages in any conduct or activity in violation of subsection A of this section shall be subject to liability for civil trespass pursuant to Chapter 7.5 and for a civil violation under Section 23-12 or Section 23-55 of this Code.
- D. Unlawful dumping or burning is a Class I offense. Any penalties, fines or damages imposed under this section are in addition to and do not supersede, preclude, or otherwise limit any other remedies which may be available in law or equity, including injunctive relief, and not preclude the Nation from prosecuting, causing to be prosecuted, or assisting in the prosecution of any other civil, criminal or administrative action in any other forum of competent jurisdiction against any person.

(Law & Order Code 2006, § 6-100)

Sec. 6-101. - Cruelty to animals.

- A. A person commits cruelty to animals if the person:
1. Intentionally, knowingly or recklessly subjects any animal under the person's custody or control to cruel neglect or abandonment.
 2. Intentionally, knowingly or recklessly fails to provide medical attention necessary to prevent protracted suffering to any animal under the person's custody or control.
 3. Intentionally, knowingly or recklessly inflicts unnecessary physical injury to any animal.
 4. Intentionally, knowingly or recklessly subjects any animal to cruel mistreatment.
 5. Intentionally, knowingly or recklessly leaves an animal unattended and confined in a motor vehicle and physical injury to or death of the animal is likely to result.
 6. Intentionally, knowingly or recklessly interferes with, kills or harms a working or service animal without either legal privilege or consent of the owner.
 7. Intentionally, knowingly or recklessly allows any dog that is under the person's custody or control to interfere with, kill or cause physical injury to a service animal.

8. Intentionally or knowingly obtains or exerts unauthorized control over a service animal with the intent to deprive the service animal handler of the service animal.
- B. This section does not prohibit or restrict the taking of wildlife or other activities as permitted under this Code.
- C. A police officer, animal control enforcement agent or animal control enforcement officer may use reasonable force to open a vehicle to rescue an animal if the animal is left in the vehicle as prescribed in subsection A, paragraph 5 of this section.
- D. Cruelty to Animals is a Class V offense.
- E. For purposes of this section:
 1. **Animal** means a mammal, bird, reptile or amphibian.
 2. **Cruel mistreatment** means to torture or otherwise inflict unnecessary serious physical injury upon an animal or to kill an animal in a manner that causes protracted suffering to the animal.
 3. **Cruel neglect** means to fail to provide an animal with necessary food, water or shelter.
 4. **Handler** means a law enforcement officer or any other person who has successfully completed a course of training prescribed by the person's agency or the service animal owner and who used a specially trained animal under the direction of the person's agency or the service animal owner.
 5. **Service animal** means an animal that has completed a formal training program that assists its owner in one (1) or more daily living tasks that are associated with a productive lifestyle and that is trained to not pose a danger to the health and safety of the general public.
 6. **Working animal** means a horse or dog that is used by a law enforcement agency that is specially trained for law enforcement work and that is under the control of the handler.

(Law & Order Code 2006, § 6-101)

Secs. 6-102—6-109. - Reserved.

ARTICLE VII. - ALCOHOL AND DRUG-RELATED OFFENSES

Sec. 6-110. - Possession or use of controlled substances.

(For a list see 21 USCA Sec. 812, schedule I-V)

- A. Prohibited generally. A person is guilty of possession or use of controlled substances who possesses, has under his or her control, dispenses, uses, transports, carries, sells, gives away, prepares for sale, furnishes, administers, or offers to sell, furnish, administer or give away a controlled substance except as pursuant to this section.
- B. Prescription drugs exempt. This section shall not apply to persons who:
 1. Possess, have under their control, or transport controlled substances pursuant to a prescription issued to that person by a licensed physician, osteopath, physician assistant, nurse practitioner, dentist or veterinarian.
 2. Use a controlled substance under the supervision of and pursuant to a prescription issued to that person by a licensed physician, osteopath, physician assistant, nurse practitioner, or dentist, provided that the controlled substance is used as prescribed, as may be determined by analysis of the person's blood, urine or other bodily fluids, which analysis quantifies the amount of the controlled substance in the person's system, and which quantified amount is within the range of medically accepted levels of the effective use of the controlled substance for that person.

- C. Certain professionals exempt. This section shall not apply to licensed manufacturers, wholesalers, pharmacists, physicians, physicians assistants, nurse practitioners, osteopaths, dentists, or veterinarians who have under their control, dispense, transport, sell, prepare for sale, furnish, administer, or offer to do the same, any controlled substance prohibited by this section while acting within the scope of their profession, in good faith, and in accordance with generally accepted medical standards (where applicable), provided such acts are consistent with, and not in violation of, any law or regulation of the United States.
- D. Law enforcement exception. This section shall not apply to duly commissioned law enforcement officials and other authorized employees of any tribal, state, or federal law enforcement agency while performing required functions within the scope of their official duties.
- E. Controlled substances defined. As used in this article, "controlled substances" means any substance listed in Schedules, I, II, III, IV and V of Title 21, United States Code, Section Code, Section 812.
- F. Defense regarding peyote. In a prosecution for violation of this section with regard to peyote, it is a defense that the peyote is being used or is intended for use:
 - 1. In connection with the bona fide practice of a religious belief; and
 - 2. As an integral part of a religious exercise; and
 - 3. In a manner not dangerous to public health, safety or morals.
- G. Possession or use of controlled substances is a Class I offense. A person convicted of possession or use of controlled substances and found to have dispensed, transported, sold, given away, furnished, administered or to have prepared for sale, or to have offered to sell, furnish, administer or give way a controlled substance shall serve a mandatory minimum jail sentence of six (6) months and shall not be eligible for suspension of jail sentence, probation, pardon or release from custody on any basis until the jail sentence imposed is fully served.

(Law & Order Code 2006, § 6-110)

Sec. 6-111. - Unlawful use of vapor-releasing substance.

- A. A person is guilty of unlawful use of vapor-releasing substances who shall intentionally or knowingly breathe, inhale or drink a vapor-releasing substance for a purpose other than the product's intended use.
- B. Unlawful use of a vapor releasing substance containing a toxic substance is a Class II offense.

(Law & Order Code 2006, § 6-111)

Sec. 6-112. - Possession, manufacture or delivery of drug paraphernalia.

- A. A person is guilty of possession, manufacture or delivery of drug paraphernalia when a person uses or possesses with intent to use, drug paraphernalia to plant, propagate, cultivate, grow harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, conceal, inject, ingest, inhale or otherwise to introduce into the human body a controlled substance or the residue, smoke, vapor or fumes of a controlled substance in violation of this article.
- B. A person is guilty of possession with possession, manufacture or delivery of drug paraphernalia when a person delivers, possesses or possesses with intent to deliver or manufactures with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, conceal, inject, ingest, inhale or otherwise to

introduce into the human body a controlled substance or the residue, smoke, vapor or fumes of a controlled substance in violation of this article.

C. In determining whether an object is drug paraphernalia, a court shall consider, in addition of all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any tribal, federal or state law relating to any controlled substance.
3. The proximity of the object, in time and space, to a direct violation of this article.
4. The proximity of the object to controlled substances.
5. The existence of any residue of controlled substances on the object.
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this article.
7. Instructions, oral or written, provided with the object concerning its use.
8. Descriptive materials accompanying the object that explain or depict its use.
9. National or local advertising concerning its use.
10. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
11. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise.
12. The existence and scope of legitimate uses for the object in the community.
13. Expert testimony concerning its use.

D. In this section, unless the context otherwise requires, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise to introducing into the human body a controlled substance or the residue, smoke, vapor or fumes of a controlled substance in violation of this article. It includes, but is not limited to:

1. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
3. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance or from which a controlled substance can be derived.
4. Testing equipment used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance or from which a controlled substance can be derived.
5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances.

7. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
 8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.
 9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
 10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.
 11. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parentally injecting controlled substances into the human body.
 12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing into the human body a controlled substance or the residue, smoke, vapors or fumes of a controlled substance, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion mask.
 - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.
 - g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers.
- E. Possession, manufacture or delivery of drug paraphernalia is a Class I offense. A person convicted of possession, manufacture or delivery of drug paraphernalia pursuant to Subsection 2. shall be sentenced to a mandatory minimum jail sentence of thirty (30) days and shall not be eligible for suspension of jail sentence, probation, pardon or release from custody on any basis until the jail sentence imposed is fully served.

(Law & Order Code 2006, § 6-112)

Sec. 6-113. - Underage consumption.

- A. A person is guilty of underage consumption who, while under the age of twenty-one (21) years and while within the exterior boundaries of the Fort McDowell Yavapai Nation, has any spirituous liquor in his or her body.
- B. Underage consumption is a Class III offense.

(Law & Order Code 2006, § 6-113)

Sec. 6-114. - Possession of spirituous liquor by a person under twenty-one (21) years.

- A. A person is guilty of possession of spirituous liquor by a person under twenty-one (21) years who, while under the age of twenty-one (21) years and while within the exterior boundaries of the Fort McDowell Yavapai Nation, possesses, has under his or her control, dispenses, transports or carries any spirituous liquor.
- B. Possession of spirituous liquor by a person under twenty-one (21) years is a Class V offense.

(Law & Order Code 2006, § 6-114)

Sec. 6-115. - Seizure of vehicles used in controlled substances violations.

- A. **Forfeiture of interest.** The interest of the legal owner or owners of record of any vehicle used to transport unlawfully a controlled substance, or in which a controlled substance is unlawfully kept, deposited or concealed, or in which a controlled substance is unlawfully possessed by an occupant, shall be forfeited to the Fort McDowell Yavapai Nation.
- B. **Police officer to seize vehicle.** Any peace officer making or attempting to make an arrest for a violation of this article shall seize the vehicle used to transport unlawfully a controlled substance, or in which a controlled substance is unlawfully kept, deposited or concealed, or unlawfully possessed by an occupant and shall immediately deliver the vehicle to the tribal police chief, to be held as evidence until forfeiture is declared or a release ordered.
- C. **Notice of seizure.** A notice or petition of seizure shall be filed with the clerk of the Tribal Court by either the Peace Officer, the Prosecutor, or the Office of General Counsel within thirty (30) days of the seizure and the clerk shall serve notice thereof on all owners of the vehicle, by one (1) of the following methods:
 - 1. Upon an owner or claimant whose right, title or interest is of record, in the division of motor vehicles of the state in which the automobile is licensed, by mailing a copy of the notice by registered mail to the address on the records of the division of motor vehicles of said state.
 - 2. Upon an owner or claimant whose name and address are known, by mailing a copy of the notice by registered mail to his last known address.
 - 3. Upon an owner or claimant, whose address is unknown but who is believed to have an interest in the vehicle by publication in one (1) issue of a newspaper of general circulation in Maricopa County, Arizona.
- D. **Owner's answer to notice.** Within twenty (20) days after mailing or publication of a notice of seizure, as provided by subsection C hereof, the owner of the seized vehicle may file a verified answer to the allegation of the use of the vehicle contained in the notice of seizure and of the intended forfeiture proceedings. No extension of time shall be granted for the purpose of filing the answer.
- E. **Procedure for hearing:**
 - 1. If a verified answer to the notice given as prescribed by this section is not filed within twenty (20) days after the mailing or publication thereof, the court shall hear evidence upon the charge of unlawful use of the vehicle, and upon motion shall order the vehicle forfeited to the Fort McDowell Yavapai Nation.
 - 2. If a verified answer is filed, the forfeiture proceedings shall be set for a hearing on a day not less than thirty (30) days after the answer is filed, and the proceedings shall have priority over other civil cases. Notice of the hearing shall be given in the manner provided for service of the notice of seizure.
 - 3. At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the vehicle was not used to transport controlled substances illegally, or that

controlled substances were not unlawfully possessed by an occupant of the vehicle, nor the vehicle used as a depository or place of concealment for controlled substances.

4. A claimant of any right, title or interest in the vehicle may prove his lien, mortgage or conditional sales contract to be bona fide, and that his right, title or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the purchaser, and without knowledge that the vehicle was being, or was to be used for the purpose charged; but no person who has the lien dependent upon possession for the compensation to which is legally entitled for making repairs or performing labor upon and furnishing supplies and materials for, and for the storage, repairs, safekeeping of any vehicle, and no person doing business under any law of any state or the United States relating to banks, trust companies, building and loan associations, and loan companies, credit unions, or licensed pawnbrokers or money lenders or regularly engaged in the business of selling vehicles or purchasing conditional sales contracts on vehicles shall be required to prove that his right, title or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the owner, purchaser, or person in possession of the vehicle when it was brought to the claimant.

F. Judgment.

1. If proper proof is presented at the hearing, the court shall order the vehicle released to the bona fide owner, lien holder, mortgagee or vendor, if the amount due him is equal to or in excess of the value of the vehicle as of the date of seizure, it being the purpose of this section to forfeit only the right, title or interest of the purchaser.
2. If the amount due a claimant or claimants is less than the value of the vehicle, the vehicle shall be sold at public auction by the tribal police chief after due and proper notice has been given.
3. If no such claimant exists, and the confiscating agency wishes to retain the vehicle for its official use, it may do so. If such vehicle is not to be retained, it shall be disposed of as provided in subsection 2 of paragraph F of this section.

(Law & Order Code 2006, § 6-115)

Secs. 6-116—6-119. - Reserved.

ARTICLE VIII. - WEAPONS AND EXPLOSIVES

Sec. 6-120. - Definitions.

A. In this chapter, unless the context otherwise requires:

1. **Dangerous Weapon** means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.
2. **Explosive** means any dynamite, nitroglycerine, black powder, plastic designed for detonation or chemical or combination of chemicals useable or combined for the purposes of causing an explosion, excluding rifle, shotgun or handgun ammunition.
3. **Firearm** means any unloaded or loaded handgun, pistol, revolver, rifle, shotgun or other weapon designed to or that may be readily converted to expel a projectile by the action of an explosion.
4. **Prohibited Weapon** includes, but is not limited to:
 - (a) Explosive, incendiary or poison gas;
 - (b) Bomb;
 - (c) Grenade;
 - (d) Silencer or device designed to muffle the sound of a firearm;

- (e) Rifle with a barrel of less than sixteen (16) inches, a shotgun with a barrel of less than eighteen (18) inches, or any firearm made from a rifle or shotgun with an overall length of less than twenty-six (26) inches;
 - (f) Instrument, including nunchaku or nonchucks, consisting of two (2) or more sticks, clubs, bars or rods connected by a rope, cord, wire or chain;
 - (g) Breakable container containing a flammable liquid that has a wick or device capable of being ignited;
 - (h) Chemical or combination of chemicals, compounds or materials for the purpose of generating a gas to cause an explosion of any kind;
 - (i) A dagger or dirk;
 - (j) Any knife with a blade longer than four (4) inches carried on a person with the exception of police officers, military personnel and hunters while on duty or hunting;
 - (k) Metal knuckles;
 - (l) Stun gun other than one used by a law enforcement officer in the performance of his or her duty;
 - (m) Firearm that is capable of shooting more than one (1) shot automatically, without manual reloading, by a single function of the trigger; except any firearms or devices that are registered in the national firearms registry and transfer records of the United States treasury department or any firearm that has been classified as a curio or relic by the United States treasury department.
- B. In determining whether an item, instrument, object or thing is a prohibited weapon for purposes of this Chapter, the character of the item, instrument, object or thing, the character of the wound produced, if any, and the manner in which the item, instrument, object or thing was used shall be determinative.

(Law & Order Code 2006, § 6-120)

Sec. 6-121. - Discharge of firearms.

- A. A person commits discharge of firearms who discharges a firearm in a building, thereby endangering the life or person of another, or disturbing the peace of the persons inside the building or injuring, destroying or damaging any property therein, or who discharges a firearm in an inhabited area in such a way as to place persons or property in the vicinity in danger.
- B. Law enforcement exception. This section shall not apply to duly commissioned law enforcement officials and other authorized employees of any tribal, state, or federal law enforcement agency while performing required functions within the scope of their official duties.
- C. Discharge of firearms is a Class II offense.

(Law & Order Code 2006, § 6-121)

Sec. 6-122. - Misuse of firearms.

- A. A person commits misuse of firearms by:
 - 1. Handling or discharging any firearm in a careless or reckless manner or with wanton disregard for the safety of property or human life; or,
 - 2. Possessing or discharging any firearm while under the influence of alcohol, toxic vapors, marijuana or any drug or other substance identified or defined as a controlled substance under the provisions of Title 21, Chapter 13 of the United States Code.

- B. It is not a defense that the drug or other substance identified or defined as a controlled substance was prescribed by a licensed physician.
- C. Misuse of firearms is a Class II offense.

(Law & Order Code 2006, § 6-122)

Sec. 6-123. - Carrying concealed weapon.

- A. A person is guilty of carrying concealed weapon who shall be armed with a dangerous weapon concealed upon his person in a place other than their own home or residence, which weapon can be used to inflict harm upon another person.
- B. A weapon is not a concealed weapon as used in this section if:
 - 1. It is carried in a belt holster, is wholly or partially visible, or is carried in a scabbard or case designed for carrying weapons which scabbard or case is wholly or partially visible.
 - 2. It is located in a closed trunk, luggage or glove compartment of a motor vehicle.
 - 3. A person has a concealed weapon permit signed by the Arizona Department of Public Safety and has the permit on his person.
- C. Law enforcement exception. This section shall not apply to duly commissioned law enforcement officials and other authorized employees of any tribal, state, or federal law enforcement agency while performing required functions within the scope of their official duties.
- D. Carrying concealed weapon is a Class II offense.

(Law & Order Code 2006, § 6-123)

Sec. 6-124. - Prohibited weapons.

- A. A person is guilty of prohibited weapon who possesses, within the Fort McDowell Yavapai Nation, a prohibited weapon.
- B. This section does not apply to any commercial or tribal business operations that are in compliance with applicable federal and state regulatory guidelines.
- C. Prohibited weapon is a Class II offense. Any prohibited weapon possessed in violation of this Chapter shall be forfeited to the Nation upon conviction for disposal or use by the tribal police department.

(Law & Order Code 2006, § 6-124)

Secs. 6-125—6-129. - Reserved.

ARTICLE IX. - GANG-RELATED OFFENSES

Sec. 6-130. - Definitions.

- A. **Combination** means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other's identity, membership in the combination changes from time to time or one (1) or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.

- B. **Criminal street gang** means an ongoing formal or informal association or persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any criminal act and who has at least one (1) individual who is a criminal street gang member.
- C. **Criminal street gang member** means an individual to whom two (2) of the following seven (7) criteria that indicate criminal street gang membership apply unless one is self-proclamation, which will show membership:
 - 1. Self-proclamation.
 - 2. Witness testimony or official statement.
 - 3. Written or electronic correspondence.
 - 4. Paraphernalia or photographs.
 - 5. Tattoos indicating a street gang.
 - 6. Clothing or colors commonly associated with a gang.
 - 7. Any other indicia of street gang membership.
- D. **Criminal syndicate** means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct that violates any one (1) or more criminal code provisions of this Nation.
- E. **Drive by shooting** means intentionally discharging a firearm or the propulsion of any explosive or explosive device from a motor vehicle whether moving or stopped, at a person, another motor vehicle, or structure.
- F. **Participant** means a person who of his or her own will is in a vehicle used in a drive-by shooting, as a shooter, driver, or as one who encourages such behavior through voluntary actions such as the yelling of gang names, knowing or having reason to know that a drive-by shooting is likely to occur.

(Law & Order Code 2006, § 6-130)

Sec. 6-131. - Participating in or assisting a criminal syndicate.

- A. A person commits participating in a criminal syndicate by:
 - 1. Intentionally organizing, managing, directing, supervising, or financing a criminal syndicate with the intent to promote or further the criminal objectives of the syndicate; or
 - 2. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of criminal syndicate; or
 - 3. Furnishing advice or direction in the conduct, financing or management of a criminal syndicate's affairs with the intent to promote or further the criminal objectives of criminal syndicate; or
 - 4. Intentionally promoting or furthering the criminal objectives of a criminal syndicate by inducing or committing any act or omission by a public servant in violation of his official duty; or
 - 5. Hiring, engaging or using a minor for any conduct preparatory to or in completion of any offense in this section.
- B. A person commits assisting a criminal syndicate by committing any offense, whether completed or preparatory, with the intent to promote or further the criminal objectives of a criminal syndicate.
- C. Use of a common name or common identifying sign or symbol shall be admissible and may be considered in proving the combination of persons or enterprises required by this section.
- D. Participating in or assisting a criminal syndicate is a Class I offense.

(Law & Order Code 2006, § 6-131; Ft. McD. Res. No. 2009-66, ex. A(§ 6-131), adopted 9-15-2008; Ft. McD. Res. No. 2009-67, ex. A(§ 6-131), adopted 9-15-2008)

Sec. 6-132. - Participating in or assisting a criminal street gang.

- A. A person commits participating in a criminal street gang by any of the following:
 - 1. Intentionally organizing, managing, directing, supervising, or financing a criminal street gang with the intent to promote or further the criminal objectives of the criminal street gang; or
 - 2. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal street gang; or
 - 3. Furnishing advice or direction in the conduct, financing or management of a criminal street gang's affairs with the intent to promote or further the criminal objectives of a criminal street gang; or
 - 4. Intentionally promoting or furthering the criminal objectives of a criminal street gang by inducing or committing any act or omission by a public servant in violation of his official duty.
- B. A person commits assisting a criminal street gang by committing any offense, whether completed or preparatory for the benefit of, at the direction of or in association with any criminal street gang.
- C. Use of a common name or common identifying sign or symbol shall be admissible and may be considered in proving the existence of a criminal street gang or membership in a criminal street gang.
- D. Participating in or assisting a criminal street gang is a Class I offense.

(Law & Order Code 2006, § 6-132; Ft. McD. Res. No. 2009-66, ex. A(§ 6-132), adopted 9-15-2008; Ft. McD. Res. No. 2009-67, ex. A(§ 6-132), adopted 9-15-2008)

Sec. 6-133. - Drive by shooting.

- A. A person commits drive by shooting by intentionally discharging a weapon from a motor vehicle at a person, other motor vehicle or structure.
- B. Any person who is a participant in a drive-by shooting is guilty of an offense.
- C. Drive by shooting is a Class I offense.

(Law & Order Code 2006, § 6-133; Ft. McD. Res. No. 2009-66, ex. A(§ 6-133), adopted 9-15-2008; Ft. McD. Res. No. 2009-67(§ 6-133), ex. A, adopted 9-15-2008)

Secs. 6-134—6-139. - Reserved.

ARTICLE X. - SENTENCING AND PROBATION

Sec. 6-140. - General conditions of sentence.

Any person who has been convicted by the Fort McDowell Yavapai Tribal Court of a violation of a provision of the Fort McDowell Law and Order Code for which a penalty may be exacted, may be fined or may be sentenced by the court to serve time in jail or both. No sentence of a fine and/or jail time shall exceed the maximum fines or jail sentences set for the offense in the Code and a sentence shall begin to run on the day of the sentence. Multiple sentences may run concurrently or consecutively to each other, as determined by the Court.

(Law & Order Code 2006, § 6-140)

Sec. 6-141. - Determining factors.

In determining the character and duration of the sentence which shall be imposed, the court shall take into consideration the criminal history of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the offender has attempted to make amends and the extent of the defendant's resources and the needs of his dependents, the nature and extent of the victims' injuries, the impact on the victim and his or her family; community safety concerns, the likelihood of recidivism and any other relevant information.

(Law & Order Code 2006, § 6-141)

Sec. 6-142. - Additional penalties or conditions; costs assessed against per capita payments; maximum sentence.

- A. In addition to any other sentence, the court may order an offender to do the following:
1. To pay restitution to the victim of the offense;
 2. To pay the cost of his/her incarceration.
 3. To pay the costs directly incurred and reasonably necessary for the investigation of the offense which would not have been otherwise expended but for the investigation of the defendant's case except that such costs shall not include the salaries of police officers and police department personnel.
 4. To pay the cost of services, counseling, treatment, and rehabilitation provided or arranged by Wassaja Family Services or any other service provider.
 5. To complete community work hours.
 6. To refrain from contact or behavior.
 7. Any other requirements or conditions that the Court deems appropriate.
- B. If the offender is a member of the Fort McDowell Yavapai Nation and is currently receiving per capita payments from the Fort McDowell Yavapai Nation, the court may order that the costs listed in subparagraphs 1-4 be deducted from the offender's monthly per capita payments and be paid to the victim or the Nation.
- C. In no event shall the court impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of five thousand dollars (\$5,000.00), or both.
- D. The costs listed in subparagraphs (A)(1-4) of this section shall not be considered a fine under subparagraph (C) of this section and may exceed the five thousand dollar (\$5,000.00) limitation set forth in that subparagraph. All monies imposed and received pursuant to subparagraphs (A)(2-4) of this section shall be deposited in the Nation's general fund.

(Law & Order Code 2006, § 6-142)

Sec. 6-143. - Probation.

- A. A defendant who has been found guilty of an offense may be sentenced to a term of probation unless the offense is an offense for which probation has been expressly precluded.
- B. The authorized term of probation shall not exceed more than two (2) years per offense.

C. Probation may include a term of incarceration and/or such other terms that the Tribal Court deems reasonable under the circumstances of the case, including but not limited to the following:

1. Rehabilitative measures;
2. No-association requirements;
3. Drug and/or alcohol testing;
4. No contact provisions;
5. Restitution;
6. Curfew; and
7. Any such other term or conditions, that under the individual circumstance of each case the Tribal Court deems reasonable in an effort to rehabilitate the defendant.

(Law & Order Code 2006, § 6-143; Ft. McD. Res. No. 2006-61, § 6-143, adopted 7-11-2006, eff. 8-1-2006)

Sec. 6-144. - Violation of probation.

Upon a finding that a person has violated his or her probation, the Court may:

- A. Modify the terms of probation,
- B. Revoke the probation entirely and reinstate the original sentence; or
- C. Re-impose the terms of probation.

(Law & Order Code 2006, § 6-144)

Sec. 6-145. - Parole or early release.

There is no parole or early release of any kind available under this Code.

[**HISTORICAL NOTE:** Sections 6-1 through 6-152 repealed by Resolution No. Ft. McD 2005-72, effective July 1, 2005. New Sections 6-1 through 6-149 added by Resolution No. Ft. McD 2005-72, effective July 1, 2005.]

(Law & Order Code 2006, § 6-145; Ft. McD. Res. No. 2005-72, eff. 7-1-2005)

Secs. 6-146—6-149. - Reserved.

Chapter 7 - EXTRADITION AND CIVIL TRESPASS

ARTICLE I. - EXTRADITION

Sec. 7.1-1. - Definitions.

Chief Executive officer includes the governor, president, chairman, business manager or chief administrative official who has been lawfully designated by an Indian tribal government to act in such executive capacity.

Executive Authority includes any person who is the chief executive officer of a state or Indian tribe or such law enforcement, correction or probation officials or agencies of a state or Indian tribe who are by

such state or Indian tribe authorized to perform the functions of demanding extradition from other jurisdiction.

Indian Tribal Government means any existing American Indian tribe recognized as a self-governing unit for the purpose of any federal governmental agency and which has a duly organized tribal court, court of Indian offenses, or traditional court.

Nation refers to the Fort McDowell Yavapai Nation.

President means the chief executive officer of the Fort McDowell Yavapai Nation.

Prosecuting Officer includes any person duly designated by legal authority to attend to the prosecution of criminal offenses on behalf of the government, including attorneys general, prosecutors, special prosecutors, district attorneys or special appointees.

State includes any state or territory, organized or unorganized, of the United States of America, including the District of Columbia.

Tribe or Tribal is used in this chapter synonymously with "Indian tribal government," the Code of Indian Offenses or the custom and tradition of that tribe, or to specific departments within an Indian tribe or Nation.

(Law & Order Code 2006, § 7.1-1; Ft. McD. Res. No. 2008-79, ex. A, adopted 12-16-2008)

Sec. 7.1-2. - Fugitives from justice; duty of chief executive.

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof; it is the duty of the president of the Fort McDowell Yavapai Nation to have arrested and delivered to the executive authority of any state or other Indian tribe any person charged in that jurisdiction with a felony, who has fled from justice and is found in this tribal jurisdiction.

(Law & Order Code 2006, § 7.1-2)

Sec. 7.1-3. - Applicability of chapter.

This chapter shall be applicable only in cases in which it is claimed that a felony has been committed. For purposes of this chapter, any act made a crime by the laws of any Indian tribe is a felony.

(Law & Order Code 2006, § 7.1-3)

Sec. 7.1-4. - Form of demand.

No demand for the extradition of a person charged with crime or crimes in a state or another tribal jurisdiction shall be recognized by the president unless the demand is in writing alleging, except in cases arising under section 7.1-6, that the accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, and that thereafter he fled from that jurisdiction. Said demand must be accompanied by a copy of an affidavit made before a tribal court judge or magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state or tribe that the person sought has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the tribal court judge or magistrate must substantially charge that the person has committed a crime under the law of that state or tribe; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

(Law & Order Code 2006, § 7.1-4)

Sec. 7.1-5. - President may investigate case.

When a demand shall be made upon the president of the Fort McDowell Yavapai Nation by the executive authority of a state or another Indian tribe for the surrender of a person so charged with crime, the president may call upon any prosecuting officer to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person sought and whether he should be surrendered.

(Law & Order Code 2006, § 7.1-5)

Sec. 7.1-6. - Extradition of persons imprisoned or awaiting trial in a state or another tribe or who have left the demanding jurisdiction under compulsion.

- A. When it is desired to have returned to this Nation a person who is charged in this jurisdiction with a crime, and that person is imprisoned or is held under criminal proceedings then pending against him in a state or other tribe, the president of the Fort McDowell Yavapai Nation may agree with the executive authority of such state or tribe for the extradition of that person before the conclusion of those proceedings or his term of sentence in the other state or tribe, upon the condition that the person be returned to the other state or tribe at the expense of this Nation as soon as the prosecution is terminated in this jurisdiction.
- B. The president may also surrender, on the demand of the executive secretary of any state or other tribe, any person in this jurisdiction who is charged in the manner provided in section 7.1-23 with having violated the laws of the state or tribe whose executive authority is making the demand, even though such person left the demanding jurisdiction involuntarily.

(Law & Order Code 2006, § 7.1-6)

Sec. 7.1-7. - Extradition of persons not present in demanding jurisdiction at time of commission of crime.

The president may also surrender, on demand of the executive authority of any state or other tribe, any person in this jurisdiction who is charged in such other state or tribe in the manner provided in section 7.1-3 with committing an act in this jurisdiction or in another state or another tribe, which intentionally resulted in a crime occurring in the jurisdiction whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that jurisdiction at the time of the commission of the crime, and has not fled therefrom.

(Law & Order Code 2006, § 7.1-7)

Sec. 7.1-8. - Issue of president's warrant of arrest; recitals of fact.

If the president decides that the demand should be complied with, he shall sign a warrant of arrest which shall be directed to any peace officer or other person whom he may deem fit to entrust with the execution thereof. The warrant must substantially set forth the facts necessary to the validity of its issuance.

(Law & Order Code 2006, § 7.1-8)

Sec. 7.1-9. - Manner and place of execution of warrant.

Such warrant shall authorize the peace officer or other person to whom directed, to arrest the accused at any time and any place where he may be found within the tribal jurisdiction, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provision of this chapter to the duly authorized agent of the demanding state or tribe.

(Law & Order Code 2006, § 7.1-9)

Sec. 7.1-10. - Authority of arresting officer.

Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

(Law & Order Code 2006, § 7.1-10)

Sec. 7.1-11. - Rights of accused person; application for writ of habeas corpus.

No person arrested upon such warrant shall be delivered over to a duly designated agent of the demanding executive authority unless he shall first be taken forthwith before a Tribal Court judge in this jurisdiction, who shall inform him of the demand made for his surrender. He must also be advised of the crime of which he is charged, and his right to demand and procure legal counsel. If the prisoner or his counsel desire to test the legality of his arrest, the judge of such court shall fix a reasonable time for him to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of time and place of hearing thereon shall be given to the prosecuting officer and to the said agent of the demanding state or tribe. At the hearing the judge may inquire into whether the accused can receive a fair trial in the demanding jurisdiction. If the judge determines that the accused probably cannot receive a fair trial in the demanding jurisdiction, then he shall release the accused from custody forthwith or hold a hearing early to determine if a fair trial can be had.

(Law & Order Code 2006, § 7.1-11)

Sec. 7.1-12. - Penalty for noncompliance with preceding section.

Any officer who shall wrongfully deliver to the agent of the demanding state or tribe a person in his custody in willful disobedience of this chapter shall be guilty of an offense and, upon conviction, shall be fined not more than five hundred dollars (\$500.00) or be imprisoned not more than six (6) months, or both.

(Law & Order Code 2006, § 7.1-12)

Sec. 7.1-13. - Confinement in jail when necessary.

- A. The officer executing the president's warrant of arrest or the agent of the demanding jurisdiction to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the Nation jail or any other existing facility for detention of Nation prisoners; and the keeper of such jail must receive and safely keep the prisoner until the officer having charge of him proceeds on his route, such officer or agent being chargeable with the expense of keeping.
- B. The officer or agent of a demanding jurisdiction to whom a prisoner may have been delivered, following extradition proceedings in another state or another Indian tribe, or who may have jurisdiction over a prisoner, and who is merely passing through this jurisdiction with the prisoner for the purpose of immediately returning him to the demanding jurisdiction, may, when necessary, confine the prisoner in the Nation jail or other detention facility. The keeper of such jail must receive

and safely keep the prisoner until the officer or agent having charge of him proceeds on his route. The officer or agent is responsible for the expense of keeping his prisoner; however, such officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding jurisdiction with legal authority. Such prisoner shall not be entitled to demand a new requisition while in this Tribal Jurisdiction.

(Law & Order Code 2006, § 7.1-13)

Sec. 7.1-14. - Arrest prior to requisition.

Whenever any person within this Nation is charged by the oath of a credible person given before a judge of this Nation, with having committed a crime in any state or in another tribe and, except in cases arising under section 7.1-6, with having fled from justice, or with having been convicted of a crime in that jurisdiction and having escaped from confinement, or having broken the terms of his bail, probation or parole; or whenever a complaint is made before a Nation judge in this Nation on the affidavit of a credible person in another jurisdiction stating that a crime has been committed in that jurisdiction and that the accused has been charged with having committed that crime and, except in cases arising under section 7.1-6, has fled from justice, or that the accused has been convicted of a crime and has escaped from confinement, or that the accused has broken the terms of his bail, probation or parole, and is believed to be in this jurisdiction; such Tribal Court judge shall issue a warrant directed to any peace officer commanding him to apprehend the named person in this jurisdiction and to bring him before the Tribal Court to answer the foregoing charges. A certified copy of the sworn charge of complaint and affidavit shall be attached to the warrant.

(Law & Order Code 2006, § 7.1-14)

Sec. 7.1-15. - Arrest without a warrant.

The arrest of a person may be lawfully made by any peace officer without a warrant, upon reasonable information that the accused stands charged in the courts of a state or other tribe with a crime punishable by death or imprisonment for a term exceeding one (1) year. When arrested, the accused must be taken before a Nation judge with all practicable speed and a complaint must be made against him under oath setting forth the grounds for the arrest as if he had been arrested as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on warrant.

(Law & Order Code 2006, § 7.1-15)

Sec. 7.1-16. - Commitment to await requisition; bail.

If from the examination before the Nation judge it appears that the person held is the same person who is charged with having committed the alleged crime and, except in cases arising under section 7.1-6, that he has fled from justice, the judge must, by a warrant reciting the accusation, commit him to the Nation jail for a period of time not to exceed thirty (30) days in order to enable the arrest of the accused to be made by the proper requisition procedures of the state or tribe having jurisdiction of the offense, subject to bail as provided in the next section, or until his legal discharge.

(Law & Order Code 2006, § 7.1-16)

Sec. 7.1-17. - Bail; in what cases; conditions of bond.

Unless the offense with which the prisoner is charged is punishable by death or life imprisonment under the laws of the state or tribe in which it was committed, a Tribal Court judge in this Nation may

grant the person arrested bail, in such sum as he deems proper, conditioned for the prisoner's appearance at a time specified in such bond, and for his surrender, for arrest upon the warrant of the president of this Nation.

(Law & Order Code 2006, § 7.1-17)

Sec. 7.1-18. - Extension of time of commitment; adjournment.

If the accused has not been arrested under a warrant of the president by the expiration date as specified by the Nation judge in accordance with section 7.1-15, such judge may discharge the prisoner, recommit him for a period not to exceed sixty (60) days, or grant bail for this recommitment period as provided in section 7.1-16.

(Law & Order Code 2006, § 7.1-18)

Sec. 7.1-19. - Forfeiture of bail.

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the tribal judge by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he is within the Tribal Jurisdiction. Recovery may be had on such bond in the name of the Nation as in the case of other bonds given by the accused in criminal proceedings.

(Law & Order Code 2006, § 7.1-19)

Sec. 7.1-20. - Persons under criminal prosecution in this Nation at time of requisition.

If a criminal prosecution has been instituted against such person under the laws of this Nation and is still pending, the chief executive officer, at his discretion, may either surrender him on demand of the executive authority of a state or other Indian tribe, or hold him until he has been tried and discharged or convicted and punished by this Nation.

(Law & Order Code 2006, § 7.1-20)

Sec. 7.1-21. - Guilt or innocence of accused; when inquired into.

Neither the president nor the Tribal Court may inquire into the guilt or innocence of the accused, in any proceeding after the demand for extradition, except to identify the accused as the person who is charged with the crime and to ascertain if reasonable cause exists for such extradition.

(Law & Order Code 2006, § 7.1-21)

Sec. 7.1-22. - President may recall warrant or issue alias.

The president may recall his warrant of arrest or may issue another warrant whenever he deems proper.

(Law & Order Code 2006, § 7.1-22)

Sec. 7.1-23. - Fugitives from this Nation; duty of president.

Whenever the president of this Nation shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this Nation, from the executive authority of any state or other tribe, or from the chief justice or as associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of this Nation.

(Law & Order Code 2006, § 7.1-23)

Sec. 7.1-24. - Application for issuance of requisition; by whom made; contents.

- A. When a return to this Nation of a person charged with crime in this jurisdiction is required, the prosecuting officer shall present to the president his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the jurisdiction in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said prosecuting officer, the ends of justice require the arrest and return of the accused to this Nation for trial and that the proceeding is not instituted to enforce a private claim.
- B. When the return to this Nation is required of a person who has been convicted of a crime in this Nation and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting officer shall present to the governor a written application for a requisition for the return of such person, setting forth the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the jurisdiction in which he is believed to be, including the location of the person therein at the time application is made.
- C. The application shall be verified by affidavit, executed in duplicate and accompanied by two (2) certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the Tribal Court judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer may also attach such further affidavits and documents in duplicate as he shall deem proper to be submitted with such application. One (1) copy of the application, with the action of the president endorsement thereon, and one (1) of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Nation secretary, to remain on record in that office. The other copies of all papers shall be forwarded with the president's requisition.

(Law & Order Code 2006, § 7.1-24)

Sec. 7.1-25. - Costs and expenses.

In all cases where the punishment of the crime includes confinement, the expenses shall be paid out of the Nation's treasury on the certification of the president. The expenses shall be the fees paid to the officers of the tribe or state on whose executive authority the requisition is made, and not exceeding the mileage fee then in effect by council policy for all necessary travel in returning such prisoner.

(Law & Order Code 2006, § 7.1-25)

Sec. 7.1-26. - Immunity from service of process in certain civil actions.

A person returned to this Nation by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he has been returned, until he has been convicted in the criminal proceedings, or,

if acquitted, until he has had reasonable opportunity to return to the state or tribe from which he was extradited.

(Law & Order Code 2006, § 7.1-26)

Sec. 7.1-27. - Written waiver of extradition proceedings.

- A. Any person arrested in this Nation who is charged with having committed any crime in a state or other tribe or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 7.1-7 and 7.1-8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a Tribal Court judge within this Nation a writing which states that he consents to return to the demanding jurisdiction; however, before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of all his rights including the right to the issuance or service of a warrant of extradition and his right to obtain a writ of habeas corpus as provided in section 7.1-11.
- B. If and when such consent has been duly executed it shall forthwith be forwarded to the office of the president of this Nation and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state or tribe and shall deliver or cause to be delivered to such agent or agents a copy of such consent; however, nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding jurisdiction, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding jurisdiction or of this Nation.

(Law & Order Code 2006, § 7.1-27)

Sec. 7.1-28. - Nonwaiver by the Fort McDowell Yavapai Nation.

Nothing in this chapter shall be deemed to constitute a waiver by the Fort McDowell Yavapai Nation of its sovereignty or rights, powers or privileges to try such demanded person for crime committed within this jurisdiction, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this jurisdiction. Nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this Nation of any of its sovereignty or rights, privileges or jurisdiction in any way whatsoever.

(Law & Order Code 2006, § 7.1-28)

Sec. 7.1-29. - No right of asylum; no immunity for other criminal prosecutions while in this jurisdiction.

After a person has been brought back to this Nation by or after waiver of extradition proceedings, he may be tried in this jurisdiction for other crimes which he may be charged with having committed here as well as those specified in the requisition for his extradition.

(Law & Order Code 2006, § 7.1-29)

Sec. 7.1-30. - Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the chapter which can be given

effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Law & Order Code 2006, § 7.1-30)

Secs. 7.2—7.4. - Reserved.

ARTICLE II. - CIVIL TRESPASS

Sec. 7.5-1. - Purpose.

It is the duty and obligation of the Fort McDowell Yavapai Nation Tribal Council to safeguard, protect, manage, administer and develop the natural resources of Nation lands for the sole economic, cultural, and social benefit of the members of the Nation. The peace, property, and public safety of all persons, both Indian and non-Indian, may be threatened by disruptive, destructive, negligent, or malicious acts. The Tribal Council possesses the inherent authority and constitutional obligation to protect the people, property, natural, historic and archeological resources, culture, land, water, riparian rights, livestock, and wildlife from any threat or conduct by any person which might diminish, denigrate, damage, injure, destroy or threaten Nation members, their natural resources, or the social, cultural, religious, political or economic well-being of the Nation in any manner. To regulate such threats or conduct, and to provide relief to the Nation and its individual members for damages which result therefrom, it is necessary that the provisions of this chapter be enacted to carry out and implement the purpose expressed in this section and to provide for remedies in the nature of civil sanctions and the seizure and forfeiture of property.

(Law & Order Code 2006, § 7.5-1)

Sec. 7.5-2. - Civil trespass.

A person commits civil trespass if he or she, not being an enrolled member of the Fort McDowell Yavapai Nation or an employee, agent or representative of the Nation acting within the scope of employment, enters the Nation's lands or any land to which a life estate, an estate for years, or other possessory interest has been assigned to any person by the Tribal Council or any authorized subordinate entity of the Tribal Council without the lawful consent or permission of the Nation or the person who has been granted possessory interest in the land, and engages in any action or conduct which is or may be detrimental to the interests of the Nation or its members as described in Sec. 7.5-1 of this article, including but not limited to:

- a. Cuts down, destroys or injures any wood, timber, plant, vegetation, or crops standing upon such land, or carries away or attempts to carry away any wood, timber, plant, crop or other vegetation from such land;
- b. Discharges a firearm or releases an arrow from a bow or crossbow for the purpose of engaging in target practice or practice shooting;
- c. Engages in any act or attempted act of hunting, trapping or fishing,
- d. Digs, takes or carries away, or attempts to dig, take or carry away from The Nation's lands or the land assigned to another as provided above, earth, soil, stone, minerals, attachments, water, or any other natural resource, including objects of historical or archeological interest or significance,
- e. Erects, puts up, fastens, prints, or paints upon the Nation's land or the land assigned to another as provided above, any notice, advertisement, sign, or other writing, drawing or printed material designed to communicate to the general public,
- f. Dumps, deposits, places, throws or leaves rubbish, refuse, trash, debris, filthy or odoriferous objects, substances or other objects upon a highway, road, or any land,

- g. Opens, leaves down, damages or destroys a fence enclosing The Nation's lands or the land assigned to an individual as provided above, or opens a gate, bar, or fence and leaves it open;
- h. Damages, destroys, or otherwise injures land, livestock, poultry, buildings, vegetation, crops, equipment or any property belonging to any person or the Nation;
- i. Permits or allows livestock or any domesticated animal to enter upon or remain upon the land, whether or not such person directly or knowingly allowed such livestock or domesticated animal to enter or remain upon such land;
- j. Parks, drives, or allows to be parked or driven any motorized vehicle, including but not limited to all-terrain or any other vehicle designed for off-road recreational use;
- k. Refuses to leave land to which he has no reasonable claim or right of possession when requested to do so by any law enforcement officer authorized to enforce the provisions of this Code, or any person who has an assigned possessory interest in such land as provided above, or his designate; or,
- l. Any act which does or otherwise would constitute an offense contained in Chapter 6 of this Code or is prohibited by the Nation's Gaming Ordinance and Code, provided that the standard of proof necessary for the Court to find the act unlawful under this chapter shall be proof by a preponderance of the evidence, as in other civil cases.
- m. Conducts or attempts to conduct any business, commercial, or third-party activities in violation of the laws, ordinances or resolutions of the Nation, including but not limited to conduct described by Section 15-2(F) or Section 2-1 of this Code without authority granted by the President or the Tribal Council, or in violation of applicable state or federal laws.
- n. Blocks ingress or egress from any public street into or from any structure or right-of-way.

(Law & Order Code 2006, § 7.5-2; Ft. McD. Res. No. 2008-79, ex. B, adopted 12-16-2008)

Sec. 7.5-3. - Civil penalties.

Any person who has been found by the court to have committed any act of civil trespass within the Fort McDowell Yavapai Nation shall be liable for:

- A. A civil penalty equal to any actual damages resulting from such act to be paid through the clerk of the court for the benefit of the Nation or individual who suffered such damages; and,
- B. A mandatory penalty payable to the Fort McDowell Yavapai Nation Tribal Council through its Tribal Business Manager for deposit to the Nation's General Fund for the benefit of the Nation of not less than fifty dollars (\$50.00) nor more than ten thousand dollars (\$10,000.00) for each act of civil trespass; and,
- C. Punitive damages to be paid through the clerk of the court for the benefit of the Nation or the individual who suffered damages as deemed appropriate: by the court for each act of civil trespass found to be intentional or willful, provided such punitive damages shall not exceed three (3) times the amount of actual damages determined pursuant to subsection A of this section.

(Law & Order Code 2006, § 7.5-3)

Sec. 7.5-4. - Forfeiture authorized.

- A. Any property used or which could reasonably have been used to commit any act of civil trespass, or used in aid of or in conjunction with the commission of an act of civil trespass, or any thing (including but not limited to, wild game and non-game animals, domestic animals, any vegetation or crop, green or dry wood or timber, or any rock or mineral) which was the object of or was intended to be

the end result obtained from the commission of an act of civil trespass upon any land within the Fort McDowell Yavapai Nation shall be subject to forfeiture as provided in this chapter. All forfeiture actions shall be considered *in rem*, against the property only and not against any person. No person shall be subject to civil penalties as provided in Sec. 7.5-3 merely because of an ownership interest or secured interest in any property subject to forfeiture.

- B. Any game or non-game animal or domestic animal subject to seizure as authorized in subsection A of this section, if injured or dead, shall be destroyed by the Tribal Ranger by any means which will render the hide and flesh of the animal unusable and which will not allow the carcass to constitute a health hazard, as soon as practicable, but in no case more than twenty-four (24) hours after seizure, provided that the seizing law enforcement officer or the Tribal Ranger shall first photograph (by color print still photography or by videotape) the animal at the place where it was seized so as to preserve the scene where the animal was located and serve as evidence in any tribal court action under this Code which may result from the death or injury of such animal.

(Law & Order Code 2006, § 7.5-4)

Sec. 7.5-5. - Jurisdiction.

The court shall have jurisdiction to hear all actions properly brought under Article I of this chapter against any person

(Law & Order Code 2006, § 7.5-5)

Sec. 7.5-6. - Civil trespass actions.

- A. An action for civil trespass or forfeiture pursuant to Article I of this chapter shall be commenced by the Tribal Prosecutor or such other person as the Tribal Council may designate; who shall file a complaint on behalf of the Fort McDowell Yavapai Nation. An action may be filed on behalf of any person having an interest in land or property located within the reservation if it is in the best interests of the Nation.
- B. Notice of the action shall be given:
 - (1) As provided for in Sec. 5-13 as in other civil actions; or,
 - (2) By any law enforcement officer authorized to enforce the laws and ordinances of the Fort McDowell Yavapai Nation, who may issue a civil summons prior to the filing of a complaint alleging civil trespass if such officer has reason to believe that civil trespass has been committed and the person alleged to have committed civil trespass, and to whom such civil summons is issued, is likely to remove himself from the reservation in order to avoid service or for any other reason. A civil summons issued by a law enforcement officer shall specify the date, time and place for a hearing on the action, as well as an allegation specifying the violation.
- C. If a civil summons is issued by a law enforcement officer prior to the filing of a complaint pursuant to subsection B of this section, a complaint must be filed within seven (7) calendar days of the date of issuance unless the seventh day is a Saturday, Sunday or judicial holiday, and then the complaint must be filed by the end of the next judicial day, or the civil summons shall be considered void.
- D. No defendant in an action alleging civil trespass shall be required to answer questions during discovery or at trial (except on cross-examination if the defendant testifies on his own behalf), the answers to which may be inculpatory regarding the alleged act of civil trespass.
- E. In any action for civil trespass, the Nation shall have the burden of showing by a preponderance of the evidence that a civil trespass has occurred and that the defendant committed the act of civil trespass. The Nation shall not be required to prove specific intent except in cases where punitive damages for intentional conduct are sought.

(Law & Order Code 2006, § 7.5-6)

Sec. 7.5-7. - Remedies.

After a hearing pursuant to the provisions for civil procedure contained in Chapter 5 of this Code, and Upon a finding by the court that civil trespass has occurred and that the defendant did commit the act of civil trespass, the court may issue such order as will provide an appropriate remedy, including but not limited to:

- A. Civil money penalties pursuant to Sec. 7.5-3;
- B. Forfeiture proceedings in accordance with Sec. 7.5-9 and 7.5-10;
- C. A cease and desist order or other temporary or permanent injunction; and
- D. An order directing the owner of the property in violation to remove or modify the property or take such other action as to remedy the violation.

(Law & Order Code 2006, § 7.5-7)

Sec. 7.5-8. - Removal of trespassers.

Any person observed or reasonably suspected of unlawfully hunting, fishing, hiking, trapping, camping, cutting or collecting wood, peddling or doing any unauthorized commercial business or third-party activities on any land within the exterior boundaries of the Nation, including but not limited to conduct described by Section 15-2(F) or Section 2-1 of this Code or otherwise engaging in any activity or conduct proscribed by the provisions of this article, may be forcibly removed and ejected from the reservation by a law enforcement officer.

(Law & Order Code 2006, § 7.5-8; Ft. McD. Res. No. 2008-79, ex. C, adopted 12-16-2008)

Sec. 7.5-9. - Seizure and forfeiture of property.

- A. Any property alleged in a properly filed complaint to be subject to forfeiture pursuant to Sec. 7.5-4 of this chapter may be seized by an authorized law enforcement officer upon order of the court pending disposition of the complaint.
- B. In the courts' discretion after a hearing as provided in subsection D of this section, any property seized under this chapter may be released to a lawful owner or claimant upon the posting of a cash bond equal to no less than the value of the property nor more than two (2) times the value of the property. The bond posted shall be available to be levied against if the owner does not return the property to the court upon order, or if the court determines that the property should be forfeited. If the court determines that the property should not be forfeited, any bond posted shall be returned to the party posting it.
- C. Any law enforcement officer authorized to enforce the laws of the Nation may, without notice or court order, seize, confiscate and impound any firearm or other weapon, vehicle, or any other property subject to forfeiture under this chapter if:
 - (1) The property seized presents a danger to persons, property, or wildlife within the reservation; or,
 - (2) The property is subject to being removed from the reservation; or,
 - (3) In the case of a firearm, there has been no tribal permit issued authorizing the possession of such firearm on the reservation.

- D. Any party claiming an interest in any property seized without notice or court order may request a court hearing regarding the disposition of such property.

(Law & Order Code 2006, § 7.5-9)

Sec. 7.5-10. - Forfeiture proceedings.

- A. Upon a finding that civil trespass has occurred, the court may authorize forfeiture proceedings as set forth in this section.
- B. If found to be necessary, the court may issue a writ of attachment, sequestration, injunction, or other appropriate writ in aid of, or necessary to, the action.
- C. Property subject to forfeiture and not otherwise released to an owner or claimant shall be held for a period of sixty (60) days following a finding of civil trespass, during which period adequate notice in the manner and form prescribed by the court, whether by personal service, regular, certified or registered mail, publication, or otherwise, shall be given to all parties which the court, after reasonable inquiry, has determined to have an interest in the property and pending forfeiture.
- D. During the sixty (60) day period that the property is held, any party claiming an interest in the property may file with the court a claim for the recovery of the property. The court, after a hearing for which the Nation and all known interested parties have been given notice, shall order the property restored or transferred to the claimant if such claimant proves by a preponderance of the evidence that:
 - (a) (1) The claimant is a lawful owner of, has a valid, recorded security interest in, or has an ownership interest by operation of law in the property; or,
 - (2) The possession, use or other act of the claimant is or was lawful;
 - (b) The possession, use, or other act upon which forfeiture is sought was without the knowledge and consent of the claimant; and,
- C) The property will not be used to commit future acts of civil trespass on the reservation.
- E. If no claimant provides the proof required in subsection D of this section, the court shall declare the property forfeited to the Fort McDowell Yavapai Nation. If the property forfeited is money, currency or other legal tender, the court shall order it released to the Fort McDowell Tribal Business Manager for deposit in the general fund of the Nation; otherwise, the court shall order the property:
 - (1) Destroyed by the law enforcement agency of the Nation; or,
 - (2) Sold at public auction with any expenses of keeping and selling such property, and the amount of all valid liens established by a claim filed with the court by a lienholder or other secured party, paid out of the proceeds of the sale, with any balance credited to the general fund of the Nation; or,
 - (3) Returned to the owner, lienholder or other secured party upon payment of expenses if the property is worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset; or,
 - (4) Retained for official Nation use with expenses for keeping and transferring such property to be paid by the Nation.

(Law & Order Code 2006, § 7.5-10)

Sec. 7.5-11. - Enforcement of civil penalties.

- A. Any civil penalty imposed as provided under Sec. 7.5-3 of this chapter shall be a judgment against the defendant subject to enforcement, satisfaction or execution by the Tribal Court, and is an

obligation of the defendant to the Fort McDowell Yavapai Nation Tribal Council. A civil penalty imposed shall be deemed a lien upon any personal or other property of the defendant located within the exterior boundaries of the Fort McDowell Yavapai Nation.

- B. When necessary, the Fort McDowell Yavapai Nation Tribal Council may bring suit or file an action for enforcement of a foreign judgment based on the tribal court judgment in any other court where the defendant or any property belonging to the defendant may be located without the exterior boundaries of the Fort McDowell Yavapai Nation as provided by the laws of such other jurisdiction.

(Law & Order Code 2006, § 7.5-11)

Sec. 7.5-12. - Advocate fees.

The provisions of Section 5-24(f) of this Code notwithstanding, no party shall recover advocate fees or other court costs in any action for civil trespass or forfeiture under this chapter except as may be provided in another jurisdiction for enforcement of a judgment as provided in Section 7.5-11(B) of this chapter.

(Law & Order Code 2006, § 7.5-12)

Sec. 7.5-13. - Time limitation.

An action for civil trespass where any property or thing was not seized must be filed with the court within six (6) months of the date the trespass occurred, was discovered, or reasonably should have been discovered. Any action not filed within such time is barred and the court does not have jurisdiction to hear the action.

(Law & Order Code 2006, § 7.5-13)

Sec. 7.5-14. - Authorized law enforcement officers.

The term "law enforcement officer" as used in this Article shall include all persons employed with the United States Department of Interior, Bureau of Indian Affairs, Branch of Law Enforcement Services; Fort McDowell Tribal Police Department; Fort McDowell Tribal Ranger; and such other persons as the Council may authorize by resolution.

(Law & Order Code 2006, § 7.5-14)

ARTICLE III. - TAMPERING WITH A WITNESS OR A JUROR

Sec. 7.6-1. - Tampering with a witness; civil penalty.

- A. A person is civilly liable for Tampering with a Witness if the Court finds, by a preponderance of the evidence, that such person directly or indirectly, knowingly threatens or induces a witness in any official proceeding or a person he or she believes may be called as a witness to:
1. Unlawfully withhold any testimony or evidence;
 2. Testify falsely;
 3. Avoid legal process summoning him or her to testify or supply evidence; or
 4. Absent himself or herself from any official proceeding to which he or she has been legally summoned.

- B. A person found liable for Tampering with a Witness is subject to a fine of not greater than five thousand dollars (\$5,000.00).

(Ft. McD. Res. No. 2012-6, ex. A(§ 7.6-1), effective 1-31-2012)

Sec. 7.6-2. - Tampering with a juror; civil penalty.

- A. A person is civilly liable for Tampering with a Juror if the Court finds, by a preponderance of the evidence, that such individual, directly or indirectly, with the intent to influence a juror's vote, opinion, decision or action as a juror, knowingly.
1. Offers, confers or agrees to confer anything of value upon a juror;
 2. Uses or attempts to use threats, force, violence or intimidation upon a juror; or
 3. Communicates or attempts to communicate with a juror other than as part of the proceedings in the trial of the case.
- C. A person found liable for Tampering with a Juror is subject to a fine of not greater than five thousand dollars (\$5,000.00).

(Ft. McD. Res. No. 2012-6, ex. A(§ 7.6-2), effective 1-31-2012)

Chapter 8 - DOMESTIC VIOLENCE, ORDERS OF PROTECTION, AND HARASSMENT ORDERS

ARTICLE I. - DOMESTIC VIOLENCE

Sec. 8-1. - Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice; report; diversion; notice.

- A. Domestic violence means any act that is an offense defined in sections 6-16, 6-23, 6-35, 6-36, 6-37, 6-38, 6-40, 6-41, 6-42, 6-56, 6-57, 6-58, 6-60, 6-61, 6-70, 6-71, 6-75, 6-90, 6-92, 6-122, if any of the following applies:
1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing in the same household.
 2. The victim and the defendant have a child in common.
 3. The victim or the defendant is pregnant by the other party.
 4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother, or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
 5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides in the same household as the defendant.
 6. The victim and the defendant are in a dating relationship.
- B. A peace officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense whether the offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable

cause to believe that the person to be arrested has committed the offense, whether the offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified is not deemed to be an act of domestic violence. The release procedures available under section 5-33.c do not apply to arrests made pursuant to this subsection.

- C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.
- D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two (72) hours by the law enforcement agency that seized the firearm.
- E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.
- F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice in tribal court of intent to retain the firearm. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six (6) months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten (10) days after receiving the owner or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.
- G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections B, C, D, E and F of this section.
- H. Each complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.
- I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the rules of criminal procedure. Any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions that the court deems appropriate.
- J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:
 - 1. An order of protection pursuant to section (Order of Protection Law) and an injunction against harassment pursuant to section (Harassment Injunction Law).
 - 2. The emergency telephone number for the local police agency.
 - 3. Telephone numbers for emergency services in the community.

- K. A peace officer is not civilly liable for noncompliance with subsection J of this section.
- L. If the defendant is found guilty of an offense included in this domestic violence article and if probation is otherwise available for that offense, the court shall place the defendant on probation or supervised probation, as provided. The terms and conditions of probation or supervised probation shall include those necessary to provide for the protection of the alleged victim and other specifically designated persons and additional conditions and requirements that the court deems appropriate, including imposition of a fine, incarceration of the defendant in a county jail, payment of restitution, completion of a domestic violence offender treatment program that is provided by the Nation or the probation department or any other counseling that does not involve domestic violence and that are available to the defendant. On violation of a term or condition of probation, the court shall proceed as otherwise provided for revocation of probation. On fulfillment of the terms and conditions of probation, the court shall discharge the defendant. This subsection does not apply in any case in which the defendant has previously been found guilty under this section, or in which charges under this section have previously been dismissed in accordance with this subsection.
 - (1) First Offense. Upon guilty plea or conviction, the defendant shall be ordered to participate in an appropriate domestic violence program involving the following requirements:
 - a. The defendant shall contact Wassaja Family Services (W.F.S.) within ten (10) workdays to schedule an initial evaluation.
 - b. The treatment plan shall be completed by W.F.S. and returned to the court no later than ten (10) calendar days after the initial evaluation session unless the Court extends that time period.
 - c. In the discretion of the Court, the defendant's participation in treatment sessions based on the domestic violence program's treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending a completion of the treatment ordered by the Court.
 - d. The domestic violence program or other service provided shall submit progress reports to the Court at least every six (6) calendar weeks.
 - e. Willful failure or refusal to comply with a Court order requiring a defendant to attend and cooperate in evaluation and/or to undergo treatment as described in a treatment plan shall constitute contempt of court punishable as provided in 6-22 of the criminal code.

(Law & Order Code 2006, § 8-1)

ARTICLE II. - ORDERS OF PROTECTION

Sec. 8-2. - Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction.

- A. A person may file a verified petition, as in civil actions, with a judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff and minor is a specifically designated person for the purposes of subsection G of this section. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. For the purposes of this section, notwithstanding the location of the plaintiff or defendant, any court may enforce an order of protection.
- B. An order of protection shall not be granted:
 - 1) Unless the party who requests the order files a written verified petition for an order.

2) Against more than one (1) defendant.

(i) The petition shall state the:

1. Name of the plaintiff. The plaintiff's address shall be disclosed to the court for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an order of protection, the protected address shall be maintained in a separate document or automated data base and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.
2. Name and address, if known, of the defendant.
3. Specific statement, including dates, of the domestic violence alleged.
4. Relationship between the parties pursuant to Section 8-1, subsection A and whether there is pending between the parties an action for annulment, legal separation or dissolution of marriage.
5. Name of court in which any prior or pending proceeding or order was sought or issued concerning the conduct, which is sought to be restrained.
6. Desired relief.

(ii) Filing fees under this section will be waived. The court shall make reasonable efforts to provide to both parties an appropriate information sheet on emergency and counseling services that are available in the local area.

(iii) The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the order requested should be issued without further hearing. The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following:

1. The defendant may commit an act of domestic violence.
2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

(iv) For purposes of determining the period of time under subsection E, paragraph 2 of this section, any time that the defendant has been incarcerated or out of this state shall not be counted. If the court denies the requested relief, it may schedule a further hearing within ten (10) days, with reasonable notice to the defendant.

(v) If the court issues an order of protection, the court may do any of the following:

1. Enjoin the defendant from committing a violation of one (1) or more of the offenses included in domestic violence.
2. Grant one (1) party the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result. If a law enforcement officer accompanies the other party, the other party may return to the residence on one (1) occasion to retrieve belongings. A law enforcement officer is not liable for any act or omission in the good faith exercise of the officer's duties under this paragraph.
3. Restrain the defendant from contacting the plaintiff or other specifically designated person and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.
4. If the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons, prohibit the defendant from

possessing or purchasing a firearm for the duration of the order. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four (24) hours after service of the order.

5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate and that notice to the defendant informed him that he/she may be ordered to complete a domestic violence offender treatment program, require the defendant to complete a domestic violence offender treatment program that is provided by Family Community Services or a probation department or any other program deemed appropriate by the court.
 6. Grant relief that is necessary for the protection of the alleged victim and other specifically designated persons and that is proper under the circumstances.
- (vi) Orders may only restrain the defendant's action. If opposing parties separately file verified petitions for an order of protection, the courts after consultation between the judges involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross orders of protection.
- (vii) At any time during the period during which the order is in effect, a party under an order of protection or restrained from contacting the other party is entitled to one hearing on written request. A hearing requested by a party under an order of protection or restrained from contacting the other party shall be held within ten (10) days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five (5) days from the date requested. The hearing shall be held at the earliest possible time. An ex parte order issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the order.
- (viii) The order shall include the following statement:

Warning

This is an official court order. If you disobey this order, you may be arrested and prosecuted, fined, and/or permanently removed from the reservation for the crime of Disobedience to Lawful Orders of Court and any other crime you may have committed in disobeying this order.

- (ix) A copy of the petition and the order shall be served on the defendant within one (1) year from the date the order is signed. An order of protection that is not served on the defendant within one (1) year expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires one (1) year after service on the defendant. A modified order is effective upon service and expires one (1) year after service of the initial order and petition.
- (x) Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the court. This filing shall be completed in person, shall be made by fax or shall be postmarked. If sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four (24) hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court shall register a copy of the order of protection and a copy of the affidavit of service of process or acceptance of service with the police department. Registration of an order means that the police department has received a copy of the order of protection and a copy of the affidavit or acceptance of service. The police department shall maintain a

central repository for orders of protection so that the existence and validity of the orders can be easily verified. Any changes or modifications of the order are effective upon entry of an order of the court and shall be registered with the police department within twenty-four (24) hours of the entry of the order, excluding weekends and holidays.

- (xi) A peace officer may, with or without a warrant, arrest a person if the peace officer has probable cause to believe that the person has violated section 6-23 by disobeying or resisting an order issued in any jurisdiction in this state pursuant to this section, whether or not such violation occurred in the presence of the officer. Criminal violations of an order issued pursuant to this section shall be referred to the police department. The police department shall request that the prosecutor file the appropriate charges. A violation of an order of protection shall not be adjudicated by the court unless a complaint has been filed or other legal process has been requested by the prosecutor's office. The provisions for release under section 5-33.c do not apply to an arrest made pursuant to this section.
- (xii) A person arrested pursuant to subsection M of this section may be released from custody in accordance with the rules of criminal procedure. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions, which the court deems appropriate.
- (xiii) The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available.
- (xiv) A peace officer making an arrest pursuant to this section or Section 8-1(A) is not civilly or criminally liable for such arrest if the officer acts upon probable cause and without malice.
- (xv) In addition to persons authorized to serve process pursuant to rules of Tribal civil procedure, a peace officer or a correctional officer who is acting in the officer's official capacity may serve an order of protection issued pursuant to this section. Service of the order of protection has priority over other service of process that does not involve an immediate threat to the safety of a person.
- (xvi) A valid protection order that is related to domestic or family violence and that is issued by a tribal court, a court of a United States territory or a state court shall be accorded full faith and credit and shall be enforced as if it were issued in this Nation for as long as the order is effective in the issuing jurisdiction. For the purposes of this subsection:
 - 1. A protection order includes any injunction or other order that is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with or physical proximity to another person. A protection order includes temporary and final orders other than support or child custody order that are issued by civil and criminal courts if the order is obtained by the filing of an independent action or is a pendente lite order in another proceeding. The civil order shall be issued in response to a complaint, petition or motion that was filed by or on behalf of a person seeking protection.
 - 2. A protection order is valid if the issuing court had jurisdiction over the parties and the matter under the laws of the issuing tribal court, a United States territory or a state court and the person against whom the order was issued had reasonable notice and an opportunity to be heard. If the order is issued ex parte, the notice and opportunity to be heard shall be provided within the time required by the laws of the issuing state, a United States territory or an Indian tribe and within a reasonable time after the order was issued.
 - 3. A mutual protection order that is issued against both the party who filed a petition or a complaint or otherwise filed a written pleading for protection against abuse and the person against whom the filing was made is not entitled to full faith and credit if either:
 - a. The person against whom an initial order was sought has not filed a cross or counter petition or other written pleading seeking a protection order.

- b. The issuing court failed to make specific findings supporting the entitlement of both parties to be granted a protection order.
- 4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another tribe, a United States territory or a state court if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

(Law & Order Code 2006, § 8-2)

ARTICLE III. - HARASSMENT ORDERS

Sec. 8-3. - Injunction against harassment; petition; venue; fees; notices; enforcement; definition.

- A. A person may file a verified petition with the Fort McDowell Yavapai Nation Tribal Court for an injunction prohibiting harassment as outlined in Section 6-40(A)(a). If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff, and the minor is a specifically designated person for the purposes of subsection F of this section. If a person is either temporarily or permanently unable to request an injunction, a third party may request an injunction on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff.
- B. An injunction against harassment shall not be granted:
 - 1. Unless the party who requests the injunction files a written verified petition for injunction.
 - 2. Against a person who is less than twelve (12) years of age.
 - 3. Against more than one (1) defendant.
- C. The petition shall state all of the following:
 - 1. The name of the plaintiff. The plaintiff's address shall be disclosed to the court for purposes of service. If the address of the plaintiff is unknown to the defendant, the plaintiff may request that the address be protected. On the plaintiff's request, the address shall not be listed on the petition. Whether the court issues an injunction against harassment, the protected address shall be maintained in a separate document or automated database and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.
 - 2. The name and address, if known, of the defendant.
 - 3. A specific statement showing events and dates of the acts constituting the alleged harassment.
 - 4. The name of the court in which there was or is any prior or pending proceeding or order concerning the conduct which is sought to be restrained.
 - 5. The relief requested.
- D. A fee shall not be charged for filing a petition under this section.
- E. The court shall review the petition, any other pleadings filed and any evidence offered by the plaintiff to determine whether the injunction requested should be issued without a further hearing. If the court finds reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing of the petition or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and the court finds specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given, the court shall issue an injunction as provided for in subsection F of this section. If the court denies the

requested relief, it may schedule a further hearing within ten (10) days with reasonable notice to the defendant. For purposes of determining the one (1) year period, any time that the defendant has been incarcerated or out of this state shall not be counted.

- F. If the court issues injunction, the court may do any of the following:
1. Enjoin the defendant from committing a violation of one (1) or more acts of harassment.
 2. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons.
 3. Grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.
- G. The court shall not grant a mutual injunction against harassment. If opposing parties separately file verified petitions for an injunction against harassment, the courts after consultation between the judicial officers involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross injunctions against harassment.
- H. At any time during the period during which the injunction is in effect, the defendant is entitled to one (1) hearing on written request. No fee may be charged for requesting a hearing. A hearing requested by a defendant shall be held within ten (10) days from the date requested unless the court finds compelling reasons to continue the hearing. The hearing shall be held at the earliest possible time. An ex parte injunction issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the injunction.
- I. The injunction shall include the following statement:
- Warning
- This is an official court order. If you disobey this order, you may be arrested and prosecuted, fined, and/or permanently removed from the reservation for the crime of Disobedience to Lawful Orders of the Court, section 6-23, and any other crime you may have committed in disobeying this order.
- J. A copy of the petition and the injunction shall be served on the defendant within one (1) year from the date the injunction is signed. An injunction that is not served on the defendant within one (1) year expires. The injunction is effective on the defendant on service of a copy of the injunction and petition and expires one (1) year after service on the defendant. A modified injunction is effective upon service and expires one (1) year after service of the initial injunction and petition.
- K. Each affidavit, acceptance or return of service shall be promptly filed with the clerk of the issuing court. This filing shall be completed in person, shall be made by fax or shall be postmarked, if sent by mail, no later than the end of the seventh court business day after the date of service. If the filing is made by fax, the original affidavit, acceptance or return of service shall be promptly filed with the court. Within twenty-four (24) hours after the affidavit, acceptance or return of service has been filed, excluding weekends and holidays, the court shall forward to the police department a copy of the injunction and a copy of the affidavit or certificate of service of process or acceptance of service. On receiving these copies, the police department shall register the injunction. Registration of an injunction means that a copy of the injunction and a copy of the affidavit or certificate of service of process or acceptance of service have been received by the police department. The police shall maintain a central repository for injunctions so that the existence and validity of the injunctions can be easily verified. The effectiveness of an injunction does not depend on its registration, and for enforcement purposes pursuant to section 6-23, a copy of an injunction, whether or not registered, is presumed to be a valid existing order of the court for a period of one (1) year from the date of service of the injunction on the defendant. Any changes or modifications of the injunction are effective on entry by the court and shall be registered with the police within twenty-four (24) hours of the entry, excluding weekends and holidays.

- L. A peace officer may, with or without warrant, arrest a person if the peace officer has probable cause to believe that the person has violated section 6-23 by disobeying or resisting an injunction issued pursuant to this section, whether or not the violation occurred in the presence of the officer. The provisions for release under section 5-33.C do not apply to an arrest made pursuant to this subsection. A person arrested pursuant to this subsection may be released from custody in accordance with the court rules of criminal procedure. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions, which the court deems appropriate.
- M. If a peace officer responds to a call alleging that harassment has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:
 - 1. An injunction pursuant to this section.
 - 2. The emergency telephone number for the local police agency.
 - 3. Telephone number for emergency services in the community.
- N. The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The court may hear and decide all matters arising pursuant to this section. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any.
- O. A peace officer making an arrest pursuant to this section is not civilly or criminally liable for the arrest if the officer acts on probable cause and without malice. A peace officer is not civilly liable for noncompliance with subsection M of this section.
- P. This section does not apply to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation or for protective orders against domestic violence.
- Q. A peace officer or a correctional officer who is acting in the officer's capacity may serve an injunction against harassment that is issued pursuant to this section.
- R. In this section, "harassment" means a series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose.

[**HISTORICAL NOTE:** Sections 8-1 through 8-9 repealed by Resolution No. Ft. McD. 2005-72, effective July 1, 2005. New sections 8-1 through 8-3 added by Resolution No. Ft. McD. 2005-72, effective July 1, 2005.]

(Law & Order Code 2006, § 8-3; Ft. McD. Res. No. 2005-72, eff. 7-1-2005)

Chapter 9 - PROBATE

Sec. 9-1. - Determination of heirs; probate.

When any member of the community dies leaving property other than allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be an heir to the decedent may bring suit in the Fort McDowell Yavapai Tribal Court to have the court determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of the heirs shall be made unless all the possible heirs known to the court, to the superintendent and to the claimant, have been notified of the suit and given full opportunity to come before the court and defend their interests. Possible heirs who are not residents of this community under the jurisdiction of the court must be notified and a copy of the notice mailed to them must be preserved in the record of the case.

(Law & Order Code 2006, § 9-1)

Sec. 9-2. - Procedure of court.

In the determination of heirs, the court shall apply the laws of the State of Arizona. The court shall also be empowered to appoint a temporary custodian or administrator to supervise and protect the assets of the estate. The court may also issue permits to sell such property as may be necessary before determination and the division of the administrator for the fulfillment of his duties, and may also fix the fee, which is not to exceed in any case one (1) percent of the appraised value of the estate.

(Secs. 9.2.1 and 9.2.2 added by Resolution No. Ft. McD. 97-102, effective September 19, 1997 and then rescinded.)

(Law & Order Code 2006, § 9-2; Ft. McD. Res. No. 97-102, eff. 9-19-1997)

Sec. 9-3. - Approval of wills.

When any member of the Fort McDowell Yavapai Nation dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Fort McDowell Yavapai Tribal Court shall at the request of any member of the Fort McDowell Yavapai Nation named in the will or any other interested party determine the validity of the will after giving notice and full opportunity to appear in court to tell all persons who might be heirs of the decedent, as under section 9-1. A will shall be deemed valid if the decedent had a sane mind and understood what he was doing when he made the will and was not subject to any undue influence of any kind from any person; and if the will was made in writing and signed by the decedent in the presence of two (2) witnesses who also signed the will. If the court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs.

(Law & Order Code 2006, § 9-3)

Chapter 10 - DOMESTIC RELATIONS

ARTICLE I. - IN GENERAL

Sec. 10-1. - Determination of paternity and support.

The court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain the judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determination of inheritance by the court.

(Law & Order Code 2006, § 10-1)

Secs. 10-2—10-10. - Reserved.

ARTICLE II. - MARRIAGE, DIVORCE, ANNULMENT, SEPARATE MAINTENANCE

Sec. 10-11. - Marriages to be according to state law.

- A. Since section 1(m), Article V, amended constitution and bylaws of the Fort McDowell Yavapai Nation approved April 19, 1954, provided that all marriages in the future shall be in accordance with state laws, it is recognized that the powers of the community are limited by Article III, section 5(c) of the

amended constitution and bylaws of the Fort McDowell Yavapai Nation, but it further recognized that the limitation is for the best interests and welfare of the community in cases of future inheritance problems or possible future state benefits. State marriage licenses may be secured at the office of the clerk of each county court.

- B. All marriages and divorces of members of the Fort McDowell Yavapai Nation shall be recorded within thirty (30) days with the Pima Agency and Fort McDowell Yavapai Nation Tribal Court.

(Law & Order Code 2006, § 10-11)

Sec. 10-12. - Marriages validated.

All purported marriages of members of the Fort McDowell Yavapai Nation wherein such members have lived together within the Fort McDowell Yavapai Nation prior to December 27, 1957, date of approval of Ordinance No. 1, Revised (Law and Order Code), for the Yavapai Nation, and have been recognized as man and wife in their community are hereby validated for all purposes from the date of their inception.

(Law & Order Code 2006, § 10-12)

Sec. 10-13. - Procedure for judgment of validity.

- A. Any member of the Fort McDowell Yavapai Nation claiming that his or her marriage was validated by section 10-12 may file a petition in the Fort McDowell Yavapai Tribal Court for a judgment declaring that such marriage has been so validated. If the petitioner's spouse in such alleged marriage is known to the petitioner to be living, such spouse must also sign the petition, or be named as defendant and notified of the suit as provided in section 5-11 of this Code. If the petitioner's spouse in such alleged marriage is not known to the petitioner to be living, the petitioner must prove to the satisfaction of the court that such spouse is dead or has been absent for five (5) successive years until the date of hearing the petition without being known to the petitioner within that time to be living, or the petition shall be dismissed.
- B. If the petitioner, having complied with subsection A hereof, proves to the satisfaction of the court that he or she and his or her alleged spouse lived together within the Fort McDowell Yavapai Nation prior to December 27, 1957, date of approval of Ordinance No. 1, Revised (Law and Order Code), for the Fort McDowell Yavapai Nation, and were recognized as man and wife in their community, the court shall issue a judgment that such petitioner and spouse have been validly married. If feasible, the court shall also ascertain the date of inception of such marriage and the names of the children born thereof and shall recite such information in the judgment.
- C. Any judgment of validity of marriage issued by the Fort McDowell Yavapai Tribal Court in accordance with this section may be forwarded to the superintendent of the Pima Agency, who may then cause the marriage to be recorded in the tribal census rolls and a certificate of marriage to be issued to the petitioner.
- D. If a child whose parents are both deceased contends that such parents' marriage was validated by section 10-12, such child may file a petition in the Fort McDowell Yavapai Tribal Court for judgment that such marriage was so validated. If such petitioner proves to the satisfaction of the court that his parents are both deceased and that they lived together within the Fort McDowell Yavapai Nation prior to December 27, 1957, date of approval of Ordinance No. 1, Revised (Law and Order Code), for the Fort McDowell Yavapai Nation, and were recognized as man and wife in their community, the court may issue a judgment that such parents were validly married and that the petitioner is their legitimate offspring. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment. Such judgment may be forwarded to the superintendent for recording and issuance of a certificate of marriage.

(Law & Order Code 2006, § 10-13)

Sec. 10-14. - Bigamy.

- A. Any married person who shall marry another person without having obtained a divorce shall be deemed guilty of bigamy and upon conviction thereof shall be sentenced to imprisonment for a period not to exceed six (6) months.
- B. This section shall not apply to the remarriage of a person whose husband or wife shall have been continually absent from such person for a period of three (3) years or more, and shall not have been known by such person, to have been living within that time nor to any person whose former marriage shall have been declared void by any court having competent jurisdiction.

(Law & Order Code 2006, § 10-14)

Sec. 10-15. - Annulment of marriage.

The court may dissolve a marriage and may adjudge a marriage to be null and void when the cause alleged constitutes an impediment rendering the marriage void.

(Law & Order Code 2006, § 10-15)

Sec. 10-16. - Divorce or separate maintenance.

A. **SEPARATE MAINTENANCE.**

- 1. **GROUND.** The court may grant or issue a decree of separate maintenance when one spouse willfully deserts or abandons the other spouse or when facts exist which would be grounds for granting an absolute divorce. An action for separate maintenance may be brought by a spouse without the necessity of an action for absolute divorce. The action for separate maintenance or the judgment of separate maintenance shall not bar the plaintiff from maintaining an action for absolute divorce upon the same grounds.
 - 2. **PROCEEDINGS.** The proceedings shall be commenced and conducted as actions for divorce and the court may award such sums for alimony and child support to be paid by the husband or wife as the court shall adjudge the circumstances and situations of the parties warrant.
 - 3. **AMENDMENT OF JUDGMENT.** The court may at any time after entry of final judgment amend, alter or change the provisions of the judgment with respect to the sum to be paid, as the circumstances may require.
- B. **DIVORCE.** The court shall enter a decree of dissolution of marriage if it finds that the marriage is irretrievably broken.

(Law & Order Code 2006, § 10-16)

Sec. 10-17. - Procedure for annulment, divorce or separate maintenance.

- A. **FILING OF COMPLAINT.** The complaining party shall file with the court a verified complaint stating concisely his or her cause for action and thereupon the court shall issue a summons to run in the name of the Fort McDowell Yavapai Tribal Court to the defendant apprising him or her of the pendency of action. The summons shall concisely state the grounds upon which annulment, divorce, or separate maintenance is asked. The summons and complaint when issued shall be served as provided in Chapter 5 of this Code. The procedure for pretrial and trial of cases under this chapter shall be governed by Chapter 5 of this Code.

- B. **JUDGMENT.** The court shall thereupon make and enter findings of facts and conclusions of law, and issue a signed decree signed by the chief judge, after which the divorce or separate maintenance decree shall become final subject to the provisions of this Code.

(Law & Order Code 2006, § 10-17)

Sec. 10-18. - Legitimacy of children not affected by divorce.

A divorce shall not affect the legitimacy of the children.

(Law & Order Code 2006, § 10-18)

Sec. 10-19. - Permanent alimony, custody of children and costs.

In the final decree of divorce, the court may, in addition to the division of the common property of the parties, directed one spouse to pay the spouse awarded custody of the children of the parties as may be necessary for the support and maintenance of the custodial spouse and minor children of the parties. The custody of the children may be awarded to the wife or husband as may be necessary or proper, and the court may make such disposition of and expedient under all circumstances for their present comfort and future well-being. The court may assess the cost to either or both parties of the suit, and shall in the decree change the name of the wife back to a former name if especially asked for in the pleadings.

(Law & Order Code 2006, § 10-19)

Sec. 10-20. - Modification of judgment affecting alimony and support of minor children.

The court may, from time to time, after the entry of the final decree or on petition of either party, amend, revise and alter such portions of the decree as related to the payment of money for the support and maintenance of one spouse or the support of the minor children, as may be just; and amend, change or alter any provision therein respecting the care, custody or maintenance of the children of the parties as the circumstances of the parents and the welfare of the children may require.

(Law & Order Code 2006, § 10-20)

Sec. 10-21. - Establishment and modification of orders for child support.

- A. In any action for child support, parents shall have an affirmative duty to disclose all sources of gross income; natural or adopted children (custodial and non-custodial); financial obligations; marital status; all pending claims for child support including arrearage; Court or administrative actions seeking enforcement of child support orders; and current residential and domicile addresses. For purposes of this section, gross income includes income from any source. E.g. wages, salaries, per capita distributions (monthly, quarterly, and extraordinary bonuses). Persons requesting such action shall have an affirmative duty to provide, upon the Court's request, updated information to the Court of any changed circumstances since the date of filing and continuing through the date each child is not longer eligible to receive child support.
- B. The Court shall consider all sources of gross income along with reasonable expenses to determine an appropriate amount of child support to be ordered in equity and fairness for the best interest of all the parent's custodial and non-custodial children.
- C. Parental joint stipulation of a child support obligation shall not relieve the Court from engaging in the preceding analysis and documenting its findings, provided that the Court shall have discretion to

accept such stipulation if the amount of child support is within ten (10) percent of the child support determined by the Court pursuant to the subsection B.

- D. In any action to modify child support, a parent must demonstrate a substantial and continuing change of circumstances. For purposes of this subsection, suspension or forfeiture of per capita payments pursuant to Section VII(C) of the Nation's Revenue Allocation Plan shall not evidence a substantial and continuing change unless the parent(s) receiving per capita payments from the Nation can demonstrate to the Court by clear and convincing evidence that per capita payments are the sole source of income for the payment of child support.
- E. Whenever parents are domiciled or reside together in the same household or residence, there shall be a legal presumption that the time spent by the adopted or natural child(ren) (custodial or non-custodial) with each parent is essentially equal in so far as the expenses for the children are equally shared and gross income of the parents also are essentially equal, so no child support shall be ordered (new or modified) by the Court. Parent's may rebut the presumption that they are domiciled or reside together by a showing of preponderance evidence.

(*Sec. 10-21 Added by Resolution No. Ft. McD. 2004-52, effective April 27, 2004.*)

(Law & Order Code 2006, § 10-21; Ft. McD. Res. No. 2004-52, eff. 4-27-2004)

Secs. 10-22—10-30. - Reserved.

ARTICLE III. - ADOPTION

(NOTE:Refer to Art. III, Chapter 11-19, Termination of Parental Rights.)

Sec. 10-31. - Adoption of a minor.

Any minor child may be adopted by an adult person, in the cases and subject to the rules prescribed in this article.

(Law & Order Code 2006, § 10-31)

Sec. 10-32. - Age of person adopting.

The person adopting the child must be at least ten (10) years older than the child adopted.

(Law & Order Code 2006, § 10-32)

Sec. 10-33. - Consent of spouse.

A married person not lawfully separated from his spouse cannot adopt a child without the consent of the spouse, provided that the spouse not consenting is capable of giving such consent.

(Law & Order Code 2006, § 10-33)

Sec. 10-34. - Consent to adoption by natural parents and by child over twelve (12).

- A. **PARENTS/GUARDIAN.** No adoption shall be granted unless consent to adopt has been obtained and filed with the court from the following:

1. From both natural parents, if living, except in the following cases:
 - a. Consent is not necessary from a parent who has been declared incompetent;
 - b. Consent is not necessary from a parent whose parental rights have been judicially terminated;
 - c. Consent is not necessary from a parent who has previously consented that, the child be placed for adoption;
 - d. Consent is not necessary from a father who is not married to the mother of the child both at the time of its conception and at the time, of its birth, unless the father under oath has acknowledged in a document filed with the court at or prior to the time the petition for adoption is filed, or unless the parentage of the father has been previously established by judicial proceedings.
 2. From any guardian of the person of the child appointed by a court and given authority by it to consent to the child's adoption.
 3. From any agency which has been given consent to place the child for adoption by the parent or parents whose consent would be necessary under paragraph 1 of this subsection, or which has been given authority in other proceedings to place the child for adoption.
- B. **CHILD OF TWELVE (12).** Where the child is twelve (12) years of age or older, the adoption shall not be granted without his consent. Such consent shall be given in open court or shall be in conformity with this section or in such other form as the court may direct.
- C. **WAIVER OF CONSENT.** Notwithstanding the provisions of section 10-36, the court may waive the requirement of the consent of any person required to give consent when, after a hearing on actual notice to all persons adversely affected, the court determines that the interest of the child will be promoted thereby. In such cases, the court shall make written findings of all facts upon which its order is founded.
- D. **MINORITY NO BAR TO COMPETENCE.** The minority of the child or parent shall not affect his competency to give consent in the instances set forth in this section.

(Law & Order Code 2006, § 10-34)

Sec. 10-35. - Form and content of consent to adoption.

- A. **WRITTEN; WITNESSED.** All consents to adoption shall be in writing and signed by the person giving the consent and witnessed by two (2) or more credible witnesses who are at least eighteen (18) years of age and who subscribed their names in the presence of the person giving the consent or shall be duly acknowledged before an officer authorized to take acknowledgments by the person giving consent.
- B. **TIME LIMIT.** A consent given before seventy-two (72) hours after the birth of a child is invalid.
- C. **DATED; IDENTIFIED.** The consent shall be dated and shall sufficiently identify the party giving the consent and the child to whose adoption the consent is given.
- D. **DESIGNATION OF PLACEMENT AGENCY, ADOPTIVE PARENT.** The consent shall designate either of the following:
1. The particular person or persons authorized by the party giving the consent to place the child for adoption.
 2. The particular person or persons authorized to adopt the child by the person giving the consent.
- E. **TRUE NAMES TO BE USED; EXCEPTIONS.** The true names of the adopting person or persons shall be used except that fictitious names may be used if the person or persons are considered by the court to be acceptable to adopt the child, the consenting party knows that the names used are

fictitious and does not wish to know the true names and the consenting party has been furnished with all information which the consenting party wished to know about the adopting person or persons.

- F. **INVALIDITY OF CERTAIN CONSENT.** A consent, other than to any agency, which does not designate a particular person or persons, or which purports to permit a third person to locate or nominate an adoptive parent, is invalid.

(Law & Order Code 2006, § 10-35)

Sec. 10-36. - Termination of parental rights.

Any person or agency that has legitimate interest in the welfare of a child, including but not limited to a relative, foster parents, physician or a private license child welfare agency, may file a petition for the termination of the parent-child relationship if one (1) or more of the following grounds exist:

- A. The parent has abandoned the child or the parent has made no effort to maintain a parental relationship with the child. It shall be presumed the parent intends to abandon the child if a child has been left without any provision for his support and without any communication from such parent for a period of six (6) months or longer. If, in the opinion of the court, the evidence indicates that such parent has made only token efforts to support or communicate with the child, the courts may declare the child abandoned by such parent.
- B. The parent has neglected or willfully abused the child.
- C. The parent is unable to discharge the parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that the condition will continue for a prolonged, indeterminate period of time.
- D. The parent is deprived of his civil liberties due to the conviction of a felony if the felony of which such parent was convicted is of such nature as to prove the unfitness of such parent to have future custody and control of the child, or if the sentence of such parent is of such length that the child would be deprived of a normal home for a period of years.
- E. The parents have relinquished their rights to the child to an agency or have consented to the adoption.

(Law & Order Code 2006, § 10-36)

Sec. 10-37. - Hearing to be by juvenile court; ruling on grounds for termination.

- A. Adoption cases shall be heard by the juvenile court.

(**HISTORICAL NOTE:** Former Sec. 10-37 repealed by adoption of Resolution No. Ft. McD. 2003-50, effective May 13, 2003).

(Law & Order Code 2006, § 10-37; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 10-38. - Hearing, order and rights under adoption order.

- A. Petitions filed under this chapter shall be heard by the court and such hearings shall be as informal as the requirements of due process and fairness permit. The person petitioning for adoption, the spouse of a petitioner and the child to be adopted shall attend unless the court orders otherwise. Only such other persons shall be admitted as the court shall find to have a direct interest in the case before the court. Any such person so admitted shall not disclose any information secured at the hearing. The court may require the presence of such other witnesses as it deems necessary.

- B. The court's finding shall be based upon a preponderance of the evidence. The court may consider any and all reports which it may order or which may be submitted to the court.
- C. If, after the hearing and consideration of all the evidence, the court is satisfied that the requirements of this chapter have been met and that the adoption is in the best interest of the child, the court shall make an order granting the adoption. The order of the court shall be in writing and shall recite the findings of fact upon which such order is based, including findings pertaining to the court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry subject to appeal as is provided for by the Code.
- D. Upon entry of the decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations, and other legal consequences of the natural relationship of child and parent shall thereafter exist between the adopted person and the adoptive parent the same as though the child were born to the adoptive parent in the lawful wedlock. The adopted child shall be entitled to inherit property from the adoptive parent and the adoptive parent shall be entitled to inherit property from the adoptive child the same as though the child were born to the adoptive parent in lawful wedlock.

(Law & Order Code 2006, § 10-38)

Sec. 10-39. - Adoption of illegitimate child by father.

The father of an illegitimate child by publicly acknowledging it as his own, receiving it as such, with the consent of his wife if he be married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child thereupon shall be deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such adoption.

(Law & Order Code 2006, § 10-39)

Secs. 10-40—10-50. - Reserved.

ARTICLE IV. - GUARDIANSHIP

DIVISION I. - GENERALLY

Sec. 10-51. - Definitions.

- A. A guardian is a person appointed to take care of a person or property of another.
- B. Guardians are either:
 - 1. General, or
 - 2. Special. A general guardian is a guardian of the person or all property of the ward, or both. A special guardian is any other.
- C. Ward is a person over whom or over whose property a guardian is appointed.

(Law & Order Code 2006, § 10-51)

Sec. 10-52. - Appointment by court to guardianship.

A guardian of a person or property, or both, of a member of the Fort McDowell Yavapai Nation who is a minor or of unsound mind may be appointed by the Yavapai Court.

(Law & Order Code 2006, § 10-52)

Sec. 10-53. - Jurisdiction over court-appointed guardians.

The Fort McDowell Yavapai Tribal Court shall have exclusive jurisdiction over a guardian appointed by the court. No person, whether parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

(Law & Order Code 2006, § 10-53)

Sec. 10-54. - Qualifications of guardians.

To be appointed a guardian by the Fort McDowell Yavapai Tribal Court for a minor member of the Fort McDowell Yavapai Nation or for a mentally incompetent member, a person must be:

- A. A member of the Fort McDowell Yavapai Nation, of good moral character, residing on the Fort McDowell Yavapai Nation.
- B. At least twenty-five (25) years of age.
- C. Qualified to administer the financial and personal affairs of his ward in a satisfactory manner.

(Law & Order Code 2006, § 10-54)

Sec. 10-55. - Appointment by will or deed.

A guardian of a person or estate, or both, of a child, born or likely to be born, may be appointed by will or by deed to take effect upon the death of the parent appointing:

- A. If the child be legitimate, by the father, with the written consent of the mother, or by either parent, if the other be dead or incapable of consent.
- B. If the child be illegitimate, by the mother.

(Law & Order Code 2006, § 10-55)

Sec. 10-56. - Termination of powers.

The power of a guardian appointed by a parent is superseded:

- A. By his removal, as provided in the preceding section.
- B. By the solemnized marriage of the ward.
- C. By the ward attaining majority.

(Law & Order Code 2006, § 10-56)

Sec. 10-57. - Rules for selection of court-appointed guardian.

In awarding the custody of a minor or in appointing a general guardian, the court is to be guided by the following considerations:

- A. By what appears to be for the best interest of the child in respect to its temporal, mental and moral welfare; and if the child is of sufficient age to form an intelligent preference, the court may consider that preference in determining the guardian.

- B. Between the parents adversely claiming the custody of guardianship, neither parent is entitled to it as of right, other things being equal. If the child is less than seven (7) years, it should be given to the mother; if it is of an age to require education and preparation for work or business, then to the father.
- C. When two (2) persons are equally entitled to the custody of a child in other respects, preference is to be as follows:
 - 1. To a parent.
 - 2. To one who was indicated by the wishes of the deceased parent.
 - 3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.
 - 4. To a relative.

(Law & Order Code 2006, § 10-57)

Sec. 10-58. - State law applicable.

In the appointment of a guardian for a minor member of the Fort McDowell Yavapai Nation, the laws of the State of Arizona will apply insofar as such laws do not conflict with the provisions of this division.

(Law & Order Code 2006, § 10-58)

Sec. 10-59. - Fees and bond required.

The court shall fix a fee for the appointment of a guardian, the fee not to exceed in any case the amount of ten dollars (\$10.00), and shall be empowered to require a bond from the guardian for the faithful performance of his duties according to law. The following conditions shall form and constitute a part of every such bond:

- A. To make an inventory of all property of the estate, real or personal, of his ward and that comes to his possession or knowledge, and to return the same within such time as the court may order.
- B. To dispose of and manage the estate according to law and for the best interest of the ward and faithfully to discharge his trust in the relation thereto, and also in relation to the care, custody and education of the ward.
- C. To render an account, on oath, of the property or estate of the ward in his hands and all proceeds or interest derived therefrom and of the management and disposition of same, within three (3) months after his appointment, at least once a year thereafter and at such other times as the court directs; and at the expiration of his trust to settle his account, with the court of the Fort McDowell Yavapai Nation, or with the ward, if he is of full age, or his legal representatives, and to pay over and deliver all the property of the estate, moneys and effects remaining in his hands, or due from him on such settlement to the person who is lawfully entitled thereto. Upon filing of the bond, duly approved, letters of guardianship will be issued to the person appointed.

(Law & Order Code 2006, § 10-59)

Sec. 10-60. - Powers of guardians.

A guardian appointed by the court has power over the person and property of the ward, unless otherwise ordered. He is charged with the custody of the ward and must look to his support, health, and education and may fix the place of residence of the ward at any place on the Fort McDowell Yavapai Nation, but not elsewhere without permission of the court. He must keep safely the property of his ward

and not permit any unnecessary waste or destruction of the real property nor make any sale of such property without the order of the Fort McDowell Yavapai Tribal Court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship in as good condition as he received it.

(Law & Order Code 2006, § 10-60)

Sec. 10-61. - Removal of guardian.

A guardian appointed by the Yavapai Tribal Court may be removed for any of the following reasons:

- A. For abuse of his trust.
- B. For continued failure to perform his duties.
- C. For incapacity to perform his duties.
- D. For gross immorality.
- E. For removal from the Fort McDowell Yavapai Nation without consent of the court.
- F. On being convicted of a felony.
- G. When it is no longer necessary that the ward should be under guardianship.

(Law & Order Code 2006, § 10-61)

Sec. 10-62. - Termination of powers of guardians appointed by court.

The power of a guardian appointed by a court is suspended only:

- A. By the order of the Fort McDowell Yavapai Tribal Court.
- B. If the appointment was made solely because of the ward's minority, by his obtaining majority; or
- C. [In regard to] the guardianship over the person of the ward, by the marriage of the ward.

(Law & Order Code 2006, § 10-62)

Sec. 10-63. - Release by ward.

After a ward has come to his majority, he may settle accounts with his guardian and give him a release, which is valid if obtained fairly without undue influence. A guardian appointed by the court is not entitled to his discharge until one (1) year after the ward's majority.

(Law & Order Code 2006, § 10-63)

Secs. 10-64—10-70. - Reserved.

DIVISION 2. - GUARDIANS FOR INCOMPETENTS

Sec. 10-71. - Guardian of incompetent members.

When it is represented to the court, by verified petition of any relative or friend, that any member of the Fort McDowell Yavapai Nation is from any cause mentally incompetent to manage his property, the Fort McDowell Tribal Court must cause notice to be given to the supposed incompetent person of the time and place of hearing such petition, not less than five (5) days before the time of such hearing; and

such person, if able to attend, must be brought before the court. If after a full hearing and examination upon such petition, it appears to the court that the person in question is incapable of taking care of himself and managing his property, the court shall appoint a guardian of his person and estate with the general duties specified in Division 1 of this article. The court may, in its discretion, exclude all nonparticipants from such hearing.

(Law & Order Code 2006, § 10-71)

Sec. 10-72. - Duties; bond.

Every guardian appointed as provided in section 10-71 has the care and custody of the person of his ward and the management of all his estate, until such time as the guardian is legally discharged, and he must give bond to such ward in like manner and with the like conditions as prescribed with respect to the guardian of a minor.

(Law & Order Code 2006, § 10-72)

Sec. 10-73. - Restoration of capacity.

Any person who has been declared mentally incompetent, or the guardian or any relative of such a mentally incompetent person within the third degree, or any friend may apply by petition to the Fort McDowell Yavapai Tribal Court to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is mentally competent. Upon receiving the petition, the court shall appoint a day for the hearing and cause notice of the hearing to be given to the guardian of the petitioner if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living on the Fort McDowell Yavapai Nation. The guardian or relative of the petitioner, or in the discretion of the court, any person may contest the right to the petition to the relief demand. Witnesses may be required to appear and testify as in other cases, and may be called and examined by the court. If it is found that the petitioner is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person is not a minor, shall cease.

(Law & Order Code 2006, § 10-73)

Sec. 10-74. - State laws applicable.

The Fort McDowell Yavapai Tribal Court shall apply the laws of the State of Arizona insofar as such laws do not conflict with the provisions of this article in the appointment of a guardian for a mentally incompetent member of the Fort McDowell Yavapai Nation and shall have exclusive jurisdiction over the guardian so appointed.

(Law & Order Code 2006, § 10-74)

ARTICLE V. - ADULT PROTECTIVE PROCEDURES

Sec. 10-75. - Policies and purpose.

- A. Policy: It is the policy of the Yavapai Nation to continue traditional respect of its elder members. Elders are important and valuable to the Yavapai Nation's history, culture, language and tradition and it is the desire to retain all aspects of Yavapai Nation's traditions. Yavapai elders provide stability by being role models to their children and grandchildren to whom they demonstrate long lasting commitment to family, marriage, employment, profession and other social institutions. Based upon

these premises, it is the Nation's best interest and welfare to protect its elders and incapacitated adults from abuse, neglect, exploitation, and other mistreatment.

- B. Purpose: The purpose of the Adult/Elder Protection code is to protect elders and incapacitated adults within the jurisdiction of the Yavapai Nation from abuse and neglect. The code will be liberally interpreted in order to achieve this purpose. This code is not intended to abrogate any existing civil or criminal laws of the Yavapai Nation.

(Law & Order Code 2006, § 10-75; Ft. McD. Res. No. 2003-105, eff. 9-28-2003; Ft. McD. Res. No. 2004-101, eff. 8-31-2004)

Sec. 10-76. - Definitions.

- (1) **Elderly** means any person who has reached the age of fifty-five (55) years or older.
- (2) **Adult** means any person between eighteen (18) and fifty-four (54) years of age.
- (3) **Abuse** means:
 - a. Intentional infliction of physical or mental harm.
 - b. Physical injury or mental harm caused by negligent acts or omissions.
 - c. Unreasonable confinement, cruelty, threats, or intimidation.
 - d. Sexual abuse or sexual assault.
 - e. Coercion or placing an adult under duress by threats or intimidation.
- (4) **Exploitation** means the illegal or improper use of an incapacitated adult/elder or his resources for another's profit or advantage without informed consent.
- (5) **Incapacity** means an impairment of reason or mental illness, mental deficiency, mental disorder, physical illness or disability, resulting from advanced age, chronic use of drugs, chronic intoxication or other causes that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning their person or property.
- (6) **Neglect** means an occurrence or a pattern of conduct resulting in deprivation of services necessary to maintain minimum physical and mental health.
- (7) **Adult/Elder Services** means programs that may be appropriate to resolve problems, which have resulted from disabilities, incapacities, abuse, exploitation or neglect. These services may be provided by several Tribal Departments and may include the following services:
 - a. In-Home Evaluations.
 - b. Guardianship or Conservatorship.
 - c. Elder Services Referrals.
 - d. Day Care.

(Law & Order Code 2006, § 10-76)

Sec. 10-77. - Jurisdiction.

1. Wassaja Family Services workers may cooperate with State, Federal, and private social services agencies or other agencies to achieve the purposes of this section.
2. Adult Protective service workers shall:
 - (a) Establish a program with other Tribal offices and agencies to monitor the health and well being of adults who may need "adult/elder services" due to age, disability or incapacitation.

- (b) Receive from any source, oral or written, information regarding any adult or elder who may be in need of protective services.
 - (c) Upon receipt of such information determine by inquiry or evaluations if the adult or elder is in need of protective services and what services, if any, are needed.
 - (d) Offer an adult or elderly person in need of services, an appointed guardian, a family member, or a care provider or other available services that appear appropriate in view of the evaluation.
 - (e) File petitions as necessary, on either a temporary or long-term basis, for the appointment of a guardian or conservator, and to make applications for special visitation as deemed necessary.
 - (f) Evaluate the environment of the adult or elder, and other persons living in the same home and evaluate the risk to such adults or elders if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. He or she shall then determine whether any of the adults or elders are in need of services.
3. Filing of a Petition to declare an adult or elder an "Adult or Elder in Need of Service":
- (a) Wassaja Family Services, hereafter WFS, is hereby authorized to file petitions requesting a declaration that an adult or elder is an "Adult or Elder in Need of Service" based on the grounds of abuse, exploitation, incapacity, neglect or permanent or temporary incapacity.
 - (b) The Tribal Court is authorized, upon the filing of a petition, to issue special visitation orders based upon supporting affidavits filed by a WFS Adult Protective Service Worker in cases where a report of abuse has been made and requires an order for tribal agencies to conduct an evaluation or in cases where WFS determines after an evaluation that continuing special visitation is necessary. These orders are civil in nature and only require establishment of an articulable, rational basis. A hearing may be requested by an interested party to modify or oppose a special visitation order.
 - (c) WFS employees are hereby authorized to take custody, be appointed as a guardian, or be appointed as conservator of an adult or elder upon order of the Tribal Court. Members of the Adult or Elders Services Board, appointed by the Tribal Council, may also serve a conservator or as a guardian ad litem.
 - (d) In cases where the adult or elder is in need of immediate care to protect them or the community, WFS may request an immediate order from the Tribal Court for immediate temporary custody with authority to remove the adult or elder to a secure location, a hospital or other appropriate facility. The Tribal police will provide assistance if necessary.
4. An adult or elder protective service worker is immune from civil liability for filing for a special visitation order or for filing a petition for guardianship or conservatorship, unless the application or filing is done in bad faith.

(Law & Order Code 2006, § 10-77)

Sec. 10-78. - Limitation of authority; duty to inform.

- 1. Before offering services to a family member or caretaker, a WFS adult service worker shall make clear that they have no legal authority to compel the person or family to receive such services, and may inform the family of their authority to petition the Tribal Court for appropriate authority.
- 2. If the family or caretaker declines to accept or to participate in the offered services, and if the WFS adult service worker believes that the adult or elder is in need of services, the worker may file a petition in the Tribal Court requesting that the adult or elder be determined to be an "Adult or Elder in Need of Service" and that certain appropriate services or actions be ordered.

(Law & Order Code 2006, § 10-78)

Sec. 10-79. - Duty to report abuse and neglect of adults/elders.

1. Any physician, hospital intern or resident, surgeon, religious practitioner, dentist, osteopath, chiropractor, podiatrist, coroner, registered nurse, licensed practical nurse, nurses aide, conservator, executor, psychiatrist, social worker, school personnel, EMT, Fire Fighters, Police, or any other person having responsibility for the care of adults or elders whose observation or examination of any adult or elder discloses evidence of exploitation, incapacity, injury, sexual molestation, death, abuse, or physical or emotional neglect which appears to have been inflicted upon such adult or elder by other than accidental means or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to the Tribal Police and WFS. Such reports shall contain:
 - (a) The names and address of the adult or elder and his children or parents or other person having custody of such adult or elder, if known.
 - (b) The adult or elders age and the nature and extent of this incapacity and/or the nature and extent of his injuries or physical neglect, including any evidence or previous injuries or physical neglect.
 - (c) Any other information that such person believes might be helpful in establishing the cause of the injury or physical neglect.
2. When such telephone or in-person reports are received by Tribal Police or other Tribal agency, they shall immediately notify WFS and make such information available to them.
3. Any person required to report pursuant to subsection A may take or cause to be taken photographs of the adult or elder and the vicinity involved. If medically indicated, further examinations, tests, including but not limited to, radiological examinations of the involved adult or elder, may be performed with the consent of the adult/elder or other authorized person. If necessary, a Court order may be obtained if the adult refuses and is incapacitated.
4. A person having custody or control of medical records of any incapacitated adult or elder for whom a report is required or authorized under this section shall make such records, or a copy of such reports, available to a peace officer or adult protective services worker or supervisor investigating the incapacitated adult or elders neglect or abuse upon subpoena for the records signed by a judge of competent jurisdiction. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.
5. Penalty. Any person convicted of failure to Report as defined by paragraph A of this section may be sentenced to pay a fine not to exceed five hundred dollars (\$500.00). Any person not subject to the jurisdiction of the Tribal Court shall be subject to exclusion from the Nation.
6. If any person is found to be responsible for abuse, neglect or exploitation of an incapacitated adult or elder in a criminal or civil action, the court shall order the person to make restitution to the individual or to the Nation.
7. If the psychiatric records are requested pursuant to subsection C of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available, the following:
 - (a) Personal information about individuals other than the patient.
 - (b) Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certified in writing that release of the information would be detrimental to the patient' health or treatment.

(Law & Order Code 2006, § 10-79)

Sec. 10-80. - Immunity of participant: non-privileged communication.

Any person making a complaint, or providing information pursuant to this chapter, or a WFS Adult Protective Service worker, or any other person otherwise participating in the program authorized by this chapter shall be immune from any civil or criminal liability by reason of such action, unless such person acted with malice and without probable cause or unless such person has been charged with or is suspected of allowing or causing an adult to be considered in need of protective care.

[**HISTORICAL NOTE:** Sec. 10-75 repealed by Resolution No. Ft. McD. 2003-105, effective September 28, 2003. New Section 10-75 added by Resolution No. Ft. McD. 2004-101, effective August 31, 2004.]

(Law & Order Code 2006, § 10-80)

Chapter 11 - JUVENILES

[**HISTORICAL NOTE:** Article I was amended by Resolution No. McD. 2003-50, effective May 13, 2003.]

ARTICLE I. - IN GENERAL

Sec. 11-1. - PURPOSE AND DEFINITIONS.

Sec. 11-1 A. - Purpose.

This chapter shall be liberally construed and interpreted to effectuate the following expressed purposes:

- A. To protect all children residing within the boundaries of the Fort McDowell Yavapai Nation and to provide assistance to the children and families in need of rehabilitative services. In child protection matters, whether administrative or judicial in nature, the best interests of a child shall be given greater weight than any other interest present in a dependency or neglect matter;
- B. To preserve and restore the unity of the family whenever possible to provide for the care, protection and wholesome mental and physical development of a child and in no instance shall a family be unified to the detriment of a child's interest in being free from abuse or maltreatment; and
- C. To conduct all matters arising under this chapter in compliance with the Constitution of the Fort McDowell Yavapai Nation in order that the rights of children, their parents and guardians and other interested parties are protected. All parties shall be treated fairly and uniformly when they appear before the Juvenile Court in relation to matters arising hereunder.

(*Sec. 11-1(A) was added by Resolution No. McD. 100, effective September 3, 2003.*)

(Law & Order Code 2006, § 11-1 A; Ft. McD. Res. No. 2003-50, eff. 5-13-2003; Ft. McD. Res. No. 100, eff. 9-3-2003)

Sec. 11-1 B. - Definitions.

Unless otherwise indicated, the following definitions shall apply for the purposes of this chapter:

Abandon: The failure of a parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Intent to abandon is presumed when a child has been left (1) by one (1) or both parents in the physical custody of another for a period of three (3) consecutive months; or (2)

by one (1) parent in the physical custody of another parent for a period of one (1) year, without personally providing support for the child's care and without communication.

Abuse: The infliction of:

- A. Physical injury on a child;
- B. Emotional or mental harm on a child as diagnosed by a psychiatrist, clinical psychologist or mental health practitioner;
- C. Molestation of a child, sexual abuse of a minor, sexual conduct with a minor, incest or unnatural sex acts as defined in Chapter 6 of the Fort McDowell Law and Order Code;
- D. Repeated withholding of readily accessible care, services and treatment necessary for the child to be able to thrive, including Court-ordered rehabilitative and medical care, and treatment and educational services;
- E. Exploitation of a child to such extent that the child's health, moral or emotional well being is endangered;
- F. Physical punishment of a child found by the Juvenile Court to have been:
 - (1) So severe, protracted or recurrent, whether or not purported to be inflicted for disciplinary purposes, or
 - (2) Administered solely for the gratification of passion or rage of the perpetrator.

Adjudicatory Hearing: A proceeding in the Juvenile Court to determine the merits of the allegations contained in the petition or citation.

Adult: A person eighteen (18) years of age or older, or otherwise emancipated by order of a Court of competent jurisdiction.

Child: A person under the age of eighteen (18) years who has not been emancipated by order of a Court of competent jurisdiction or an eighteen (18) year old person subject to the Court's jurisdiction pursuant to Sections 11-3 A. 1. and 11-3 D. herein.

Counsel: An advocate or attorney permitted to practice before the Fort McDowell Tribal Court.

Court or Juvenile Court: The Juvenile Court of the Fort McDowell Yavapai Nation.

Custodian: A person, other than a parent or guardian, to whom legal custody of the child has been given by Court order or who is acting *in loco parentis*. "Custodian" shall not include any person who has the child in violation of a Court order or who has obtained physical custody through illegal means.

Dependent Child: A child:

- A. Who is homeless or destitute or who has no parent, guardian or custodian available or willing to care for him or her;
- B. Who lacks proper care by reason of the mental or physical condition of his or her parent, guardian or custodian; or whose parent(s) guardian or custodian is unable to provide for the child because of their incarceration or their hospitalization for a physical or mental condition;
- C. Who is under the age of eight (8) years and who is found to have committed an act that would result in adjudication as a delinquent or an incorrigible child if committed by a child eight (8) years or older.

Detention: The temporary pre- or post-judgment confinement of a child in a secure facility.

Disposition Hearing: A proceeding in the Juvenile Court held after an adjudication hearing to impose consequences on the juvenile for the offense, to remunerate any victim(s) of the offense and to restore the juvenile to law-abiding behavior or to develop a reunification case plan.

Domicile: A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or where the parent or guardian considers being their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged offense.

Extended family: Those family members recognized by the customs and traditions of the Fort McDowell Yavapai Nation as being of sufficient relation to care for a child who is within the jurisdiction of the Court.

Foster Home: Placement with a family whose home has been licensed to accept placement of children under the age of eighteen (18) years.

Guardian: A person assigned by a Court of law, other than a parent, having the legal duty and authority to provide care, shelter and control of a child and to make decisions in matters having a permanent effect on the life and development of the child. It includes, among other things, the authority to consent to marriage, enlistment in the armed forces, and major medical, surgical or psychiatric treatment;

Guardian ad Litem: A person appointed by the Court to protect the interests of a child in a case before the Court.

Holidays: Those days designated as "holidays" by official resolution of the Fort McDowell Yavapai Nation Tribal Council.

Incorrigible Child: A child:

- A. Who refuses to obey the reasonable and proper orders or directions of his or her parent, guardian or custodian and who is beyond the control of such person; or
- B. Who is a runaway from his or her home or parent, guardian or custodian; or
- C. Who habitually engages in activities or behaviors that endanger him or others.

Indian: Any person:

- A. Who is enrolled or eligible for enrollment in any federally recognized Indian tribe; or
- B. Who is of no less than one-fourth ($\frac{1}{4}$) degree Indian blood and who can document direct lineal descent from a person who is enrolled or eligible for enrollment in any federally recognized Indian tribe; or
- C. Who is of verifiable quantum of blood of any federally recognized Indian tribe who holds himself or herself out to society to be an Indian and who is generally recognized as an Indian, whether by a tribe, by society, or by the federal government.

Juvenile: A person under the age of eighteen (18) years who has not been emancipated by order of a Court of competent jurisdiction or an eighteen (18) year old person subject to the Court's jurisdiction pursuant to Sections 11-3 A. 1. and 11-3 D. herein.

Juvenile Facility: Any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, a secured or unsecured juvenile inpatient alcohol or substance abuse treatment facility or hospital, transitional houses, foster homes, group homes and shelter homes.

Juvenile Offender: A child who commits a "juvenile offense" prior to the child's eighteenth (18th) birthday.

Juvenile Offense: A criminal violation of the Fort McDowell Law and Order Code which is committed by a person who is under the age of eighteen (18) at the time the offense was committed.

Juvenile Presenting Attorney: Any prosecutor designated by the Tribal Prosecutor to represent the Nation in a juvenile proceeding.

Juvenile Status Offense: The offenses of Intoxication by a Minor, Possession of Alcohol or Curfew committed by a person who is under the age of eighteen (18) years at the time the offense is committed.

Legal Custody: A legal status created by the Court which vests in a person or agency the right to have physical custody of a child; the right to determine where and with whom the child shall reside; the right and duty to protect, train and discipline the child; the duty to provide the child with food, clothing and shelter, education and ordinary medical care; the right, in an emergency, to authorize surgery or other extraordinary care; subject to residual parental rights and obligations.

Nation: Fort McDowell Yavapai Nation.

Neglected Child: A child:

- A. Who is abandoned by his parent(s), guardian or custodian;
- B. Who has not been provided with adequate food, shelter, clothing, medical care or education necessary for his or her health and well-being;
- C. Who lacks parental care due to the fault or habits of the parent, guardian or custodian;
- D. Who has been subjected to abuse by a parent, guardian or custodian or whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that endangers his health or well-being;
- E. Whose parents are unable or unwilling to provide the special care made necessary by the child's own mental, emotional or physical needs.

Parent: Includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated; nor does it include the unwed father whose paternity has not been legally acknowledged or adjudicated.

Probation: A legal status created by Court order whereby a juvenile offender is placed in a juvenile facility or permitted to remain in his or her home under the care, custody and supervision of a person designated by the Court and who is subject to specific conditions or restrictions set forth by the Court and/or the Juvenile Probation Officer. A juvenile offender on probation is subject to return to Court for further proceedings in the event of his or her failure to comply with any of the prescribed conditions of probation.

Protective Supervision: A legal status created by the Court in proceedings involving incorrigible and dependent children, whereby the child is permitted to remain in his or her home under supervision of the Court or other agency designated by the Court.

Residual Parental Rights and Obligations: Those rights and duties remaining with the parent after legal custody or guardianship of the child has been vested in another person or agency including but not limited to the responsibility to financially support the child; the right to consent to adoption of the child; the right to determine the child's religious affiliation; and the right to reasonable visitation with the child subject to any restrictions ordered by the Court.

Restitution: Financial or other reimbursement by the child to the victim and is limited to ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric or psychological treatment for injury to persons, lost wages resulting from the injury and other out-of-pocket expenses which are a direct and proximate result of the delinquent act. Restitution does not include reimbursement for damages of mental anguish, pain and suffering or other intangible losses.

Secure Facility: Any locked facility, whether used for treatment or confinement.

Secure Juvenile Detention Facility: A facility which (a) contains locked cells or rooms which are separated by sight and sound from any adult inmates; and (b) restricts the movement of those placed in the locked cells or rooms.

Shelter Care: The temporary care or confinement of a child in a non-secure facility pending Court disposition or transfer to another jurisdiction.

Termination of Parental Rights: The permanent elimination by Court order of all parental rights and duties including residual parental rights and duties.

Transfer to Tribal Court: Transferring a child from the jurisdiction of the Juvenile Court to the jurisdiction of the Tribal Court according to Section 11-3 E. herein, which results in the termination of the Juvenile Court's jurisdiction over that offense.

Tribal Council: The Tribal Council of Fort McDowell Yavapai Nation.

Tribal Court: The Tribal Court of Fort McDowell Yavapai Nation.

Weekends: Fridays at 12:00 p.m. through Mondays at 8:00 a.m.

*(The term "Juvenile" was added by Resolution No. McD. 2003-50, effective May 13, 2003 .
Section 11-1(A-B) added by Resolution No. McD. 100, effective September 3, 2003.)*

(Law & Order Code 2006, § 11-1 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003; Ft. McD. Res. No. 100, eff. 9-3-2003)

Sec. 11-2. - Establishment of Juvenile Court.

There is established for the Fort McDowell Yavapai Nation, as a division of the Courts of the Fort McDowell Yavapai Nation, a Court to be known as the Fort McDowell Juvenile Court ("Juvenile Court"). The proceedings in the Juvenile Court shall be civil in nature.

The Juvenile Court shall be empowered to conduct all proceedings and issue all orders in matters affecting children within the boundaries of the Fort McDowell Yavapai Nation, as well as involving other children who have been declared wards of the Juvenile Court.

The Juvenile Court shall also have the power to enforce subpoenas and orders of protection, contempt, confinement, fines and costs including, but not limited to, incarceration and treatment costs, and other orders as appropriate.

The Juvenile Court shall keep a taped transcript of all proceedings before the Court.

(Law & Order Code 2006, § 11-2; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-3. - JURISDICTION.

Sec. 11-3 A. - General.

The Juvenile Court shall have the authority to determine all issues and controversies concerning jurisdiction, and shall exercise original jurisdiction over all persons within the territorial jurisdiction of the Fort McDowell Yavapai Nation as follows:

1. Concerning any child who is alleged to have violated any tribal law or ordinance, which violation if committed by an adult would be a crime.
 - (a) Jurisdiction for delinquency matters is based on the date and time of the alleged offense, regardless of the date of filing.
2. A child who is alleged to be dependent or incorrigible as these terms is defined in section 11-1 B.
3. To determine the custody of any child or appoint a guardian of any child who comes within the purview of the Court's jurisdiction under other provisions of this section.
4. To determine the legal parent-child relationship, including termination of residual parental rights and duties, as to a child who comes within the purview of the Court's jurisdiction under other provisions of this section.

5. For children who are enrolled members of the Fort McDowell Yavapai Nation or who are eligible for enrollment and who are subject to proceedings in any other Court under the Indian Child Welfare Act and jurisdiction of the matter is transferred from the other Court to the Nation's juvenile Court.

(Law & Order Code 2006, § 11-3 A; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-3 B. - Jurisdiction of extended family.

Where the Juvenile Court asserts jurisdiction over a child under section 11-3 A. above, the Court may also exercise, in addition to jurisdiction over the child's parent, guardian or custodian, jurisdiction over the child's extended family whenever the Court deems it appropriate.

(Law & Order Code 2006, § 11-3 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-3 C. - Continuing jurisdiction.

Where the Juvenile Court deems it appropriate, the Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the Nation.

(Law & Order Code 2006, § 11-3 C; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-3 D. - Termination of jurisdiction.

Juvenile Court jurisdiction over delinquency matters terminates when the juvenile reaches nineteen (19) years of age. In all other juvenile matters, jurisdiction terminates when the juvenile reaches eighteen (18) years of age.

(Law & Order Code 2006, § 11-3 D; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-3 E. - Transfer to Tribal Court.

The Juvenile Presenting Attorney or prosecuting attorney may file a petition requesting the Juvenile Court to transfer the child to the jurisdiction of the adult tribal Court if the child is sixteen (16) years of age or older. The petition shall be filed within fifteen (15) days of the filing of the Juvenile Delinquency Petition. The petition shall include the factual basis supporting the request and specifically addressing the issues set forth in Section 11-3 E. (3) herein. The filing of the Petition to Transfer to Tribal Court shall automatically stay any pending delinquency action.

1. Transfer Hearing: The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to Tribal Court. The transfer hearing shall be held within twenty (20) days of the filing of the Petition to Transfer to Tribal Court.
2. Disclosure of Evidence and Witness List: The Juvenile Presenting Attorney or prosecuting attorney shall disclose any relevant evidence including, but not limited to, social reports regarding the juvenile and a witness list to the juvenile and his or her parent or counsel no later than ten (10) days before the hearing. The juvenile shall disclose any evidence including, but not limited to, social reports regarding the juvenile and his or her witness list to the Juvenile Presenting Attorney or prosecuting attorney no later than seven (7) days before the hearing.
3. Deciding Factors in Transfer Hearing: The following factors shall be considered when determining whether to transfer jurisdiction of the juvenile to tribal Court:
 - (a) The nature and seriousness of the offense(s) charged;

- (b) The age of the juvenile;
 - (c) The extent and nature of the juvenile's prior juvenile record;
 - (d) The juvenile's present intellectual development, psychological maturity; and/or other disabilities;
 - (e) The nature of past treatment efforts and the juvenile's response to such efforts; and
 - (f) The availability of programs designed to treat the juvenile's behavioral problems.
4. Written Transfer Order: A juvenile may be transferred to Tribal Court only if the Juvenile Court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with Section 11-3 E. (3). above. The written order terminates the jurisdiction of the Juvenile Court over the juvenile with respect to the juvenile offense(s) alleged in the petition. The written order represents a final order for purposes of appeal. However, at the end of the transfer hearing, the Court may enter a separate Tribal Court detention or confinement order, if applicable.
 5. Miscellaneous:
 - (a) The transfer hearing is not open to the public and the record is confidential.
 - (b) If the matter is transferred to Tribal Court, testimonial evidence by the juvenile at the transfer hearing is not admissible.
 - (c) If the matter is transferred to Tribal Court, the presiding Judge at the transfer hearing shall not hear the case in Tribal Court.

(*Sec. 11-3 F. was deleted by Resolution No. McD. 2003-50, effective May 13, 2003.*)

(Law & Order Code 2006, § 11-3 E; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4. - PROCEDURES AND AUTHORIZATIONS.

Sec. 11-4 A. - Rules of procedure.

The procedures in the Juvenile Court shall be governed by the criminal rules of procedure for the Tribal Court that are not in conflict with any procedural rules in this article.

(Law & Order Code 2006, § 11-4 A; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 B. - Fees.

There shall be no filing fee for filing a petition under Chapter 11 nor shall any fee be paid to any tribal police officer or other process server for the service of process or for attendance in Court for any proceedings brought under this Chapter. Witness fees shall be paid in accordance with provisions for witnesses in Tribal Court.

(Law & Order Code 2006, § 11-4 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 C. - Service of process.

1. Issuance and Exceptions: After a Juvenile Court petition is filed, the Court shall promptly issue written summons for hearing the case. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the Clerk of the Court or who receives written notice of a hearing at or prior to the hearing.

2. **Content of Summons:** The summons shall contain the name of the Court, the title of the proceedings, the time and place of the hearing and a brief description of the type of hearing. Additionally, the summons shall require the person or persons who have physical custody of the child to appear personally, and bring the child before the Court, if appropriate. Additionally, the summons shall explain that the Court may proceed by default against a parent, guardian or custodian, pursuant to Section 11-16 D., should they fail to appear or that the Court may issue a warrant for arrest for failing to appear.
3. **To Whom Issued:** A summons may be issued to any person within the jurisdiction of the Court whose presence the Court deems necessary.
4. **Compulsory Process; To Whom Entitled:** A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his or her own behalf. A child's counsel and a guardian ad litem shall be entitled to the issuance of compulsory process on behalf of the child.
5. **Travel Expenses:** The Court may authorize the payment of necessary travel expenses incurred by a person summoned or otherwise required to appear at the hearing of a case under this article, not to exceed the amount allowed to a witness for travel in the Tribal Court.
6. **By Whom and How Served:** Service of summons or process shall be made by the Fort McDowell Court or by a peace officer or other suitable person appointed by the Court.
 - a. **Inside Fort McDowell Yavapai Nation:** Service of process within the exterior boundaries of Fort McDowell Yavapai Nation may be made by delivering a copy thereof to the person summoned; however, parents who are living together at their usual place of abode may be served by delivering two (2) copies of the summons to either parent. If the judge is satisfied that personal service of the summons is impractical under the circumstances, he or she may order service by certified mail with a return receipt requested to be signed by the person summoned and to be addressed to the last known address of the person to be served within the exterior boundaries of the Nation. Service shall be complete upon return to the Court of the properly signed receipt.
 - b. **Outside Fort McDowell Yavapai Nation:** If the parent(s) or guardian required to be summoned cannot be found within the exterior boundaries of Fort McDowell Yavapai Nation, the fact of their child's presence within the exterior boundaries of the Nation shall confer jurisdiction under this article as to any absent parent or guardian, provided that due notice has been given in one (1) of the following manners:
 - (1) Personal service.
 - (2) If the address of the parent or guardian is known, by sending him or her a copy of the summons by certified mail with a return receipt requested to be signed by the person summoned or by personal service outside the Nation. Service by mail shall be complete upon return to the Court of the properly signed receipt.
 - (3) If the address or whereabouts of the parent or guardian outside the Nation cannot, after diligent inquiry, be ascertained, by publishing a summons in a newspaper having general circulation within the location of the person's last known address. The summons shall be published once a week for three (3) consecutive weeks. Service shall be complete on the day of the last publication.
7. **Time Limit:**
 - a. **Within Fort McDowell Yavapai Nation:** In the case of service within the exterior boundaries of the Nation, service completed at least forty-eight (48) hours before the time set in the summons for the appearance of the person served shall be sufficient to confer jurisdiction.
 - b. **Outside but Within three hundred (300) Miles:** In the case of service outside the exterior boundaries of the Nation but within three hundred (300) miles of the Nation, service completed at least five (5) days before the time set in the summons for appearance of the person served shall be sufficient to confer jurisdiction.

- c. Outside and three hundred (300) Miles or More: In the case of service outside the Nation but three hundred (300) miles or more from the Nation, service completed at least seven (7) days before the time set in the summons for appearance of the person served shall be sufficient to confer jurisdiction.

(Law & Order Code 2006, § 11-4 C; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 D. - Warrants and orders for immediate custody.

1. Warrants for Arrest: If the summons cannot be served or if it appears to the Court that the person served will not obey the summons or that serving the summons will be ineffectual, the Court may issue a warrant for arrest of the parent, guardian, custodian or other necessary party to the case and any such warrant may be served within the exterior boundaries of the Fort McDowell Yavapai Nation.
2. Orders for Immediate Custody: If it appears to the Court that the welfare of the child requires that he or she be immediately brought into custody of the Court or other appropriate agency, the Court may issue an Order for Immediate Custody and such order may be served anywhere within the jurisdiction of the Court.
3. Search Warrants: If it appears to the Court upon an affidavit sworn to by a peace officer, and upon the examination of other witnesses if required by the judge, that there is probable cause to believe that a child is being detained or ill-treated in any place with the jurisdiction of the Court, the Court may issue a warrant authorizing a duly authorized peace officer to search for the child. Upon serving such warrant upon the person in possession of the premises specified in the warrant, the peace officer making the search may enter the house or premises by force, if necessary, in order to remove the child. The officer must thereupon take the child to the Court or relinquish custody of the child to the agency designated by the Court in accordance with sections 11-11, 11-12 and 11-13 herein.

(Law & Order Code 2006, § 11-4 D; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 E. - Treatment or examination of physical, mental or emotional condition.

1. Child.
 - a. The Juvenile Court may order that a child, on whose behalf a petition has been filed, shall be examined by a physician, surgeon, psychiatrist or psychologist and may place the child in a hospital or other facility for such examination. However, the child shall not be held in such hospital or facility longer than forty-eight (48) hours, excluding weekends and holidays, unless necessary for treatment of physical injuries, without a hearing before the Court.
 - b. The Court may order emergency medical or surgical treatment that is immediately necessary for a child, on whose behalf a petition has been filed, pending the service of summons upon his parents, guardian or custodian.
 - c. If an immediate Court order cannot be obtained and any delay in treatment would adversely affect the mental, emotional or physical health of the child and where a parent or guardian cannot be located or refuses necessary medical or psychiatric or psychological treatment of a child, Wassaja Family Services is authorized to act *in loco parentis* on behalf of the child.
2. Parent, Guardian or Custodian. After due notice and a hearing, the Court may order a medical, psychiatric or psychological examination of a parent, guardian or custodian whose ability to care for a child is at issue, if the Court finds from the evidence presented at hearing that the parent's, guardian's or custodian's physical, mental or emotional condition may be a factor in causing the neglect, dependency or incorrigibility of the child.

(Law & Order Code 2006, § 11-4 E; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 F. - Cooperation with other agencies.

The Juvenile Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to carry out the purposes of this article, such as:

1. Utilizing such social services as is deemed appropriate;
2. Utilizing such foster care, shelter care or residential programs or other programs as is deemed appropriate.

(Law & Order Code 2006, § 11-4 F; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 G. - Contracts with outside agencies.

The Juvenile Court may contract, on behalf of the Nation, with tribal, federal or state agencies and/or departments for the care and placement of children before the Juvenile Court, subject to approval of the Tribal Council.

(Law & Order Code 2006, § 11-4 G; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 H. - Timing of motions and responses.

All motions shall be filed no later than ten (10) calendar days prior to the adjudication or dependency hearing unless good cause is shown.

The responding party shall have five (5) calendar days from the date of actual service to file a response. In the case of service by mail, two (2) additional calendar days will be added. Due dates falling on weekends or holidays shall carry over to the next working day.

Additional responses are allowed by leave of the Court.

The Court may decide all motions based on the pleadings unless an oral argument is specifically requested. The Court may limit oral arguments to fifteen (15) minutes per side.

(Law & Order Code 2006, § 11-4 H; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-4 I. - Deferrals of judgment.

The Court may authorize the deferral of entry of Judgments on delinquency, dependency or incorrigibility petitions for a period not to exceed eighteen (18) months provided that:

- (1) The parties agree to the deferral of entry of Judgment;
- (2) Sufficient facts of the petition are admitted to support the charges and the Court's jurisdiction is established;
- (3) The parties submit an agreed upon written list of conditions required to be met within the period of deferral which are then ordered by the Court; and
- (4) The juvenile/defendant or respondent(s) waive their right to speedy trial.

The Court shall set the matter for review at the end of the deferral period. If, at the end of the deferral period, the conditions are met, judgment will not be entered and the matter will be dismissed with prejudice. If, at the end of the deferral period, the conditions are not met, judgment may be entered and the matter may be set for formal disposition hearing. Provided, however that the Tribal Court may be allowed to extend entry of judgment one time for a period of six (6) months to allow the juvenile/defendant and or respondents are actively complying with conditions for deferred entry of judgment and need only

an additional period of time, not to exceed six (6) months to complete all conditions previously ordered by the Court.

(Law & Order Code 2006, § 11-4 I; Ft. McD. Res. No. 2003-50, eff. 5-13-2003; Ft. McD. Res. No. 2006-62, § 11-4 I, adopted 7-11-2006, eff. 8-1-2006)

Sec. 11-5. - JUVENILE COURT PERSONNEL.

Sec. 11-5 A. - Juvenile Court judge.

1. Assignment: The Chief Judge of the Court shall assign one (1) or more judges to preside over Juvenile Court matters.
2. Qualifications: The general qualifications for Juvenile Court judges shall be the same as the qualifications for Tribal Court judges. In addition, the Juvenile Court judge presiding over child protection matters shall have appropriate training and/or experience in child welfare matters.
3. Powers and Duties: In carrying out the duties and powers specifically enumerated under this article, judges of the Juvenile Court shall have the same duties and powers as a judge of Tribal Court including, but not limited to, the contempt power, the power to issue arrest or custody warrants, and the power to issue search warrants.
4. Disqualification and Removal: The rules on disqualification and removal of a Juvenile Court judge shall be the same as those rules that govern Tribal Court judges.

(Law & Order Code 2006, § 11-5 A; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-5 B. - Guardian ad litem.

At any stage of the proceedings before the Juvenile Court, the Court may, in its discretion, and upon its own motion or upon a motion by any interested party, appoint a guardian ad litem for a child or children.

1. Qualifications: The primary responsibility of the guardian ad litem is to objectively advise the Court regarding the best interests of a child. The guardian ad litem shall be at least twenty-one (21) years of age, of high moral character and integrity, and must not be a relative, or have any special interest in the case that would prevent the guardian from objectively representing the best interests of the child.
2. Duties: The duties of the guardian ad litem include, but are not limited to, the following: (1) meet with and become acquainted with the child as soon as possible after appointment; (2) attend hearings and meetings involving matters concerning the child; (3) visit with the child in any foster home or other out-of-home placement for the purpose of assessing whether the placement is in the best interest of the child; (4) report to the Court what is in the best interest of the child as to matters affecting the child; and (5) perform such other duties as would serve the best interests of the child.
3. Notice: The guardian ad litem has a right to notice of all hearings concerning the child.
4. Discharge: The guardian ad litem shall continue to serve until discharged by the Court.

(Law & Order Code 2006, § 11-5 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-6. - PROTECTIVE SERVICES WORKERS.

Sec. 11-6 A. - Power and duties.

1. Protective services workers shall be employed by the tribal social services department.
2. The department may cooperate with such state and community agencies as are necessary to achieve the purposes of this code. The department may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council or its designate.
3. A protective services worker shall:
 - a. Receive reports of neglected or dependent children and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis; and
 - b. Receive from any source, oral or written, information regarding a child who may be in need of protective services;
 - c. Upon receipt of any report of information under paragraph (a) or (b) of this section, immediately:
 - (1) Notify the appropriate law enforcement agency, if appropriate, and
 - (2) Make prompt and thorough investigation that shall include a written determination of the nature, extent and cause of any condition that is contrary to the child's best interests and the name, age and condition of other children in the home.
 - d. Take a child into temporary custody if there are reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that his or her removal is necessary.
 - e. After an investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services.
 - f. In appropriate cases, offer to the family of any child found to be a child in need of protective services appropriate services that may include, but is not limited to, temporary placement of the child outside the home.
 - g. No child shall remain in temporary custody any longer than 12:00 p.m. of the second working day following the day of removal unless a Petition for Temporary Custody or a Child Protection Petition has been filed with the Court.

(Law & Order Code 2006, § 11-6 A; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-6 B. - Limitations of authority; duty to inform.

1. Before offering protective services to a family, a worker shall inform the family that he or she has no legal authority to compel the family to receive such services and of the worker's authority to initiate a petition in Juvenile Court or to refer the matter to the Juvenile Presenting Attorney.
2. If the family declines the offered services, the worker may initiate a child protection petition in Juvenile Court or may refer the matter to the Juvenile Presenting Attorney.

(Law & Order Code 2006, § 11-6 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-7. - RIGHTS AND OBLIGATIONS OF PARTIES.

Sec. 11-7 A. - Rights and obligations of juvenile.

1. *Right to Representation:* At all stages in proceedings before the Juvenile Court, a juvenile shall have the right, at his or her own expense, to be represented by a licensed attorney or advocate who is employed by the Fort McDowell Yavapai Nation or by an advocate permitted to appear and practice before the Fort McDowell Juvenile Court, subject to such rules as may be prescribed by the Tribal Court judges, the Tribal Council or the Fort McDowell Law and Order Code.

2. *Financial Responsibility:* When the Court, pursuant to a juvenile delinquency matter, orders a juvenile into secure custody, to be placed on home electronic monitoring, to submit to urinalysis testing or other similar monitoring, or to undergo medical, psychiatric or psychological examination or other treatment, the Court in the same or subsequent hearing may inquire into the juvenile's financial ability to pay these expenses. Thereafter, the Court may order the juvenile to be responsible for all or a portion of these expenses not otherwise covered by insurance. Unless otherwise ordered, the Court shall direct the Finance Department to withhold these reimbursement amounts from the juvenile's per capita payments prior to placement of the per capita payments in the juvenile's trust account if the juvenile's per capita payments have not been suspended or forfeited under the Nation's Revenue Allocation Plan.

(*Sec. 11-17(A)(2) was amended by Resolution No. McD. 2003-50, effective May 13, 2003.*)

(Law & Order Code 2006, § 11-7 A; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-7 B. - Rights and obligations of a parent or guardian.

1. *Presence Required:* A juvenile's parent(s) or guardian shall be required to be present at any proceeding before the Juvenile Court at which his, her or their child is called to appear. If a parent does not appear, the Court has the discretion to proceed with the hearing. A parent or guardian's failure to appear may be addressed in the Court's disposition of the matter including, but not limited to, the imposition of civil sanctions authorized by this Code.
2. *Support Obligation:* In delinquency, incorrigible and dependency cases, the Court may in the same or any subsequent proceeding inquire into the ability of the parents to support the child including, but not limited to, paying for secure custody or any medical, psychiatric or psychological examination or treatment provided under order of the Court. The Court may, after due notice and a hearing on the matter, require the parents to pay the whole or part of such support and expenses, depending on their financial ability to do so.
3. *Manner of Payment :* The amounts so ordered to be paid shall be paid at such intervals as the Court may direct and, unless otherwise ordered, the Court shall direct the Finance Department to withhold support and expense payments from the parents' monthly per capita if it has not been suspended or forfeited pursuant to the Nation's Revenue Allocation Plan.
4. *Summons or Waiver Required:* No Court order for support or expenses against a parent shall be entered unless summons has been properly served or a voluntary appearance is made or a waiver of service given. The summons or accompanying petition shall specify that the hearing shall address the issue of financial support of the child or reimbursement for expenses.
5. *Enforcement by contempt proceedings; garnishment:* An order entered under this section against the parent may be enforced by contempt proceedings, and shall have the effect of a judgment of law. In addition to other remedies, the Court may issue an order to any employer, trustee, financial agency or any other person or agency within the Fort McDowell Yavapai Nation indebted to the parent, to withhold and pay over to the Clerk of Court, monies due or to become due. No property of the parent(s) shall be exempt from execution to enforce collection of the amounts ordered to be paid by the Court under this section after payment of monies owed to the Nation, the federal government or under pre-existing Court orders.
6. *Legal Custody Vested in Agency; Agency to Report:* Payment for child support may be made to an agency in whom the Court vests legal custody, provided that the agency shall make periodic reports to the Court concerning the care and treatment of the child and the expenditures for that care and treatment. Such reports shall be made at such intervals as the Court may direct and shall be made with respect to each child at least every six (6) months.
7. *Right to Representation:* At all stages of proceedings before the Juvenile Court in which a child is alleged to be Dependent, Neglected or Incorrigible, the child's parent or guardian shall have a right

to be represented by counsel, who are permitted by the Fort McDowell Juvenile Court to appear and practice, at their own expense. Prior to accepting a waiver of counsel by a child's parent or guardian, the Court shall inform the parent of his or her right to counsel, the nature of the matter before the Court and the potential liability and financial responsibility on the party resulting from the matter.

(Subsection 3 deleted and revised by Resolution No. McD. 2003-50, effective May 13, 2003.)

(Law & Order Code 2006, § 11-7 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-8. - MODIFICATION, REVOCATION OR EXTENSION OF COURT ORDERS.

Sec. 11-8 A. - Motion to modify, revoke or extend Court order.

The Court may hold a hearing to modify, revoke or extend a Court order under this Code for good cause upon the motion of:

1. The child;
2. The child's parent, guardian or custodian;
3. The child's counsel or guardian ad litem;
4. The Juvenile Presenting Attorney;
5. Wassaja Family Services or the institution, agency or person vested with legal custody of the child or responsibility for protective supervision;
6. The Court on its own motion; or
7. A representative of the Probation Department (amended 9-3-03)

(Sec. 11-8 A. was amended by Resolution No. McD. 100, effective September 3, 2003.)

(Law & Order Code 2006, § 11-8 A; Ft. McD. Res. No. 100, eff. 8-3-2003; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-8 B. - Hearing.

1. Notice and a hearing shall be required in any delinquency or incorrigibility case in which a violation of probation is alleged or any motion that requests a modification of the terms of probation or revocation of probation. The standard of proof shall be preponderance of the evidence.
2. Notice and a hearing shall be required in any dependency or neglect case in which the effect of modifying or revoking an order may be to deprive a parent of the legal custody of a child or to place the child in a secure facility. The hearing shall be held as soon as practicable but in no event more than ten (10) days from the date of the filing of the motion; however, if the child is transferred in good faith and in the child's best interest without a hearing, the party transferring the child shall incur no liability for such transfer. Transfer from one (1) non-secure placement to another may be effected without notice and hearing. Written notice of transfer shall be made to the Court and the parties by Wassaja Family Services.

(Law & Order Code 2006, § 11-8 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-9. - JUVENILE RECORDS: CONFIDENTIALITY.

Sec. 11-9 A. - Juvenile Court records.

A record of all hearings under this Code shall be made and preserved. All Juvenile Court records shall be confidential and shall not be open to inspection to anyone but the following:

1. The child;
2. The child's counsel and/or guardian ad litem;
3. The child's parent, guardian or custodian and his/her counsel;
4. The Nation's Juvenile Court personnel directly involved in the handling of the case;
5. The Juvenile Presenting Attorney or prosecuting attorney handling the case; and
6. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, including but not limited to, members of the Nation's Legal Department pursuant to an initiation of exclusion proceedings.

(*Subsection "A" was amended by Resolution No. McD. 100, effective September 3, 2003.*)

(Law & Order Code 2006, § 11-9 A; Ft. McD. Res. No. 100, eff. 8-3-2003; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-9 B. - Data for Nation's Revenue Allocation Plan and Nation's benefits.

The Court, Tribal Police and Tribal Prosecutors may provide arrest, adjudication and case completion information to the Nation's Finance Department, the Tribal Council, or their designees for the limited purposes of (1) executing and monitoring the Nation's Revenue Allocation Plan or (2) determining an individual's eligibility to receive Tribal Council discretionary loans or benefits.

(Law & Order Code 2006, § 11-9 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003; Ft. McD. Res. No. 2007-69, ex. A, adopted 10-23-2007)

Sec. 11-10. - JUVENILE COURT APPEALS.

Sec. 11-10 A. - Time limit for appeal.

An appeal may be taken from any final order, decree or judgment of the Juvenile Court to the Fort McDowell Supreme Court. Any party seeking to appeal a final Juvenile Court order shall file a written notice of appeal with the Court within ten (10) days of the date of entry of the final order, decree or judgment. The grounds for appeal, payment of filing fee and appellate procedure will conform to Article III of the Code.

(Law & Order Code 2006, § 11-10 A; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-10 B. - Record.

For purposes of appeal, a record of proceedings shall be made available to the child, his or her parent, guardian or custodian, the child's counsel and others upon Court order. Unless otherwise determined by the Court, the party seeking the appeal shall pay costs of obtaining this record and shall provide a copy to the appellee.

(Law & Order Code 2006, § 11-10 B; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-10 C. - Stay of order pending appeal.

Unless the Court stays its order, the filing of an appeal shall not stay the order or decree appealed from in a juvenile Court case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

(Law & Order Code 2006, § 11-10 C; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

ARTICLE II. - CHILD PROTECTION

Sec. 11-11. - DUTY TO REPORT CHILD ABUSE AND NEGLECT.

Sec. 11-11 A. - Duty to report.

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to Wassaja Family Services Department and/or the Fort McDowell Police Department.

(Law & Order Code 2006, § 11-11 A)

Sec. 11-11 B. - Mandatory reporters.

An individual employed with Fort McDowell Yavapai Nation by any agency, whether public, parochial or private and who, within the course of his or her duties has reasonable cause to suspect child abuse, shall be a mandatory reporter pursuant to this Article if he or she is a:

1. Physician, hospital intern or resident, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic or health care provider;
2. Administrative officer, case worker, social worker, child protection worker, victim advocate, attendance officer or truancy officer, teacher, school counselor, instructional aide, teacher's aide, teacher's assistant or bus driver employed by any school;
3. Child day care worker, Headstart teacher, public assistance worker or worker in a group home or residential facility;
4. Psychiatrist, psychologist or psychological assistant; licensed or unlicensed marriage, family or individual counselor; and
5. Law Enforcement Officer, probation officer, worker in the Juvenile Detention Center or employed by the Community and responsible for the enforcement of law and judicial orders; and
6. Any other person having the responsibility for the care of children.

(Law & Order Code 2006, § 11-11 B)

Sec. 11-11 C. - Abuse and neglect reports.

1. Form of Report: Those persons mandated to report under section 11-11B. above shall immediately make a report to the Child Protection Services worker at Wassaja Family Services and/or the Fort McDowell Police Department who shall prepare a written report.
2. Contents of Written Report: The following information shall be included in the written report:
 - a. The names, addresses and tribal affiliation(s) of the child and his or her parents and/or the person having actual custody over the child, if known;

- b. The child's age.
 - c. A description of the nature and extent of the child's injuries or physical neglect, including any evidence of previous injuries or physical neglect;
 - d. The name, age, address and relationship to child of the person(s) alleged to be responsible for the child's abuse or neglect, if known;
 - e. Other information the reporting party believes might be helpful in establishing the cause of the child's injuries and/or neglect; and
 - f. The name and address of the person or agency making the report.
3. Communications With Other Agencies
- a. When reports of suspected or known abuse or neglect are received by the Fort McDowell Tribal Police Department, the law enforcement officer in charge shall immediately notify Child Protective Services and make all reported information immediately available.
 - b. When, after a report of suspected or known abuse or neglect has been received, an investigation by Child Protective Services results in a substantiation of the abuse or neglect, the Child Protective Services worker shall immediately notify the Fort McDowell Tribal Police Department and make all reported information available.
4. Photographic or Medical Examinations
- a. Wassaja Family Services or the Fort McDowell Police Department, having received a report of suspected abuse or neglect, may photograph or cause x-rays to be taken of the child suspected of being abused, and such photographs or x-rays may be introduced into evidence at a hearing.
 - b. An immediate medical examination of a child, without the consent of a parent, may be conducted if there is an acute need, such as an injury to the child that requires medical attention or if there is a need to preserve evidence or other existing conditions make it advisable. If no medical emergency or acute need for evidence preservation exists, a medical examination shall be arranged in the normal course of business.

(Law & Order Code 2006, § 11-11 C)

Sec. 11-11 D. - Immunity from liability and waiver of privilege.

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil and criminal liability unless such person is charged with or is suspected of abusing or neglecting the child in question.

The physician-patient, husband-wife or any other privilege, except the attorney-client privilege, and any professional code of ethics regarding confidentiality, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which a child's neglect, abuse, dependency or abandonment is an issue or in any proceeding resulting from a report submitted pursuant to this section.

(Law & Order Code 2006, § 11-11 D)

Sec. 11-11 E. - Penalty for not reporting.

Any person required by this section to report a case of known or suspected abuse or neglect that knowingly fails to do so or willfully prevents another from doing so shall be subject to a civil fine of up to five hundred dollars (\$500.00).

(Law & Order Code 2006, § 11-11 E)

Sec. 11-12. - INVESTIGATION AND REMOVAL.

Sec. 11-12 A. - Investigation.

Child Protective Services or other appropriate agency shall investigate all child abuse or neglect reports and shall make a written report of their findings.

(Law & Order Code 2006, § 11-12 A)

Sec. 11-12 B. - Grounds for emergency removal.

No child shall be removed from the home of the child's parent, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Juvenile Court, except as follows:

1. When failure to remove the child may pose an immediate danger to the child's health or welfare including, but not limited to, a substantial risk of death, permanent or ongoing injury or serious emotional harm; or
2. When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

(Law & Order Code 2006, § 11-12 B)

Sec. 11-13. - Restrictions on placement of children

- A. A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be detained in the following community-based shelter care facilities:
 1. A Licensed Foster Home: A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, or protective care; or
 2. Other Licensed Facility: A facility operated by a licensed child welfare services agency; or
 3. Relatives: With a relative of the child who is willing to guarantee to the court that the child will not be returned to, or have any unauthorized contact with, the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the Court.
- B. A child alleged to be incorrigible shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses. A child alleged to be incorrigible may be detained for a maximum of five (5) days in a facility intended for the incarceration of children alleged to be juvenile delinquent offenders. Detention of an alleged incorrigible child in a juvenile delinquent facility requires a judicial finding that the child is a runaway risk or is a danger to self or others.

(Law & Order Code 2006, § 11-13; Ft. McD. Res. No. 2010-24, ex. A, adopted 4-20-2010, eff. 4-20-2010)

Sec. 11-14. - NOTICE OF REMOVAL/PETITION FOR IMMEDIATE CUSTODY.

Sec. 11-14 A. - Notice to the parent, guardian or custodian.

After a child is removed from his or her home, Child Protective Services or other appropriate agency shall make all reasonable efforts to notify the parent, guardian or custodian, as soon as possible, that the child was removed. Reasonable efforts shall include personal, telephonic and written contacts at their residence or place of employment. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

(Law & Order Code 2006, § 11-14 A)

Sec. 11-14 B. - Petition for immediate temporary custody.

1. Time Limitation: If the Child Protective Services or other appropriate agency removes a child from his or her home, the Child Protective Services Worker or the Juvenile Presenting Attorney, on behalf of the Nation, shall prepare and file a Petition for Immediate Temporary Custody with the Court no later than the second Court working day following the day of removal.
2. Contents of Petition: The Petition for Immediate Temporary Custody shall set forth the following with specificity:
 - a. The name, birth date, sex and address of the child(ren);
 - b. The basis for the Court's jurisdiction;
 - c. The name and address of the person(s) having physical custody of the child(ren) unless such information requires confidentiality for the safety of the children;
 - d. The names, relationship and addresses of the child's parents, guardians or custodians, if known; and
 - e. A plain and concise statement of the facts upon which the removal was based and any other information that might be helpful in determining the need for temporary custody.

(Subsection "1" was amended by Resolution No. McD. 100, effective September 3, 2003.)

(Law & Order Code 2006, § 11-14 B; Ft. McD. Res. No. 100, eff. 9-3-2003)

Sec. 11-14 C. - Temporary custody hearing.

1. Hearing/Notice: A hearing shall be held regarding the removal of a child before the end of the second Court working day following the day of filing of the Petition for Immediate Custody. The Court shall notify the parties of the date and time of the hearing. The sole purpose of the hearing is to determine whether there is probable cause to believe that continuing removal from the home is necessary to protect the well being of the child.
2. Evidence: The determination of probable cause may be based on evidence which may be hearsay, in whole or in part, in the following forms:
 - (a) The allegations of a verified petition;
 - (b) An affidavit;
 - (c) Sworn testimony;
 - (d) The written reports of expert witnesses;
 - (e) The written reports of Wassaja Family Services or Child Protective Services provided the social worker or child protective worker is present and available for cross-examination.
3. Burden of Proof: The petitioner shall have the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is necessary.

4. Possible Outcomes of the Hearing:

At the conclusion of the hearing, the Court:

- a. Upon a finding that there is no probable cause to believe that temporary custody is necessary, shall return the child to the child's parent or guardian; or
 - b. Upon a finding that there is probable cause to believe that temporary custody is necessary, may declare or continue the child as a temporary ward of the Court; and
 - c. Shall establish a time limitation for the petitioner to file a Neglect or Dependency Petition with the Court.
5. Temporary Custody Order: If no Dependency or Neglect Petition is filed within the time frame established by the Court, the Temporary Custody Order will terminate and the child will be returned home. If a Dependency or Neglect Petition is filed within the time frame established by the Court, the temporary custody order shall remain in effect until the next Court hearing.

(Law & Order Code 2006, § 11-14 C)

Sec. 11-15. - JURISDICTION OF COURT.

Sec. 11-15 A. - Authorization to file petition.

Proceedings in Neglect, Dependency and Incurability cases are initiated by the filing of a petition in Juvenile Court. Any person may file a petition alleging a child subject to the jurisdiction of the Court is neglected, dependent or incurable.

(Law & Order Code 2006, § 11-15 A)

Sec. 11-15 B. - Notice.

The Court shall make all reasonable efforts to notify the parents, guardian or custodian of the date and time of the initial and adjudicatory hearings. The Court shall request that the parent, guardian or custodian be present for the hearing and shall explain that the Court can proceed by default against them should they fail to appear. Reasonable efforts shall include personal, telephone or written contacts at their last known place of residence or place of employment or other location where the person is known to frequent with regularity. If the Court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

(Law & Order Code 2006, § 11-15 B)

Sec. 11-15 C. - Contents of petition.

The Petition for Neglect, Dependency or Incurability shall set forth the following with specificity:

1. The name, birth date, sex and address of the child(ren);
2. The basis for the Court's jurisdiction;
3. The name and address of the person(s) having physical custody of the child(ren) unless such information requires confidentiality for the safety of the child(ren);
4. The names, relationship and addresses of the child's parents, guardians or custodians, if known; or the name, relationship and address of a known adult relative residing within the Fort McDowell Yavapai Nation;

5. The legal basis upon which the petition is based; and
6. A plain and concise statement of the facts that support the conclusion that each child is neglected, dependent or incorrigible.

(Law & Order Code 2006, § 11-15 C)

Sec. 11-15 D. - Setting an initial hearing.

Upon the filing a petition for Dependency or Incorrigibility, the Court shall set an initial hearing to be held within ten (10) Court working days.

(*Sec. 11-15 D. was amended by Resolution No. McD. 100, effective September 3, 2003.*)

(Law & Order Code 2006, § 11-15 D; Ft. McD. Res. No. 100, eff. 9-3-2003)

Sec. 11-16. - INITIAL AND ADJUDICATORY HEARINGS.

Sec. 11-16 A. - Advise of rights: At the initial dependency hearing, the Court shall advise the parent(s) or guardian(s) of the following:

1. The right to counsel;
2. The right to a trial by the Court on the issues contained in the petition;
3. The right to cross-examine all witnesses who may be called to testify against the parent or guardian or child;
4. The right to use the process of the Court to compel the attendance of witnesses; and
5. That failure to participate in the proceedings or in services offered to reunite the family could result in adjudication of dependency, neglect or incorrigibility and disposition, or termination of parental rights.

(Law & Order Code 2006, § 11-16 A)

Sec. 11-16 B. - Nature of hearings.

The hearings shall be informal in nature. Interested parties may present evidence relating to the situation. In initial, disposition and review hearings, the rules of evidence do not apply (other than with respect to privileges). In adjudication hearings, the rules of evidence shall apply. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the Court shall be admitted.

(Law & Order Code 2006, § 11-16 B)

Sec. 11-16 C. - Possible outcomes of initial hearing

1. If the parent(s) or guardian(s) admits or does not contest the allegations in the petition, the Court shall determine whether the allegations contained in the petition support a finding of dependency, neglect or incorrigibility. In incorrigibility cases filed by or with the parent(s), the parent need only affirm that the information in the verified petition is true and correct. If the Court so finds, the Court shall enter a finding adjudicating the child as dependent, neglected or incorrigible and shall set the matter for a disposition hearing.

2. If the parent(s) or guardian(s) denies the allegations of the petition, the Court shall set the matter for a pre-adjudicatory hearing.
3. If the Court finds that the petition does not set forth sufficient facts taken in a light most favorable to the petitioner to support a finding of probable cause, the matter shall be dismissed and the child shall be returned to his or her parents or guardians.

(Law & Order Code 2006, § 11-16 C; Ft. McD. Res. No. 2009-67, ex. A, adopted 9-15-2008)

Sec. 11-16 D. - Adjudication by default.

At either the initial hearing or the adjudicatory hearing, if a parent or guardian does not appear, the Court, after determining that the parent or guardian has been served with proper legal notice, may find that the parent has waived his or her legal rights and is deemed to have admitted the allegations of the petition by his or her failure to appear and the Court may make a determination of dependency and/or neglect and disposition based upon the record and evidence presented.

(Law & Order Code 2006, § 11-16 D)

Sec. 11-16 E. - Timing and possible outcome of adjudicatory hearing.

1. Except for good cause shown, the adjudicatory hearing shall be set within sixty (60) days of the date of the initial hearing.
2. Within fifteen (15) days of the conclusion of the adjudicatory hearing or following an admission or declaration of no contest to the allegations in the petition or following a finding of dependency by default, the Court shall state its findings in a written order.
 - (a) If the Court finds that the allegation of dependency or neglect is sustained by the evidence, the Court may either immediately proceed with the disposition of the case or set a disposition hearing not more than thirty (30) days after the adjudication of dependency, neglect or incorrigibility.
 - (b) If the Court finds that the allegation of dependency, neglect or incorrigibility is not sustained by the evidence, the Court shall dismiss the petition.

(Law & Order Code 2006, § 11-16 E)

Sec. 11-16 F. - Adjudicatory hearing—miscellaneous.

1. *Burden of Proof* : The burden of proof lies with the petitioner. Findings of fact by the judge as to allegations raised in the petition shall be based on the standard requiring clear and convincing proof.
2. *Consolidation*: When more than one child is involved in a home situation that may be found to constitute neglect or dependency, or when one child is alleged to be involved in the same violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition and reviews.
3. *Amendment of Petition*: The petition may be amended to conform to evidence presented that supports material facts not alleged. A continuance shall be granted to insure justice and fairness to all parties if the amended petition results in a substantial departure from the original petition.
4. *Appeal Notice*: Parties adversely affected by a final disposition shall be informed of their right to appeal pursuant to section 11-10.

(Law & Order Code 2006, § 11-16 F)

Sec. 11-17. - DISPOSITION HEARINGS/DISPOSITIONAL REVIEW HEARINGS.

Sec. 11-17 A. - Written report.

At least five (5) calendar days prior to the scheduled disposition hearing, a social service agency shall file a written report with the Court and provide a copy to the parties, which contains the dispositional recommendations. The Court may waive the filing of a written report if the Court believes that it has sufficient information to make dispositional orders and the Court may accept the oral recommendations of the parties regarding disposition.

(Law & Order Code 2006, § 11-17 A)

Sec. 11-17 B. - Evidence.

In making or modifying dispositional findings and orders, the Court may consider the reports of any parties, reports of any social service agency, including attachments, reports of service providers and any other documents or testimony that the Court deems relevant.

(Law & Order Code 2006, § 11-17 B)

Sec. 11-17 C. - Notice and timing of dispositional review hearings.

As part of the Court's dispositional order, it shall set forth the date and time of the next dispositional review hearing. Barring exceptional circumstances, a dispositional review hearing shall be held no longer than six (6) months from the initial dispositional hearing or any subsequent dispositional review hearing.

(Law & Order Code 2006, § 11-17 C)

Sec. 11-17 D. - Placement preferences.

1. If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, can be met. It is preferred that the child be placed in reasonable proximity to his or her home, taking into account any special needs of the child.
2. A hearing is required prior to placement of a child in a residential treatment center or other secure facility unless the Court grants an ex parte motion for change of placement that states that all parties agree to the change of placement.

(Law & Order Code 2006, § 11-17 D)

Sec. 11-18. - PERMANENCY PLANNING.

Sec. 11-18 A. - Initial permanency planning hearing.

1. Time Limitation: The Court shall hold an initial permanency planning hearing no later than eighteen (18) months after the child's removal from the home.
2. Request for Expedited Permanency Planning Hearing: At the request of the petitioner or by its own motion, the Court may set the matter for an initial permanency planning hearing on an earlier date than the date required under the preceding paragraph.

3. Purpose: At the initial permanency planning hearing the Court shall determine (1) whether the child can be returned to the parent or guardian without a substantial risk of harm to the child's physical, mental or emotional health or safety, (2) whether reunification efforts should continue for a period of time of up to an additional six (6) months or (3) whether a permanency planning hearing shall be held to adopt a permanent plan for the child.
4. Reports: Wassaja Family Services shall file a report with the Court not less than ten (10) calendar days prior to the initial permanency planning hearing and shall provide copies to all parties. The report shall address the following:
 - (a) The current case plan;
 - (b) The parent(s) or guardian's compliance with the case plan;
 - (c) The case worker's opinion as to whether or not the child can return to the parent or guardian without a substantial risk of harm; and
 - (d) Any proposed changes to the case plan goals or services.
5. Procedure: At the initial permanency planning hearing the Court shall consider the Wassaja Family Services report and any additional evidence offered by the parties, in the form of testimony or documents admitted into evidence, which may include hearsay, in whole or in part, in making its determination under paragraph 3 above.
6. Standard of Proof: The Court shall make its determination as required under paragraph 3 above based upon a standard of preponderance of the evidence.

(Law & Order Code 2006, § 11-18 A)

Sec. 11-18 B. - Permanency planning hearing.

1. Purpose: At the permanency planning hearing the Court shall determine the appropriate permanency plan for the child and shall enter such orders as may be necessary to accomplish the permanency plan within a specific time frame.
2. Time Limitation: The permanency planning hearing shall be scheduled at the initial permanency planning hearing and held within three (3) months of the initial permanency planning hearing unless good cause exists to continue it for up to an additional thirty (30) days.
3. Procedure: At the permanency planning hearing the Court shall consider the proposed permanency case plan and evidence from the parties, in the form of testimony or documents admitted into evidence, which may include hearsay, in whole or in part, in order to determine what permanent legal status is appropriate for the child.
4. Findings and Order: The Court shall make findings based upon the evidence presented and shall:
 - (a) Determine the appropriate permanency plan for the child and order the petitioner to accomplish the permanent plan within a specified period of time;
 - (b) Set a permanency planning review hearing as required herein;
 - (c) Order that petitioner, child's counsel or guardian ad litem file a petition for guardianship within thirty (30) days after the permanency planning hearing if it is determined that the establishment of a guardianship is clearly in the best interest of the child; or
 - (d) Order that the petitioner, child's counsel or guardian ad litem file a petition for termination of parental rights within thirty (30) days after the permanency planning hearing if it is determined that termination of parental rights is clearly in the best interest of the child; or
 - (e) Order that the child be placed in or continue placement in long-term foster care; or
 - (f) Order any other placement arrangement intended to be permanent in nature.

5. Modification or Revocation of Permanency Plan: A parent or guardian of a child whose legal custody has been transferred to another person, agency or institution pursuant to a permanency plan may petition the Court for modification of the permanency plan or revocation of the permanency plan and restoration of their custody rights upon a clear and convincing showing that a change of circumstances has occurred which requires such modification or revocation in the best interests of the child.

The Court shall make a preliminary determination and may dismiss the petition if it finds that the alleged change of circumstances, if sufficiently proved, would not affect the permanency plan. If the Court finds that a further examination of the alleged change of circumstances is appropriate, it shall conduct an evidentiary hearing upon due notice to all persons concerned and may thereupon enter an order continuing, modifying or revoking the permanency plan.

(Law & Order Code 2006, § 11-18 B)

Sec. 11-18 C. - Permanency planning review hearings:

1. As part of the Court's permanency planning order, it shall set forth the date and time of the initial permanency planning review hearing. Barring exceptional circumstances, the initial permanency planning review hearing shall be held within six (6) months from the permanency planning hearing or any subsequent permanency planning review hearing.
2. Permanency planning review hearings need not be held if:
 - (a) The child has been adopted;
 - (b) The child is a ward of a guardian; or
 - (c) The child is in long-term foster placement intended to be permanent in nature and the Court explicitly orders that no further permanency planning hearings are required.

(Law & Order Code 2006, § 11-18 C)

ARTICLE III. - TERMINATION OF PARENTAL RIGHTS

Sec. 11-19. - TERMINATION OF PARENTAL RIGHTS.

Sec. 11-19 A. - Preferred parental right to custody.

Before depriving any parent of his or her parental rights, the Juvenile Court shall give due consideration to the preferred right of parents to their children and shall not terminate the relationship unless the Court finds, from all the circumstances in the matter, that the welfare of the child or the Nation requires that the child be taken from his or her parent(s).

(Law & Order Code 2006, § 11-19 A)

Sec. 11-19 B. - Grounds for termination of parental rights.

The Juvenile Court may terminate a person's parental rights if it finds that:

1. The parent(s) has intentionally abandoned and made no effort to maintain a parental relationship with the child.
 - a. Intent to abandon will be presumed when a child has been left:
 - (1) By one (1) or both parents in the physical custody of another person for a period of three (3) consecutive months; or

- (2) By one (1) parent in the physical custody of another parent for a period of one (1) year, without personally providing support for the child's care and without communication.
- b. The Juvenile Court may declare a child to have been abandoned upon a finding that efforts to provide care for or communicate with the child were not more than token efforts.
2. The parent has seriously neglected or willfully abused the child.
3. The parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period of time.
4. The parent is deprived of his or her civil liberties due to a conviction of a felony, and the offense is of such nature as to show the unfitness of such parent to have custody and control of the child, or if the sentence of such parent is of such length that the child will be deprived of a normal home for a period of years.
5. That a parent receiving services pursuant to a dependency or neglect adjudication has inflicted or attempted to inflict further injury or cruel punishment upon the child or has continued to refuse or neglect to provide the child with necessary food, clothing, shelter, medical care or education.
6. A parent subject to a dependency or neglect adjudication has refused to comply with the disposition requirements ordered by the Court and there is reasonable cause to believe that the parent will not, in the foreseeable future, comply with those requirements.
7. The child has suffered physical or emotional injury willfully and repeatedly inflicted by his or her parent(s).
8. The parent(s) has subjected the child to any act of sexual abuse.
9. One (1) or both parents have knowingly and voluntarily given their written consent to the termination of their parental rights before the Juvenile Court.

The rights and responsibilities of one parent may be terminated without affecting the rights and responsibilities of the other parent.

(Law & Order Code 2006, § 11-19 B)

Sec. 11-19 C. - Petition for termination of parental rights.

1. A Petition for Termination of Parental Rights may be filed by any person or agency that has a legitimate interest in the welfare of the child including, but not limited to, a parent, a relative and Fort McDowell Wassaja Family Services.
2. The petition shall include the following to the best information or belief of the petitioner:
 - a. The name, sex, birth date, birthplace, address and tribal affiliation of the child(ren);
 - b. The names, relationship, birth dates, addresses and tribal affiliation(s) of the parent(s), legal guardian(s) or custodian(s);
 - c. The basis for the Court's jurisdiction;
 - d. The relationship of the petitioner to the child or the fact that no relationship exists;
 - e. The names and addresses of the persons having legal custody or guardianship of the person or acting in loco parentis to the child, or the organization or authorized agency having legal custody or providing care for the child;
 - f. The legal grounds upon which termination is sought; and

g. The factual basis underlying the petition.

When any of the facts required by this section are unknown, the petition shall so state. The petitioner shall sign and date the petition.

3. If applicable, the written relinquishment or consent previously executed by the parent(s) shall be attached to the petition.

(Law & Order Code 2006, § 11-19 C)

Sec. 11-19 D. - Notice of the termination of parental rights hearing.

1. After a Petition for Termination of Parental Rights has been filed, the Juvenile Court shall set a date and time for the termination hearing. No hearing shall be set earlier than ten (10) days after service of the summons is completed. The summons shall contain a statement that the rights of the parent may be terminated in the proceeding.
2. Notice shall be given by personal service. If service cannot be made personally, the Court may authorize service by registered mail at the last known address of the person to be served. If the summons cannot be delivered personally or by certified mail, the Court may authorize service by publication as provided in the rules for service of process in civil actions.
3. Notice of the termination hearing shall be provided to the child's parents, the person having physical custody of the child, the person having legal custody of the child, any individual standing in *loco parentis* to the child and the child's guardian *ad litem*, if any.

(Law & Order Code 2006, § 11-19 D)

Sec. 11-19 E. - Pre-termination report.

Upon the filing of an involuntary petition for termination of parental rights, the Court may request that Wassaja Family Services or other qualified social service agency prepare and submit to the Court a report in writing. The report shall be submitted to the Court no later than ten (10) days before the hearing with copies given to all parties. The purpose of the report is to aid the Court in making a determination on the petition and shall be considered by the Court prior thereto. The Court may request additional reports where it deems necessary.

The report shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and other such facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation, and the reasons therefore, as to whether or not the parent and child relationship should be terminated.

(Law & Order Code 2006, § 11-19 E)

Sec. 11-19 F. - Voluntary termination of parental rights.

Parental rights may be voluntarily terminated by a parent in writing, if signed or the signature acknowledged by the parent in the presence and with the approval of the Court. A voluntary termination by a parent shall not be accepted or approved by the Court prior to ten (10) days after the birth of the child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it.

(Law & Order Code 2006, § 11-19 F)

Sec. 11-19 G. - Termination of parental rights hearing.

1. Termination of Parental Rights hearings shall be heard by the Court in a closed hearing. Only such persons whose presence the judge finds to have a direct interest in the case or in the work of the Court shall be admitted provided that such persons shall not disclose any information obtained at the hearing. The Court may require the presence of any parties and witness it deems necessary to the disposition of the petition.
2. At the beginning of the hearing the Court shall advise the parent of his or her rights as set forth in section 11-7 B. of this Code.
3. The burden of proof lies with the petitioner to prove that the allegations of the termination petition are supported by clear and convincing evidence and that the best interests of the child will be served by termination of parental rights.

(Law & Order Code 2006, § 11-19 G)

Sec. 11-19 H. - Findings of fact and conclusions of law.

The Court shall make formal findings of fact and conclusions of law as a basis for the written order terminating the parent-child relationship. Such order shall be conclusive and binding on all persons from the date of entry.

(Law & Order Code 2006, § 11-19 H)

Sec. 11-19 I. - Result of termination order.

1. An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit and receive support from the parent. This right of inheritance and support shall be terminated by a final order of adoption.
2. The rights of one parent may be terminated without affecting the rights of the other parent.

(Law & Order Code 2006, § 11-19 I)

Sec. 11-19 J. - Child's continued right to benefits.

An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

(Law & Order Code 2006, § 11-19 J)

Sec. 11-19 K. - Custody after termination order.

If upon entering an order terminating the parental rights of a parent there remains no parent having parental rights, the Court shall commit the child to the custody of a social service agency for the purpose of placing the child for adoption, or in the absence of an adoptive home the agency may place the child in a licensed foster home or with a relative, or take other suitable measures for the care and welfare of the child. The custodian shall have the authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child and consent to such matters as might normally be required of the child's parent.

The Court shall also make a separate order fixing responsibility for the child's support.

(Law & Order Code 2006, § 11-19 K)

Sec. 11-19 L. - Future review hearings.

If a child has not been adopted or permanently placed within six (6) months of the termination order, another six (6) month review hearing will be held. Such six (6) month hearings will continue until the child is adopted or permanently placed.

(Law & Order Code 2006, § 11-19 L)

ARTICLE IV. - JUVENILE DELINQUENCY

Sec. 11-20. - ARREST AND DETENTION OF JUVENILES.

Sec. 11-20 A. - Taking juvenile into custody.

A law enforcement officer may take a child into custody when:

1. The child commits a juvenile offense in the presence of the officer;
2. The officer has probable cause to believe a juvenile offense has been committed by the juvenile being detained; or
3. A custody order or warrant has been issued by the Court authorizing the taking into custody of the particular juvenile.

(Law & Order Code 2006, § 11-20 A)

Sec. 11-20 B. - Notification to parent/guardian.

When an officer takes a juvenile into custody, he or she shall notify the juvenile's parent, guardian or custodian as soon as possible. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for the taking of the juvenile into custody and, if applicable, the place of continued detention. If notification cannot be provided to the juvenile's parent, guardian or custodian, the notice shall be given to a member of the juvenile's extended family.

(Law & Order Code 2006, § 11-20 B)

Sec. 11-20 C. - Release or continued detention.

A law enforcement officer taking a child into custody shall do one (1) of the following:

1. Release the juvenile to the juvenile's parent, guardian or custodian;
2. Release the juvenile to a relative or other responsible adult community member if the juvenile's parent, guardian or custodian and the juvenile, if over ten (10) years old, consent to the release;
3. In the event release under subsection 1 or 2 is not available, then release the juvenile to a responsible member of the juvenile's extended family if the extended family member and the juvenile, if over ten (10) years old, consent to the release;
4. Place the juvenile in a juvenile detention facility and notify the Juvenile Presenting Attorney or prosecutor of the juvenile's detention; or

5. In the event release under subsections 1 through 4 is not available, place the juvenile in the temporary legal custody of Wassaja Family Services.

(Law & Order Code 2006, § 11-20 C)

Sec. 11-21. - DETENTION HEARING.

Sec. 11-21 A. - Requirement of a detention hearing.

Where a juvenile who has been taken into custody is not released pursuant to Sec. 11-20 C 1.2 or 3, a detention hearing shall be convened by the Court within forty-eight (48) hours of the juvenile's detention, excluding Friday afternoons, Saturdays, Sundays and holidays. An initial hearing may be conducted simultaneously.

(*Sec. 11-21 was amended by Resolution No. McD. 100, effective September 3, 2003.*)

(Law & Order Code 2006, § 11-21 A; Ft. McD. Res. No. 100, eff. 9-3-2003)

Sec. 11-21 B. - Purpose of detention hearing.

The purpose of the detention hearing is to determine whether continued detention is necessary pending further proceedings.

(Law & Order Code 2006, § 11-21 B)

Sec. 11-21 C. - Notice of detention hearing.

Notice of the date, time and place of the detention hearing shall be given by the Court to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set.

(Law & Order Code 2006, § 11-21 C)

Sec. 11-21 D. - Factors to be considered at detention hearings.

The Court shall review the need for continued detention and shall release the child to his or her parent, guardian or custodian in order to appear at the initial hearing on a date to be set by the Court unless:

1. The alleged act is serious enough to warrant continued detention to protect the community; or
2. There is reasonable cause to believe the child will run away so that he or she unavailable for further proceedings or otherwise fail to appear at further proceedings; or
3. There is reasonable cause to believe that the child is a safety threat to himself or herself or to the community.

No child under the age of twelve (12) years shall be detained in a detention facility or other secured facility, unless otherwise ordered by the Court.

(Law & Order Code 2006, § 11-21 D)

Sec. 11-21 E. - Order for continued detention or condition or release.

If a determination is made that continued detention is necessary, the Court shall issue an Order for Detention setting forth the place of detention pending a further hearing.

If a determination is made that continued detention is not necessary, the Court may issue an order setting forth specific conditions of release pending a further hearing.

(Law & Order Code 2006, § 11-21 E)

Sec. 11-22. - INITIAL AND ADJUDICATION HEARINGS.

Sec. 11-22 A. - Filing and Content of Delinquency Petition.

- (a) Juvenile Delinquency Proceedings shall be commenced by the filing of a Juvenile Delinquency Petition on behalf of the Nation. The petition shall set forth with specificity:
 - 1. The name, birth date and address of the juvenile;
 - 2. The names and addresses of the juvenile's parent(s), guardian(s) or custodian(s);
 - 3. A citation to the specific section(s) of this Code which give the Court jurisdiction over the proceedings;
 - 4. A citation to the criminal statute or other law or ordinance which the child is alleged to have violated;
 - 5. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.
- (b) *Motor Vehicle Violations* . In the case of violations of motor vehicle laws or ordinances, a petition shall not be required, and the issuance of a citation or summons shall be sufficient to invoke the jurisdiction of the Court.
- (c) *Amendment of Petition; Continuance*: Amendment of the delinquency petition shall be liberally allowed upon a showing of good cause up to the date of the adjudication hearing. When it appears in the course of any proceedings in a juvenile delinquency case that evidence presented points to material facts not alleged in the petition, the Court may proceed to consider the additional matters raised by the evidence. The Court, on motion of any party or on its own motion, shall direct that the petition be amended to conform to the evidence. If the amendment results in a substantial departure from the facts originally alleged, the Court shall grant a continuance as justice may require. The Court may grant such a continuance as it deems reasonable.

(Law & Order Code 2006, § 11-22 A)

Sec. 11-22 B. - Issuance, Content and Service of Summons.

After a juvenile delinquency petition has been filed, the Court shall direct the issuance of summons to:

- 1. The juvenile;
- 2. The juvenile's parent, guardian or custodian;
- 3. The juvenile's counsel;
- 4. The Juvenile Presenting Attorney; and
- 5. Any other person the Court deems necessary for the proceeding.

The summons shall contain the name of the Court, the title of the proceedings, and the date and time of the Initial Hearing. The summons shall notify the party that failure to appear could result in the issuance of a warrant. A copy of the petition shall be attached to the summons.

The summons shall be served upon the parties at least five (5) days prior to the hearing. The summons shall be personally delivered by an appointee of the Court. If the summons cannot be delivered personally, the Court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be made by publication. A party, other than the juvenile, may waive service of the summons by voluntary appearance at the hearing.

(Law & Order Code 2006, § 11-22 B)

Sec. 11-22 C. - Initial Hearing.

Absent good cause, the initial hearing shall be held within ten (10) working days from the date the delinquency petition is filed with the Court.

At the initial hearing, the Court shall advise the juvenile of the charges against him or her, the potential consequences for each charge, the juvenile's trial rights and to his or her right to legal representation.

If the juvenile is not represented by legal counsel and invokes his or her right to legal representation, the Court shall continue the matter for a reasonable period of time to allow the juvenile to confer with legal counsel.

If the juvenile knowingly, willingly and voluntarily waives his or her right to legal counsel, the Court shall proceed with taking a plea of admission or denial of each charge.

As to each charge, the juvenile shall admit, deny or enter a plea of nolo contendere.

If the juvenile admits to a charge, the Court shall then establish that a factual basis exists for the admission.

If the juvenile denies a charge, the Court shall set the matter for a pre-adjudication hearing as set forth in section 11-22 D. Furthermore, the Court shall determine whether the juvenile shall be released or detained pending further hearings and shall determine what, if any, conditions of release shall be imposed pending further hearings. The Court may, upon a motion by either party or upon its own motion, amend the order setting forth release conditions and may, where appropriate, enforce a suspended detention condition or release a juvenile from detention pending further hearings.

(Law & Order Code 2006, § 11-22 C)

Sec. 11-22 D. - Pre-Adjudication Hearing.

Except for good cause shown, the Court shall set a pre-adjudication hearing within twenty (20) days of the initial hearing. The Court may, in its discretion, continue the pre-adjudication hearing upon stipulation of the parties, or if it determines that such a continuance is not prejudicial to the juvenile and the Nation.

Purpose: The purposes of the pre-adjudication hearing are (1) to present any settlement agreements between the parties to the Court; (2) to address and resolve any evidentiary, disclosure or other pre-adjudication hearing issues; and (3) to schedule the adjudication hearing.

Change of Plea: The juvenile may enter an admission to any or all of the charges and may enter into an agreement with the Juvenile Presenting Attorney with regard to the alleged offense(s).

Mental Health Evaluation: The Court may, upon a motion of either party or upon its own motion, order a mental health evaluation by Wassaja Family Services or by a licensed psychiatrist or psychologist where there is a reasonable belief that the juvenile suffers from a mental illness, defect or disability and such mental illness, defect or disability affects the youth's competence to stand trial, understand the nature of the proceedings or affects the juvenile's health in general.

(Law & Order Code 2006, § 11-22 D)

Sec. 11-22 E. - Adjudication Hearing.

Purpose and Conduct: The Court shall conduct the adjudication hearing for the purpose of determining whether the juvenile has committed a juvenile offense. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses and other persons requested by the parties shall be admitted. All adjudication hearings are tried by the Court without a jury.

Time Limitations on Adjudication Hearings: Except for good cause shown, the adjudication hearing shall be held within sixty (60) days of the date of the initial hearing. If the child is being held in detention, the adjudication hearing shall be held within forty (40) days of the date of the initial hearing except for good cause shown. Good cause includes but is not limited to: (1) When the juvenile leaves the jurisdiction or (2) When the juvenile and/or his or her parent or guardian intentionally avoids service of process.

Finding After Hearing: If the Court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the Court shall make and record its findings and schedule a disposition hearing in accordance with section 11-24 of this code. Additionally, the Court shall specify in writing whether the juvenile is to be continued in out of home placement or released on conditions pending the disposition hearing.

Dismissal of Petition: If the Court finds that the allegations of the petition have not been established beyond a reasonable doubt it shall dismiss the petition and order the juvenile released from any detention imposed in connection with the proceeding.

(Law & Order Code 2006, § 11-22 E)

Sec. 11-23. - PRE-DISPOSITION STUDIES: REPORTS AND EXAMINATIONS.

Sec. 11-23 A. - Pre-disposition reports: At the direction of the Court, the juvenile probation officer or other authorized person(s) shall prepare a pre-disposition report.

This report shall include information and recommendations to the Court based on the juvenile's misconduct, age, family situation, prior juvenile record, victim impact statements and any other relevant matters. This report shall be treated as a confidential juvenile record.

(Law & Order Code 2006, § 11-23 A)

Sec. 11-23 B. - Pre-disposition examinations.

The Court may order an examination of an adjudicated juvenile by a physician, psychiatrist or psychologist. If so, the Court shall order the parent, custodian or guardian to sign all necessary releases. The Court may also, following the adjudication hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his or her consent and whose ability to care for or supervise a child is an issue before the Court at the disposition hearing.

(Law & Order Code 2006, § 11-23 B)

Sec. 11-23 C. - Alcohol or substance abuse assessment.

The Court may order an alcohol or substance abuse assessment of an adjudicated juvenile.

(Law & Order Code 2006, § 11-23 C)

Sec. 11-23 D. - Submissions of reports.

Evaluations, assessments, disposition reports and other materials to be considered by the Court in a juvenile hearing shall be submitted to the Court and to the parties no later than three (3) days before the scheduled hearing date. A written declaration including why a report has not been completed shall be filed with the Court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline.

(Law & Order Code 2006, § 11-23 D)

Sec. 11-24. - DISPOSITION HEARINGS.

Sec. 11-24 A. - Purpose and conduct of disposition hearing:.

The Court shall conduct the disposition hearing to determine appropriate treatment and consequences for the juvenile after the juvenile has been adjudicated. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, victims and other persons determined to be appropriate by the Court shall be admitted.

(Law & Order Code 2006, § 11-24 A)

Sec. 11-24 B. - Time limitation.

If a juvenile is adjudicated a delinquent, the Court shall set a Disposition Hearing within thirty (30) days of the adjudication hearing.

(Law & Order Code 2006, § 11-24 B)

Sec. 11-24 C. - Notice.

Notice of the disposition hearing shall be given to the juvenile and the juvenile's parent, guardian or custodian, the juvenile's counsel, the Juvenile Presenting Attorney and any other person the Court deems necessary for the hearing.

(Law & Order Code 2006, § 11-24 C)

Sec. 11-24 D. - Evidence and reports.

In the disposition hearing, the Court may consider all relevant and material evidence, including oral and written reports and may rely on such evidence to the extent of its probative value even though not otherwise competent. The Court shall consider any predisposition report, medical report, assessment or social study it may have ordered and afford the juvenile, the juvenile's parent, guardian or custodian and the juvenile's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The Court shall also consider the alternative predisposition report or recommendations prepared by the juvenile or the juvenile's counsel, if any.

(Law & Order Code 2006, § 11-24 D)

Sec. 11-24 E. - Findings.

The Court shall make specific findings on the record supporting the imposition of disposition consequences ordered.

(Law & Order Code 2006, § 11-24 E)

Sec. 11-24 F. - Disposition alternatives.

The Court may make one (1) or more of the following orders for disposition for the juvenile's supervision, care and rehabilitation:

1. Permit the juvenile to remain with his or her parent, guardian or custodian, subject to such conditions and limitations as the Court may prescribe;
2. Place the juvenile in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the Court may prescribe;
3. Place the juvenile under protective supervision, as defined herein, subject to such conditions and limitations as the Court may prescribe;
4. Place the juvenile on supervised or unsupervised probation subject to such conditions and limitations as the Court and the juvenile probation officer may prescribe;
5. Place the juvenile in a facility designated by the Court, including but not limited to an alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, boarding school, substance abuse treatment facility, residential facility, juvenile detention facility, except that no juvenile under twelve (12) may be placed in a secure juvenile detention facility;
6. Place the eighteen (18) year old person subject to the juvenile Court's jurisdiction pursuant to Sections 11-3 A. 1. and 11-3 D. in a facility designated by the Court, including but not limited to an alcohol or substance abuse emergency shelter or halfway house, group home, substance abuse treatment facility, residential facility or adult jail;
7. Order the juvenile to pay restitution to the victim(s) for any out-of- pocket expenses incurred by the juvenile's wrongful act(s);
8. Order the juvenile to complete community work service or participate in other work or school programs;
9. Order the juvenile and/or the juvenile's parent, guardian or custodian to participate in counseling sessions;
10. Order the juvenile to participate in in-patient or out-patient treatment programs;
11. Order the juvenile and/or any juvenile's parent(s) or guardian(s) to reimburse the Nation for the cost of the juvenile's incarceration or the cost of services, counseling, treatment or rehabilitation provided by or arranged by Wassaja Family Services;
12. Order that the juvenile be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he or she receive other special care, and for such purpose may place the juvenile in a hospital or other suitable facility;
13. Order the juvenile to pay a fine;
14. In cases of violation of traffic laws or ordinances, the Court may, in addition to any other disposition, restrain the juvenile from driving for such periods of time as the Court deems necessary, and may take possession of the juvenile's driving license or permit; or
15. Make any reasonable orders that are in the best interest of the juvenile or that are required for the protection of the public.

(Subsection 6 amended by Resolution No. McD. 2003-50, effective May 13, 2003.)

(Law & Order Code 2006, § 11-24 F; Ft. McD. Res. No. 2003-50, eff. 5-13-2003)

Sec. 11-24 G. - Establishment of conditions.

In addition to the disposition alternatives set forth above, the Court may order reasonable conditions to be complied with by the parent, child, his custodian or any other person who has been made a party to the proceedings, including but not limited to restrictions on visitations by the parent(s), restrictions on the child's associates, occupation and other activities and requirements to be observed by the parents or custodian(s).

(Law & Order Code 2006, § 11-24 G)

Secs. 11-25—11-50. - Reserved.

ARTICLE V. - TRUANCY

[**Historical Note.** Previous Article III. Truancy repealed by adoption of Article III. Truancy set forth below pursuant to Resolution No. 2001-44 enacted June 26, 2001. Article III. Truancy was subsequently amended by Resolution No. 2001-57 on August 14, 2001 to more clearly define absences from school and further clarify instances of good cause and the duties and authority of the Truancy Officer. Please refer to the attachment to Resolution No. 2001-57 for a complete description of all changes made by such Resolution. Section 11-51 through 11-59 was amended by Resolution No. McD. 2002-43, effective July 16, 2002.]

Sec. 11-51. - School defined.

- A. It is mandatory that all children between the ages of six (6) and eighteen (18) years residing within the exterior boundaries of the Fort McDowell Yavapai Nation attend:
 - 1) An accredited school that monitors attendance every day that school is regularly in session except for those children who have received a high school diploma or a graduate equivalency diploma or otherwise satisfy the requirements for high school graduation.
 - 2) The Fort McDowell Education Division Academic Recovery Program if that child is suspended and/or expelled from a school.
 - 3) Home Schooling may be recognized upon the prior approval of the Education Division Director. The Education Division Director shall determine the acceptable requirements and standards of home schooling, and shall publish those requirements and standards in the community newsletter on an annual basis.
- B. All children described in Subsection A above shall be enrolled in an accredited school. A child absent from school shall be considered truant unless excused by good cause. The term "absent" means that a child is not in attendance at school. Good cause shall consist of only the following conditions:
 - 1) Sickness. A medical doctor's note or nurse practitioner's note is required for two (2) consecutive days of absence from school, and for three (3) non-consecutive days of absence from school during any given thirty (30) day period for which the child is required to attend school;
 - 2) Medical treatment and appointments for the child that cannot be scheduled for non-school hours;
 - 3) Hospitalization;
 - 4) Death of a family member. Allowable absences under this condition are limited to a period of three (3) school days for the death of an immediate family member unless reasonable cause is

provided for a longer absence, and for a period of one (1) school day for the death of an extended family member unless reasonable cause is provided for a longer absence.

- (i) An immediate family member means a child's mother, stepmother, father, step-father, sister, step-sister, brother, step-brother, grandparent, step-grandparent and legal guardian.
 - (ii) An extended family member means a child's aunt, uncle, and cousin that are directly related to the child.
- 5) Later stage of pregnancy and childbirth. The applicable school's criteria for this condition shall be taken into consideration for determining the appropriate length of time allowable for absence from school;
- 6) Head lice. Only one (1) day of school is authorized for this condition;
- 7) Participation in a school activity authorized by the school for which the child is enrolled;
- 8) Participation in events occurring in official Tribal celebrations where such participation is approved by Tribal Council resolution;
- 9) Required attendance in court;
- 10) Verifiable hazardous road conditions;
- 11) School Approved college visitations;
- 12) School approved co-operative programs;
- 13) Verifiable emergencies reasonably preventing attendance at school;
- 14) A child who is a participant in a Tribal cultural or religious ceremony. In order for such absence to be considered good cause, the absence may not be for a period longer that would cause the child to be dropped from a class or losing credit for a class. Prior to a child being absent from school for this exception, a parent or guardian must provide the Truancy Officer at least two (2) weeks notice and receive approval by the Truancy Officer;
- 15) Family vacation. In order for such absence to be considered good cause, the absence may not be for a period longer than would cause the child to be dropped from a class or losing credit for a class. Prior to a child being absent from school for this exception, a parent or guardian must provide the Truancy Officer at least two (2) weeks notice and receive approval by the Truancy Officer;
- 16) Physical mental, emotional or behavioral conditions verified by a physician, psychiatrist or psychologist that make instruction inexpedient or impracticable;
- 17) Detainment in a juvenile detention facility pursuant to court order.
- C. Suspension or expulsion from school shall not be considered good cause.
 - 1) If upon review of a child's IEP or 504 Plan by the Truancy Officer, the Special Education Specialist, and the Education Division Director, the behavior that precipitated the suspension is determined to be a function of a physical, mental, emotional or behavioral disability identified in the said IEP and/or 504 Plan, fines shall not be levied for that specific suspension.
 - 2) If the review results in recommendations for specific actions to be taken or resources utilized to help the student and mitigate further similar behavior, and the child's parent/guardian refuses to take such actions or utilize recommended resources, parent/guardian shall not be exempt from paying fines levied for subsequent suspensions.
- D. Five (5) incidents of unexcused tardiness will be considered as one (1) unexcused absence from school. Fines will be administered accordingly.
- E. Three (3) incidents of unexcused absence from individual classes or school periods will be considered as one (1) unexcused absence from school.

- F. Acceptable "excused" absences with one (1) semester are limited to a total of ten (10), unless the absence is caused by a verifiable documented emergency at the discretion of the Truancy Officer.

(Sec. 11-51 amended by Resolution No. McD. 2001-44, effective June 26, 2001. Sec. 11-51 amended by Resolution No. McD. 2001-57, effective August 14, 2001. Sec. 11-51 amended by Resolution No. McD. 2002-43, effective July 16, 2002. Sec. 11-51(17) amended by Resolution No. McD. 2002-94, effective August 1, 2002. Sec. 11-51 amended by Resolution No. McD. 2007-005, effective January 23, 2007. Sec. 11-51 amended by Resolution Ft. McD. 2009-42, effective May 5, 2009.)

(Law & Order Code 2006, § 11-51; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2002-94, eff. 8-1-2002; Ft. McD. Res. No. 2007-005, § 11-51, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-52. - Parental responsibility.

- a) It is the responsibility of each parent and/or guardian to ensure that their child or children attends school in accordance with the requirements of this law.
- b) For the purposes of this article, "Parent" includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated; nor does it include the unwed father whose paternity has not been legally acknowledged or adjudicated.
- c) For the purposes of this article, "Guardian" is a person assigned by a court of law, other than a parent, having the legal duty and authority to provide care, shelter and control of a child. Guardians include, but are not limited to, foster parents, custodians, or any person appointed by a court of law to act *in loco parentis*.

(Sec. 11-52 amended by Resolution No. McD. 2001-57, effective August 14, 2001. Sec. 11-51 amended by Resolution No. McD. 2002-43, effective July 16, 2002.)

(Law & Order Code 2006, § 11-52; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-52, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-53. - Applicability.

This Truancy Ordinance shall apply to any person who resides within the exterior boundaries of the Fort McDowell Yavapai Nation.

(Sec. 11-53 amended by Resolution No. McD. 2001-57, effective August 14, 2001. Sec. 11-51 amended by Resolution No. McD. 2002-43, effective July 16, 2002.)

(Law & Order Code 2006, § 11-53; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-53, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-54. - Truancy officer and duties.

- a) There is hereby established within the Fort McDowell Yavapai Nation Education Department the position(s) of Truancy Officer whom shall have the following authority and duties:
 - 1. Verify that all children are enrolled in educational institutions as required herein;
 - 2. Verify that all children are attending school as required herein;
 - 3. Make inquiries of any educational institutions and of any child and their parent or guardian as to the enrollment and attendance status of children in school;
 - 4. Verify that all children are arriving at school on time according to school guidelines;
 - 5. Issue notice and fines;
 - 6. Take truant children into custody pursuant to the parameters established in this Article III;
 - 7. At anytime the Truancy Officer may make a referral to Family Services if it is deemed necessary;
 - 8. Perform other duties specifically set forth in this Article V.
- b) Whenever the Truancy Officer finds or observes that a child is not attending school during regular school hours, the Truancy Officer shall:
 - 1. Inquire as to the child's circumstances and the child and/or parents or guardian shall explain to the Truancy Officer the reason for the child's failure to attend school;
 - 2. Bring the child to the child's home or to Fort McDowell Family and Community Services and hold the child until the Truancy Officer can relinquish custody of the child to the child's parent or guardian; and
 - 3. Make a report of the truancy incident, and send a copy of that report to the applicable Child Protective Services.
- c) In the event that the child's parent or guardian is not at home or not available, the Truancy Officer may release the child to Fort McDowell Child Protective Services which shall take the child into custody until the parent or guardian becomes available.
- d) In the event that a Fort McDowell Police Officer finds or observes a child who is not in the presence or company of his parent or guardian within the territorial boundaries of the Fort McDowell Yavapai Nation during regular school hours, the Police Officer shall notify the Truancy Officer and may detain such child at the Fort McDowell Police Department until the Truancy Officer takes custody of the child pursuant to the Article V.

(Sec. 11-54 amended by Resolution No. McD. 2001-57, effective August 14, 2001. Sec. 11-51 amended by Resolution No. McD. 2002-43, effective July 16, 2002. Sec. 11-54 amended by Resolution No. McD. 2007-00 5, effective January 23, 2007.)

(Law & Order Code 2006, § 11-54; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-54, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-55. - Providing Information to Truancy Officer.

For purpose of this Article V, it shall be the duty and obligations of each child and parent or guardian to provide whatever information is reasonably requested by the Truancy Officer as to circumstances, activities, and whereabouts of any child or other information relating to a child's school attendance.

(Sec. 11-55 amended by Resolution No. McD. 2001-57, effective August 14, 2001. Sec. 11-51 amended by Resolution No. McD. 2002-43, effective July 16, 2002.)

(Law & Order Code 2006, § 11-55; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-55, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-56. - Notice of Truancy and Fines.

- A. Whenever the Truancy Officer finds or observes a child outside of school during regular school hours or information comes to the Truancy Officer from a school or other source that a child is not attending school during regular school hours without good cause, the Truancy Officer shall serve by regular mail on the parent or guardian written notice of such truancy and that such truancy violates Tribal law. Upon the first notice of violation to the parent or guardian, the parent or guardian shall have the option of participating in the truancy diversion program operated by the Nation. The parent or guardian that does not opt to participate in the truancy diversion program shall be assessed a fine as provided in this section. Failure of the parent or guardian to successfully participate in and complete the truancy diversion program shall result in the parent or guardian being penalized a mandatory fine of Fifty Dollars (\$50.00) per child per day of absence from school. The first notice shall also inform the parent or guardian that a second violation will result in the parent or guardian being penalized a mandatory fine of One Hundred Dollars (\$100.00) per child per day of absence from school.
 - 1. Notice of the truancy violation shall also be given to the truant child and shall require the child to attend a truancy diversion program operated by the Nation.
 - 2. In the event the truant child does not successfully complete the truancy diversion program, a fine will be assessed the truant child in accordance with this article.
- B. A second violation of this law within a twelve (12) month period shall result in the Truancy Officer serving by regular mail on the parent or guardian written notice of such truancy and the imposition of a fine of One Hundred Dollars (\$100.00) per child per day of absence from school.
- C. A third violation of this law within a twelve (12) months period shall result in:
 - 1. The Truancy Officer serving by regular mail on the parent or guardian written notice of such truancy and the imposition of a fine of One Hundred Fifty Dollars (\$150.00) per child per day of absence from school.
 - 2. Truancy Officer shall make a report to Child Protective Services (CPS) for an assessment regarding neglect of children, incorrigibility, or other issues of dependency in the household. The assessment will evaluate the family situation and may require further intervention and referrals to other resources. The CPS will determine the need for further assistance. A determination of "substantiated" or "unsubstantiated" will be reported back to the Truancy Officer.
- D. Subsequent violations of this law within twelve (12) months period shall result in the Truancy Officer serving by regular mail on the parent or guardian written notice of such truancy and the imposition of a fine of not less than Two Hundred Dollars (\$200.00) per child per day of absence from school.
- E. In the event fines are not paid within fourteen (14) days from the date the parent or guardian is served notice pursuant to this Section 11-56, the Fort McDowell Finance Department is authorized to deduct the amount of said fine from any Tribal benefit that may be due and payable to the parent or guardian including, but not limited to, salary and per capita payments subject to the following restrictions: not more than eight (8) percent may be deducted from a parent or guardian's gross monthly per capita distribution and not more than eight (8) percent may be deducted from a parent or guardian's gross pay check. No restrictions shall apply to the other Tribal benefits. Deductions set

forth in this Subsection (e) shall continue in effect until the entire amount of said fine(s) have been paid in full.

1. Where the parent or guardian is employed by a subordinate economic enterprise of the Nation, the Finance Department is authorized to order the enterprise to deduct the amount of said fine from the parent or guardian's pay check pursuant to the requirements in Subsection (e) and the enterprise is required to comply with such order.
- F. In the event that fines are imposed as the result of this Article V where the truant child is fourteen (14) years or older, an amount equal to that assessed against the parent or guardian shall be withheld and forfeited back to the Nation from any future scheduled payment to the child's per capita minor's account. The notice criteria applicable to parents and guardians set forth in this Section 11-56 shall also apply to the imposition of fines against truant children as set forth in this Subsection (f). Upon notice from the Truancy Officer, the Fort McDowell Finance Department is authorized to withhold from any future scheduled payment to a child's per capita minor's account pursuant to this Subsection 11-56 (f). The withheld amount shall be placed into the Nation's general fund and used to offset the cost of operating the Truancy Diversion Program and enforcing the Truancy Ordinance. The withholding of a child's per capita funds pursuant to Subsection (f) shall not create a claim for damages arising or resulting from the withholding of such funds. The Truancy Office may impose community service requirements for children thirteen (13) years of age and older.
- G. In order for parents and guardians to receive per capita payments or any other Tribal benefits, and for per capita payments to be deposited into the minor's account of an eligible child, parent and guardians must execute a written release that allows their child's school to provide any and all attendance and grade records to the Fort McDowell Education Department.
- H. The imposition of fines and civil penalties in this Ordinance may be imposed joint and severable against the parents or guardians of truant children.
- I. In instances where the Truancy Officer is unable to reasonably locate the parent, guardian and/or child to serve notice upon such individual(s) as required herein, service of notice may occur by the Truancy Officer attaching written notice to the front door of the home, house, or dwelling for which the person or child is last known to reside at.

(Sec. 11-56 amended by Resolution No. Ft. McD. 2001-44, effective June 26, 2001. Sec. 11-56 subsequently amended by Resolution No. Ft. McD. 2002-43, effective July 16, 2002. Sec. 11-56 amended by Resolution No. Ft. McD. 2007-005, effective January 23, 2007. Sec. 11-56 amended by Resolution No. Ft. McD. 2009-42, effective May 5, 2009.)

(Law & Order Code 2006, § 11-56; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-56, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-57. - Appeals.

- A. Any parent or guardian who has received written notice of a fine from the Truancy Officer and wants to contest the fine must within seven (7) days of being served such notice, appeal the fine in writing to the Truancy Officer. The fine shall be upheld except when the parent or guardian provide satisfactory information of proof of good cause occasioning the truancy or information in accordance with Section 11-51 (b). The Truancy Officer shall have three (3) days within which to make a final decision in regard to a timely filed appeal. Any information provided shall be confidential except that it may be disclosed to the Fort McDowell Tribal Court on appeal or to the Education Advisory Council.

- B. Within seven (7) days of a final decision by the Truancy Officer, the parent or guardian shall have the further right to appeal the Truancy Officer's final decision to the Tribal Division of the Tribal Court which shall have jurisdiction over the issue. The Tribal Division of the Tribal Court shall hold a hearing within thirty (30) days and shall render a decision within five (5) days of the hearing in regard to a timely filed appeal. The Trial Division of the Tribal Court shall give deference to the finding of facts submitted by the Truancy Officer and shall not overturn the findings unless the Court finds an abuse of discretion. The standard of review for the conclusion of law submitted by the Truancy Officer shall be de novo. The decision of the Trial Division of the Tribal Court shall be final and is not subject to further appeal.
- C. It shall not be a defense to the imposition of any fine, suspension or termination of per capita allowed hereunder that the child is acting without the knowledge or authority of the parent or guardian, or that the parent or guardian was unaware of the truancy or claims to be unable to control their child, as the parent and/or guardian has responsibility for the child's actions. Illness of the child shall not be defense or an excuse for the violation of this law if the child was: (1) seen or found outside of his residence and apart from the company of the parent or guardian during regular school hours, or (2) seen or found outside of his residence with his parent or guardian without good cause during regular school hours.
- D. A child who has per capita funds withheld and forfeited to the Nation may also appeal such action pursuant to the rules set forth in this Section 11-57.

(Law & Order Code 2006, § 11-57; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-57, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-58. - Judgments.

- A. The Truancy Officer shall have authority to have fines assessed pursuant to this Article V entered as a judgment in the Fort McDowell Tribal Court to facilitate enforcement of such fines within the Fort McDowell Yavapai Nation and when necessary in Courts outside the territorial boundaries of the Fort McDowell Yavapai Nation.
- B. Upon the failure of a child to timely fulfill community services requirements imposed pursuant to Subsection 11-56 (f), the Truancy Officer shall have authority to request the Fort McDowell Tribal Court to enter the imposition of said community service requirements as a judgment of the Tribal Court.

(Law & Order Code 2006, § 11-58; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-58, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Sec. 11-59. - Severability.

If any section or provision of this Article or amendment made by this Article is held invalid, the remaining sections or provisions of this Article and amendments made by this Article shall continue in full force and effect and such invalidity shall not affect the sovereign immunity of the Nation, its Official, Officers or Employees.

(Sec. 11-59 added and amended by Resolution McD. No. 2002-43, effective July 16, 2002.)

(Law & Order Code 2006, § 11-59; Ft. McD. Res. No. 2001-44, eff. 6-26-2001; Ft. McD. Res. No. 2001-57, eff. 8-14-2001; Ft. McD. Res. No. 2002-43, eff. 7-16-2002; Ft. McD. Res. No. 2007-005, § 11-59, adopted 1-23-2007; Ft. McD. Res. No. 2009-42, ex. A, adopted 5-5-2009, eff. 8-1-2009)

Secs. 11-60—11-70. - Reserved.

ARTICLE VI. - CURFEW

Sec. 11-71. - Curfew for juveniles under fifteen (15) years; exceptions.

It shall be unlawful for any juvenile under the age of fifteen (15) years to be, remain or loiter in, about or upon any place in the community away from the dwelling house or usual place of abode of said juvenile, between the hours of 10:00 p.m. and 5:00 a.m. of the following day. However, the provisions of this section do not apply to said juvenile when accompanied by his parent, guardian or other adult person having the care, custody or supervision of said juvenile; or when said juvenile is on an emergency errand.

(Law & Order Code 2006, § 11-71; Ft. McD. Res. No. 2003-107, eff. 8-23-2003; Ft. McD. Res. No. 2009-67, ex. B, adopted 9-15-2008)

Sec. 11-72. - Curfew for juveniles of the age of fifteen (15) years and under eighteen (18) years; exceptions.

It shall be unlawful for any juvenile of the age of fifteen (15) years and under the age of eighteen (18) years to be, remain or loiter in, about or upon any place in the community away from the dwelling house or usual place of abode of said juvenile, between the hours of 12:00 midnight and 5:00 a.m. each day, Monday through Friday and between the hours of 1:00 a.m. and 5:00 a.m. each Saturday, Sunday and holiday. However, the provisions of this section do not apply to any emancipated minor or to a juvenile accompanied by his parent, guardian or other adult person having the care, custody or supervision of said juvenile; or when said juvenile is on an emergency errand.

(*Sec. 11-72 was amended by Resolution McD. No. 2003-107, effective September 23, 2003.*)

(Law & Order Code 2006, § 11-72; Ft. McD. Res. No. 2003-107, eff. 8-23-2003)

Sec. 11-73. - Responsibility of parent or guardian.

It shall be unlawful for the parent, guardian or other adult person having the care, custody or supervision of a juvenile to permit such juvenile to be, remain or loiter in, about or upon any place in the community away from the dwelling house or usual place of abode of said juvenile in violation of sections 11-71 and 11-72. However, the provisions of this section do not apply when the juvenile is an emancipated minor; or when the juvenile is accompanied by his parent, guardian or other person having the care, custody or supervision of the juvenile; or when the juvenile is on an emergency errand; or when the juvenile is on reasonable, legitimate and specific business or activity directed or permitted by his parent, guardian or other person having the care, custody or supervision of such juvenile.

(Law & Order Code 2006, § 11-73)

Sec. 11-74. - Curfew violations to be separate offenses.

Each violation of the provisions of sections 11-71, 11-72 and 11-73 shall constitute a separate offense.

(Law & Order Code 2006, § 11-74)

Sec. 11-75. - Parents not having knowledge not to constitute defense.

It shall not constitute a defense hereto that such parent, guardian or other adult person having the care, custody or supervision of such juvenile coming within the provisions of section 11-71 or section 11-72 did not have actual knowledge of the presence of such juvenile in, about or upon any place in the community away from the dwelling house or usual place of abode of said juvenile, if said parent, guardian or other person having the care, custody or supervision of such juvenile or juveniles, in the exercise of reasonable care and diligence, should have known of the aforementioned unlawful acts of such juvenile or juveniles.

(Law & Order Code 2006, § 11-75; Ft. McD. Res. No. 2009-67, ex. B, adopted 9-15-2008)

Sec. 11-76. - Delivery of juvenile into custody of parent or guardian.

In addition to any other powers he may have, any law enforcement officer who arrests a juvenile for violating any of the provisions of sections 11-71 or 11-72 is also hereby empowered to demand of the parent, guardian or other person having the care, custody or supervision of such juvenile that such parent, guardian or other person come and take such juvenile into custody. Should there be a failure of the parent, guardian or other person to take custody of such juvenile, the officer may then be empowered to take such juvenile home. It shall be unlawful for any such parent, guardian or other person having the care, custody or supervision of said juvenile to fail or refuse to take such juvenile into custody after such demand is made upon him.

(Law & Order Code 2006, § 11-76)

Sec. 11-77. - Penalties.

- A. Any juvenile who shall violate the provisions of section 11-71 or 11-72 shall be guilty of a Class 5 offense, and proceedings shall be taken in accordance with and pursuant to Chapter 11 of the Revised Law and Order Code of the Fort McDowell Yavapai Nation.
- B. Any parent or guardian of a juvenile who shall violate the provisions of sections 11-73 or 11-76 shall be guilty of a Class 5 offense.

(Law & Order Code 2006, § 11-77; Ft. McD. Res. No. 2009-67, ex. B, adopted 9-15-2008)

Secs. 11-78—11-80. - Reserved.

ARTICLE VII. - RIGHTS OF CHILDREN VICTIMS AND WITNESSES OF CRIME

Sec. 11-81. - Intent.

The Fort McDowell Yavapai Nation recognizes that it is important that child victims and child witnesses of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to community enforcement efforts and the general effectiveness of the criminal justice system of this community. Therefore, it is the intent of the community council by means of this article to ensure that all child victims and witnesses of crime are treated with sensitivity, Courtesy and special care in order

that their rights may be protected by law enforcement agencies, social agencies, protection afforded the adult victim, witness or criminal defendant.

(Law & Order Code 2006, § 11-81)

Sec. 11-82. - Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this article.

1. *Crime* means an act punishable under the laws of this community or equivalent federal or state law.
2. *Child* means any person under the age of eighteen (18) years.
3. *Victim* means any person against whom a crime has been committed.
4. *Witness* means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or a person who is subject to call or likely to be called as a witness for the prosecution by reason of having relevant information, whether or not an action or proceeding has been commenced.
5. *Family member* means child, parent, legal guardian, or extended family member.
6. *Advocate* means any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding.

(Law & Order Code 2006, § 11-82)

Sec. 11-83. - Rights of child victims and witnesses.

There shall be every reasonable effort made by law enforcement agencies, prosecutors and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. The enumeration of these rights shall be construed to create substantive rights and duties; and the application of an enumerated right in an individual case is not subject to the discretion of the law enforcement agency, prosecutor or judge. Child victims and witnesses have the following rights:

1. To have explained in language easily understood by the child all legal proceedings and/or police investigations in which the child may be involved.
2. To be provided, whenever possible, a secure waiting area during Court proceedings and to have an advocate or support person remain with the child prior to and during any Court proceedings.
3. To prevent the disclosure of the names, addresses or photographs of the living child victim or witness by any law enforcement agency, prosecutors office or state agency without the written permission of the child victim, child witness, parents or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel or tribal or private agency that provides services to the child victim or witness.
4. To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.
5. To allow an advocate to provide information to the Court concerning the child's ability to understand the nature of the proceedings.
6. To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation and judicial proceedings in which the child is involved.

7. To allow an advocate to be present in Court while the child testifies in order to provide emotional support to the child.
8. To provide information to the Court as to the need for the presence of other supportive persons at the Court proceeding while the child testifies in order to promote the child's feelings of security and safety.
9. To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of child victims.
10. To be provided with coordinated tribal services so as to decrease any duplication of services and to minimize the number of interviews with the child victim or witness.
11. To be provided with the use of closed circuit television or other such similar recording device for the purposes of interviewing or Court testimony when appropriate, and to have an advocate remain with the child prior to and during any recording sessions. The use of closed circuit television or other such similar recording device is appropriate when the trial Court, after hearing evidence, determines this procedure is necessary to protect the particular child witness' welfare; and specifically finds the child would be traumatized, not by the Courtroom generally, but by the defendant's presence and finds that the emotional distress suffered by the child in the defendant's presence is more than *de minimus*.

(Law & Order Code 2006, § 11-83)

Sec. 11-84. - Civil liability.

The failure to provide notice to a child victim or witness under this article of the rights enumerated in section 11-83 of this article shall not result in civil liability so long as the failure to notify was in good faith and without gross negligence. The failure to make a reasonable effort to assure that child victims and witnesses are afforded the rights enumerated in section 11-83 of this article shall not result in civil liability so long as the failure to make a reasonable effort was in good faith and without gross negligence.

(Law & Order Code 2006, § 11-84)

ARTICLE VIII. - APPLICATION OF THE INDIAN CHILD WELFARE ACT

Sec. 11-85. - Application of the Indian Child Welfare Act.

The Juvenile Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. 1901-63, where they do not conflict with the provisions of this Article. The procedures for state Courts in the Indian Child Welfare Act shall not be binding upon the Juvenile Court unless specifically provided for in this Code.

1. Transfer to State Court or Other Tribal Court: In any proceeding before the Juvenile Court, the Court may transfer the proceedings to an appropriate state Court or another tribal Court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child.
2. Transfer from Other Courts: The Juvenile Court may accept or decline, under the procedures set forth in this Code, transfers of child custody proceedings from other federal, state or tribal Courts.
3. Procedures for Intervention or Transfer:
 - (a) Agent of Notice: The Nation's agent for service of notice concerning child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Nation's Indian Child Welfare Officer of the Wassaja Family Services Department.

- (b) Receipt of Notice; Determination of Eligible Children: Upon receipt of notice of child custody proceeding from a state or other Court, the Indian Child Welfare Officer shall forward the notice to the Nation's Enrollment Officer. The Enrollment Officer shall determine whether the child's name appears on the Nation's enrollment list as a member of the Nation and, if not, shall forward the notice to the Tribal Council for its determination of whether the child is eligible for enrollment as a member. The Tribal Council shall make this determination within seven (7) calendar days following the receipt of notice from the Enrollment Officer.
 - (1) If the child is not a member of the Nation nor eligible for enrollment as a member, the Indian Child Welfare Officer shall notify the appropriate state or other Court concerning this information.
 - (2) If the child is a member or eligible to be enrolled as a member of the Nation, the Indian Child Welfare Officer shall inform the state or other Court that issued the notice that the child is a member or eligible for enrollment as a member and that the Nation will soon determine whether to file a petition to intervene or petition to transfer the case. The Indian Child Welfare officer shall also notify the tribal Prosecutor of the pending decision.
- (c) Recommendations for Transfer or Intervention: Once the Tribal Council has determined that a child is a member or eligible to be enrolled as a member of the Nation and this determination is given to the Indian Child Welfare Officer, the Wassaja Family Services Department shall investigate the matter and submit written recommendations to the Tribal Council as to whether the Nation should petition to intervene or petition to transfer the case. The standard for the recommendations shall be the "best interest of the child." The recommendations shall be submitted to the Tribal Council within seven (7) calendar days from the date that the Department received notice of the Tribal Council's determination referenced above in this Subsection (c).
- (d) Petition for Intervention or Transfer: Within seven (7) calendar days of receipt of the Department's written recommendations, the Tribal Council shall determine whether the Nation shall petition to intervene or petition to transfer the case to the Juvenile Court. Upon a decision to intervene in or to transfer the case, the Tribal Prosecutor shall be informed of this decision and the Prosecutor's Office shall proceed with filing the necessary petition and supporting documents. The Wassaja Family Services Department shall also be informed of this decision.
- (e) Acceptance of Transfer: The Juvenile Court shall not accept transfer from state or other Court unless:
 - (1) A parent or Indian custodian's petition to state or other Court for transfer is granted; or
 - (2) The Nation's petition to state or other Court for transfer is granted.
- (f) Temporary Custody/Guardianship: Upon acceptance of transfer from state or other Court, the Juvenile Court shall place the child in the temporary legal custody of Wassaja Family Services and enter such other appropriate orders as may be necessary until final disposition of the matter.
- (g) Hearing(s): Upon receipt of transfer jurisdiction from state or other Court, the Tribal Prosecutor may file a dependency and/or neglect petition as the circumstances may warrant and appropriate hearings may be held in accordance with this Code.

(*Sec. 11-85. was amended by Resolution No. McD. 100, effective September 3, 2003.*)

(Law & Order Code 2006, § 11-85; Ft. McD. Res. No. 100, eff. 9-3-2003)

Policy statement.

The Fort McDowell Yavapai Nation has become overpopulated with domesticated animals. Several animals are sick, starving, neglected or homeless. These animals pose a threat to the residents and visitors of the Nation by roaming throughout the community uncontrolled. In order to protect our residents and visitors, livestock, natural resources, and control animal neglect, starvation, disease and overpopulation, the following Animal Control Ordinance shall become effective.

(Res. No. 2010-7, ex. A, 2-2-2010/4-1-2010)

ARTICLE I. - ANIMAL CONTROL ORDINANCE

Sec. 12-1. - Definitions.

"Abandon" means to willfully cause or allow an animal to remain at large with no intent to reclaim or provide necessary food, water, shelter, or medical care.

"Aggressive Dog" means a dog that by its breeding or training has a propensity to be violent and a danger to humans, including but not limited to a dog of the following breeds: hybrid wolves, German shepherd, Doberman pinscher, Pit Bull or Rottweiler.

"Animal" means any domesticated animal of a species that is susceptible to rabies, except humans.

"Animal Breeder" means any owner, who provides the means for, or assists, the procreation of animals for commercial or other pecuniary gain and who possesses an appropriate business license issued by the Nation.

"Animal Control Officer" means the enforcement officer(s) employed by the Fort McDowell Police Department who is empowered by and responsible for enforcing this ordinance.

"At large" means being neither confined by rope, pasture, pen, enclosure, nor physically restrained by a leash or harness.

"Collar" means a band, chain, harness, or other suitable device worn around the neck of an animal to which a license can be attached.

"Exotic Animal" means an animal of a non-domesticated species not commonly kept as a household pet or for food or fiber production. Exotic animals may or may not be native to the area and may or may not be regulated by existing wildlife regulations.

"Harboring" means the keeping of an animal by the occupant of any premises on which the animal is kept or to which the animal customarily returns daily for food and care for a period of three (3) or more consecutive days.

"Impound" means the act of taking or receiving into custody by the Animal Control Officer or other police officer of any dog or other animal for the purpose of confinement in accordance with the provisions of this ordinance.

"Leash" means a line made of rope, chain, or other suitable material not less than one-fourth (¼) inch in diameter for the purpose of restraining an animal.

"Livestock" means cattle, horses, sheep, goats, swine, mules, or burros.

"Owner" means any person who harbors an animal, any assignee of a home within Fort McDowell Yavapai Nation where dogs are registered, or any person named in said registration as the owner.

"Stray Animal" means any animal kept by a person as a pet or as livestock for sale or consumption which is running at large.

"Stray Dog" means any dog six (6) months of age or older running at large that is not registered with the Animal Control Officer.

"Vaccination" means the administration of vaccine to an animal by a veterinarian, or other licensed personnel, including the Animal Control Officer.

"Veterinarian", unless otherwise indicated, means any veterinarian licensed to practice in the State of Arizona or any veterinarian employed in this state by a governmental agency.

"Vicious Dog" means a dog that has attacked or bitten a person, a dog that has killed or mauled another animal, or a dog that cannot be controlled or a dog which by its breeding has a propensity to be violent and a danger to persons and has demonstrated the potential to be vicious.

"Wild Animal" means any animal not domesticated or kept as a pet, running freely or out of control.

"Working Dog" means a dog kept for the primary purpose of hunting, herding, search and rescue, livestock protection, or other jobs.

(Law & Order Code 2006, § 12-21; Res. No. 2010-7, ex. A(§ 12-1), 2-2-2010/4-1-2010)

Sec. 12-2—12-9. - Reserved.

Sec. 12-10. - Animal Control Officer.

- A. The Animal Control Officer shall enforce the provisions of this ordinance and any other regulations pertaining thereto. He or she shall be empowered to issue summons, citations and complaints relating to this ordinance.
- B. The Animal Control Officer shall be under the employ and control of the Fort McDowell Police Department.
- C. Any Fort McDowell Yavapai Nation police officer may be delegated the responsibilities and authority to act as the Animal Control Officer for the purpose of enforcement of this Ordinance.

(Res. No. 2010-7, ex. A(§ 12-10), 2-2-2010/4-1-2010)

Sec. 12-11. - Unlawful interference with Animal Control Officer.

Any person who interferes, threatens or harasses the Animal Control Officer in the performance of his or her duties is guilty of a Class V criminal offense and subject to the penalties set forth in Chapter 6 herein. Any such person who is not subject to the Court's criminal jurisdiction is liable for a civil offense and subject to civil penalties as set forth herein.

(Res. No. 2010-7, ex. A(§ 12-11), 2-2-2010/4-1-2010)

Secs. 12-12—12-14. - Reserved.

Sec. 12-15. - Registration; issuance of license certificates.

- A. **Registration Requirement:** Every dog or cat six (6) months of age or older that resides within Fort McDowell Yavapai Nation shall be registered with the Animal Control Officer by the owner within thirty (30) days of the date that the dog was acquired by the owner.
- B. **Registration Information:** The registry of the ownership shall contain the following information: name, age, breed (if known), sex, color, whether the animal is spayed or neutered and any additional information regarding the animal as is requested. The name and telephone number(s) of the owner(s) and the location of the residence where the animal resides shall also be included.
- C. **Proof of Registration:** Upon completion of the registration, a certificate shall be issued to the owner. A copy of the registration certificate shall be provided to the owner.

- D. **Registration Renewal and Transfer:** Whenever a registration certificate is lost, a duplicate certificate shall be issued upon application with the Animal Control Officer. The number of the registration certificate will also be recorded in the registry. The certificate is non-transferable.
- E. **Proof of Vaccination:** Proof of vaccination is required before the registration certificate can be issued. Proof of vaccination is obtained through any licensed veterinarian, the Animal Control Officer or the Humane Society. A vaccination tag with owner identifying information must be worn by the animal at all times.
- F. **Failure to Register:** Any person who knowingly fails, within fifteen (15) calendar days after receipt of written notification from the Animal Control Officer, to obtain registration, or counterfeits an official vaccination tag, or places a vaccination tag upon an unregistered dog or cat is guilty of a civil offense and is subject to civil penalties as set forth herein.

(Res. No. 2010-7, ex. A (§ 12-15), 2-2-2010/4-1-2010)

Sec. 12-16. - Responsibilities of owners and other persons.

- A. **Dogs Not Permitted At Large:** No dogs shall be allowed to run at large on the Fort McDowell Yavapai Nation. All dogs found running at large shall be impounded by the Animal Control Officer and the registered owner shall be responsible to reimburse the Nation for all costs associated with the impoundment of the dog.
- B. **Restraint Required in Public Places:** No person in charge of any dog shall permit such dog in public unless the dog is physically restrained by a leash or enclosed in a car, cage or similar enclosure.
- C. **Unregistered Animals:** An animal subject to licensing under this Ordinance found without a vaccination tag identifying its owner may be presumed unowned and treated as a stray.
- D. **Failure to Provide:** Any owner, who intentionally, knowingly or recklessly, fails to provide adequate food, water, shelter or medical care for an animal is guilty of a Class V criminal offense (refer to Section 6-101), and shall be subject to the criminal penalties as set forth in Chapter 6 herein. An owner, who is not subject to the Court's criminal jurisdiction or who negligently fails to provide adequate food, water, shelter or medical care for an animal is liable for a civil offense and subject to civil penalties as set forth herein.

The Animal Control Officer shall be allowed to immediately remove such animals from the owner's custody, and such owner shall be responsible for all fees incurred as a result, including costs of medical treatment.

- E. **Harm to animals Prohibited:** Any person who intentionally, knowingly or recklessly strikes, beats, maims, mutilates, disables, tortures, shoots, poisons, kills or in any other way abuses or harasses any animal is guilty of a Class V criminal offense (refer to Section 6-101), and shall be subject to the criminal penalties as set forth in Chapter 6 herein. Any such person who is not subject to the Court's criminal jurisdiction is liable for a civil offense and subject to civil penalties as set forth herein. Traditional animal husbandry practices such as tail-docking, declawing, dehorning, branding, and ear cropping are exempt when humanely performed.
- F. **Interference with Police Dogs Prohibited:** Any person who intentionally, knowingly or recklessly harasses a police dog while said police dog is confined in its quarters, an automobile, kennel or fenced area, training area, or while under the control of a dog handler; or who interferes with a police dog or dog handler while said police dog or dog handler is engaged in lawful police activities is guilty of a Class V criminal offense (refer to Section 6-101) and shall be subject to the criminal penalties as set forth in Chapter 6 herein. Any such person who is not subject to the Court's criminal jurisdiction is liable for a civil offense and subject to civil penalties as set forth herein.
- G. **Interference with Working Dogs or Service Animals Prohibited:** Any person who intentionally, knowingly or recklessly harms, harasses, or interferes with a working dog or a service animal while

the animal is performing their working or service duties is guilty of a Class V criminal offense (refer to Section 6-101) and shall be subject to the criminal penalties as set forth in Chapter 6 herein. Any such person who is not subject to the Court's criminal jurisdiction is liable for a civil offense and subject to civil penalties as set forth herein.

- H. **Abandonment Prohibited:** No person shall abandon an animal within the Nation and, in addition to a civil fine, is liable for all costs associated with the capture, care and placement or destruction of the animal.
- I. **Disposal of Dead Animals:** Owners of a dead animal shall dispose of or make arrangement for the disposal of the carcass individually or by contacting Public Works Department within twenty-four (24) hours of the death of the animal. In any event, owners of registered animals shall notify the Animal Control Officer of the death of the registered animal as soon as possible. If the owner refuses or fails to comply with this section, such disposal arrangements shall be made by the Animal Control Officer or the Police Department and the cost of the disposal, if any, shall be assessed to the owner of the animal.
- J. **Removal of Impounded Animals:** No person shall remove or attempt to remove an animal which has been impounded or which is in the possession of the Animal Control Officer except according to this Ordinance. Any person removing or attempting to remove an impounded animal in violation of this Ordinance is liable for a civil offense and subject to civil penalties as set forth herein.
- K. **Exotic Animals Prohibited:** No person may own, harbor or keep an exotic animal within the Nation unless permitted by the Nation's Tribal Council and subject to any and all conditions or restrictions placed thereon. Furthermore, all exotic animals permitted within the Nation are subject to the provisions of this Ordinance unless specifically exempted by the Nation's Tribal Council.
- L. **Compulsory Spaying/Neutering:**
 - 1. A dog or cat one (1) year or older must be spayed/neutered, at the expense of its owner. The Animal Control Officer shall issue the owner of a dog or cat less than one (1) year old a provisional registration certificate that will note the date on which the dog or cat must be spayed/neutered. Once the dog or cat is spayed/neutered and provided that all other registration requirements are met, the Animal Control Officer shall issue a registration certificate. If a person obtains ownership of a dog or cat who is older than one (1) year and not spayed/neutered, such person must have the dog or cat spayed/neutered, at their expense, within thirty (30) days of obtaining ownership. The Animal Control Officer shall issue the owner a provisional registration certificate until such time as the owner provides documentation verifying the dog or cat was spayed/neutered. At that time, the Animal Control Officer shall issue a registration certificate, provided that all other registration requirements are met.
 - 2. The Animal Control Officer, in his or her discretion, may exempt an owner from the compulsory spaying/neutering provisions of subsection L.1. herein for good cause. Good cause includes, but is not limited to, licensed animal breeders and for verified medical reasons.
 - 3. Any owner of a dog or cat subject to this section who violates the terms of this section is liable for a civil offense and subject to civil penalties as set forth herein, including all medical costs incurred to treat or to spay/neuter the animal.

(Res. No. 2010-7, ex. A (§ 12-16), 2-2-2010/4-1-2010)

Sec. 12-17. - Responsibility to prevent public nuisance.

- A. Any person who harbors, owns or controls an animal that:
 - 1. Molests passersby or passing vehicles;
 - 2. Attacks other animals;

3. Barks, howls, crows or creates other animals noises so as to corrupt the peace and quiet of any reasonable person(s);
 4. Is repeatedly running at large;
 5. Overturns or spreads garbage about on property other than that of the registered owner; or
 6. Disturbs or destroys gardens, landscaping or lawns on property other than that of the registered owner is considered to be maintaining a public nuisance and is liable for a civil offense and subject to civil penalties as set forth herein.
- B. The owners of livestock guarding or herding dogs, service dogs or police dogs shall be exempt from this section when such dog is performing duties on the owner's premises or under the control of the owner.

(Res. No. 2010-7, ex. A(§ 12-17), 2-2-2010/4-1-2010)

Sec. 12-18. - Household limitations.

- A. The maximum number of dogs and/or cats permitted for each household located within the Nation is three (3).
- B. The Animal Control Officer, in his or her discretion, may exempt an owner from the household limitation provisions set forth in subdivision A, for good cause. Good cause includes for licensed breeders or in homes where working dogs or service dogs are kept. If the Animal Control Officer determines that good cause exists, a special registration certificate will be issued.
- C. No person shall keep, harbor or maintain a dog or cat within the Nation except as provided by the terms of this Ordinance.

(Res. No. 2010-7, ex. A(§ 12-18), 2-2-2010/4-1-2010)

Sec. 12-19. - Impounding dogs.

- A. **Police Department Kennels:** The Fort McDowell Police Department shall maintain appropriate kennels for the temporary housing of dogs captured at large. The kennels shall be operated in accordance with the provisions of this Ordinance and such other rules and regulations as the Animal Control Officer shall promulgate. If necessary, the Nation may enter into a cooperative agreement with a veterinarian, humane society or other private kennel for the purpose of providing care or additional housing for animals.
- B. **Stray Dogs:** Each stray dog captured may be impounded at the police department kennels for a maximum of three (3) days. While impounded, the stray dog shall be given proper food and care and the Animal Control Officer or other police officer shall make reasonable efforts to ascertain ownership information. If unclaimed after three (3) calendar days, other arrangements for the dog may proceed in compliance with Section 12-19(E) herein.
- C. **Registered Dogs:** A registered dog captured at large may be impounded at the police department kennels for a maximum of three (3) days. While impounded, the registered dog shall be given proper food and care and the Animal Control Officer or other police officer shall make daily attempts to contact the owner based upon contract information included in the registry. If unclaimed after three (3) calendar days, other arrangements for the dog may proceed in compliance with Section 12-19(E) herein.
- D. **Reclaiming Impounded Dogs:** Any impounded licensed dog may be reclaimed by its owner or such owner's agent provided the person reclaiming the dog furnishes proof of ownership or the right to reclaim the dog and pays all costs associated with the impoundment of the dog, including a

reasonable sum for daily food and care and all medical treatment costs and other impoundment related costs.

- E. **Placement or Destruction of Unclaimed Dogs:** Should the three (3) day impoundment period expire without reclamation by the owner of the impounded dog, the Animal Control Officer may arrange for placement of the dog with the Humane Society, or another publicly or privately held kennel or may destroy the dog. If the dog is destroyed, it shall be destroyed by using a humane method.
- F. **Destruction of Suffering or Diseased Animals:** Notwithstanding the above provisions, the Animal Control Officer or a police officer may destroy a sick or diseased animal whenever necessary to prevent such animal from suffering or to prevent the spread of disease using a humane method.

(Res. No. 2010-7, ex. A(§ 12-19), 2-2-2010/4-1-2010)

Sec. 12-20. - Quarantine of biting animals; authority to destroy.

- A. **Quarantine of Dogs or Cats:** An unregistered or unvaccinated dog or cat that bites any person shall be confined and quarantined at the Police Department's kennel or in an animal shelter or other appropriate facility, at the expense of the owner if known or determined, for a period of not less than ten (10) days. A registered and vaccinated dog or cat that bites any person or other animal may be confined and quarantined at the home of the owner or where the animal is harbored and maintained with the consent of and in the manner prescribed by the Animal Control Officer.
- B. **Quarantine of Other Animals:** Any animal other than a dog or cat that bites any person or other animal shall be confined and quarantined in an animal shelter or other appropriate facility, at the owner's expense if known or determined, for a period of not less than ten (10) days. If the animal is a caged rodent, it may be confined and quarantined at the home of the owner or where it is harbored or maintained, for the required ten (10) day period with the consent of and in the manner prescribed by the Animal Control Officer.
- C. **Wild Animals:** Any wild animal that bites a person may be killed and submitted to the Animal Control Officer for transport to an appropriate diagnostic laboratory.
- D. **Reporting of Animal Bites:** Whenever an animal bites any person, the incident shall be reported to the Animal Control Officer immediately by any person having direct knowledge. Failure to report the incident is a civil offense.
- E. **Destruction of Quarantined Animals:** The Animal Control Officer may, by using a humane method, destroy any animal confined and quarantined under this section prior to the termination of the minimum confinement period for laboratory examination for rabies if:
 - (1) Such animal shows clear clinical signs of rabies; or
 - (2) The owner of the animal consents to its destruction.
- F. **Destruction of Attacking Animals:** A person who destroys any animal while the animal is in the act of attacking a human being or cattle shall not be liable, civilly or criminally, for destroying the animal.

(Res. No. 2010-7, ex. A(§ 12-20), 2-2-2010/4-1-2010)

Sec. 12-21. - Diseased animals.

- A. **Contagious or Infectious Diseases:** Any animal afflicted with a contagious or infectious disease shall, at all times, be securely confined by a fence or pen or in a kennel or cage and shall not be removed from such enclosure, except for the purpose of being transported to a licensed veterinarian.

- B. **Rabid Animals:** If any owner or other person knows or has reason to believe that an animal has rabies, or has been exposed to rabies, they shall immediately report this information to the Animal Control Officer or the Nation's Police Department for appropriate action.
- C. **Removal of Rabid Animals:** It shall be unlawful for any animal owner or other person, knowing that an animal has rabies or has been exposed to rabies, to remove the animal from the owner's residence within the Nation, except under the order of the Animal Control Officer.
- D. **Liability of Rabid or Diseased Animal Owners:** Owners of any animal, known or believed to be rabid or suffering from an infectious disease shall be liable for all costs related to the capture, treatment, transport and/or destruction of said animal.

(Res. No. 2010-7, ex. A (§ 12-21), 2-2-2010/4-1-2010)

Sec. 12-22. - Control of vicious dog; authority to destroy.

- A. **Determination of Vicious Dog.** Upon the filing of a formal civil complaint with the Fort McDowell Tribal Court by the Animal Control Officer or another adult person, a hearing shall be conducted to determine whether, by a preponderance of the evidence, the dog in question is vicious.
- B. **Definition of Vicious Dog.** For purposes of this section, a "vicious dog" is defined as follows:
 - 1. A dog that has attacked or bitten a person.
 - 2. A dog that has killed or mauled another animal.
 - 3. A dog that cannot be controlled or contained.
 - 4. An aggressive dog which by its breeding has a propensity to be violent and a danger to persons and has demonstrated the potential to be vicious.
- C. **Affirmative Defenses:**
 - 1. Provocation. It is an affirmative defense to this section that there is provocation such as those acts contemplated in Section 12-16E. or where the dog's actions were directed towards a trespasser or a person attempting to commit a crime while on the owner's property.
 - 2. Police Dog. It is an affirmative defense that the dog is a police dog under the command of its owner or trainer who is acting within the scope of official police authority.
- D. **Vicious Dogs Not Permitted At Large:** A vicious dog shall not be permitted at large. Vicious dogs shall be confined within an enclosure on the owner's property, or secured so that the dog is confined entirely within the owner's property, or on a leash not to exceed six (6) feet in length and directly under the owner's control when not on the owner's property.
- E. **Authority to Destroy Vicious Dogs:**
 - 1. The Animal Control Officer or other certified police officer shall humanely destroy a vicious dog upon the order of the Tribal Court. The Tribal Court may issue such an order only after notice to the dog's registered owner, if any, and a hearing.
 - 2. The Animal Control Officer or other police officer may destroy a vicious dog if the officer reasonably believes that any attempt to capture or restrain the dog will put the officer or any other person at risk of harm.
 - 3. The Police Department shall adopt regulations, not inconsistent with this section, setting standards for officers in dealing with vicious dogs.
- F. **Liability of Owners of Vicious Dogs:** Injury to any person or damage to any property by a vicious dog while at large shall be the full responsibility of the dog owner and the person or persons having responsibility for controlling the dog when such injury or damage was inflicted.

(Res. No. 2010-7, ex. A (§ 12-22), 2-2-2010/4-1-2010)

Sec. 12-23. - Liability of the Nation, officers or employees.

- A. **Liability of the Nation:** Neither the Fort McDowell Yavapai Nation, its officers or employees, shall have any liability resulting from the transport, treatment, impoundment or destruction of an animal pursuant to this Ordinance nor any regulations adopted pursuant to it.

(Res. No. 2010-7, ex. A (§ 12-23), 2-2-2010/4-1-2010)

Sec. 12-24. - Civil penalties and liabilities.

- A. **Civil Penalties.** Any person who violates a provision of this Ordinance is liable for a civil offense and subject to:
1. The imposition of a fine per the Fine Schedule attached hereto as Appendix I or, if not included in the Fine Schedule, the imposition of a fine of up to five hundred dollars (\$500.00) per violation and costs;
 2. Payment of restitution for damages, medical treatment costs or any other costs incurred for the housing, care or destruction of an animal and incurred by the victim and/or the Nation; and
 3. Any reasonable restrictions or conditions for the care of the pet or the safety of the community set by the Animal Control Officer or the Tribal Court.

(Res. No. 2010-7, ex. A (§ 12-24), 2-2-2010/4-1-2010)

Sec. 12-25. - Civil infraction procedures.

- A. **Initiation of Civil Court Proceedings:** Court proceedings to enforce civil penalties herein shall be initiated by the issuance of a civil citation by the Animal Control Officer or police officer or by the filing of a civil complaint by the victim or the Nation's Prosecutor's Office. A civil citation shall include a time and date for an initial hearing to be held not less than five (5) business days, nor more than sixty (60) calendar days from the date the citation is served unless good cause exists to hold an immediate hearing. ("Good cause" includes, among other things, the need to determine whether a dog or dogs are vicious under Section 12-22 herein.)

The citation shall contain the name, address, birth date and race of the alleged offender, the name and/or physical description of the animal involved in the infraction, the name and Code section of the alleged offense and the date, time and place the alleged offender shall appear in court.

A copy of the written citation shall be provided to the alleged offender and he or she shall sign the citation to verify receipt of the same. If the alleged offender refuses or is incapable of signing the citation, the Animal Control Officer or police officer shall verify the refusal or inability on the citation.

- B. **Civil Citations — Options for Response.** A person shall respond to a non-mandatory court appearance citation for a civil offense cited under this Ordinance in either of the following ways:
1. **Waive Hearing and Pay Fine.** The person cited may waive their right to a hearing and pay the fine pursuant to the civil fine scheduled set forth in Appendix I herein. The fine shall be made payable to and paid to the Fort McDowell Tribal Court by money order or cashier's check on or before the day of the initial hearing. The Court shall then enter the civil judgment against the person named in the citation; or
 2. **Personally Appear at Hearing.** The person cited shall appear personally at the initial hearing and request a court trial to determine whether the person is civilly liable for the alleged offense.

If the citation indicates that a mandatory court appearance is required, the person must personally appear at the initial hearing noticed on the citation.

- C. **Failure to Respond to Civil Citation.** If a person, properly served, fails to appear and respond as required herein, the Court shall enter an order finding that the person committed the civil offense and shall assess the appropriate fine, restitution and costs. In addition, the Court may issue an order of impoundment authorizing the police and/or animal control officer to seize and impound an animal. For those persons not subject to the Court's criminal jurisdiction, the Court may refer the matter to a collection agency and assess the person the costs of collection.
- D. **Hearing to Contest the Citation.** The following rules apply to civil hearings held pursuant to this Ordinance:
1. The proceeding shall be heard by the Court without a jury;
 2. The Nation and the person requesting the hearing may both be represented by qualified legal counsel;
 3. The Nation and the person requesting the hearing may have witnesses subpoenaed;
 4. The burden of proof is on the Nation to establish the commission of the civil offense by a preponderance of the evidence;
 5. The person requesting the hearing has the right to present evidence and examine the witnesses;
 6. After consideration of the evidence and argument, the Court shall determine whether an infraction was committed. Where it has not been established by a preponderance of the evidence that an infraction was committed, the Court shall enter an order dismissing the action. Where it has been established by a preponderance of the evidence that an infraction was committed, the Court shall enter judgment accordingly and shall order appropriate civil penalties and liabilities as set forth in Section 12-24 herein;
 7. The Fort McDowell Law and Order Code shall govern any appeal of a final order.

(Res. No. 2010-7, ex. A (§ 12-25), 2-2-2010/4-1-2010)

Secs. 12-26—12-39. - Reserved.

ARTICLE II. - LIVESTOCK ORDINANCE

Sec. 12-40. - Definitions.

- (1) **Animal** means a mammal, bird, reptile, or amphibian.
- (2) **Bill of Sale** means a written document stating that livestock ownership has been sold or transferred to the ownership of another party.
- (3) **Brand** means physical marking identifying ownership including, but not limited to, ear marking, microchips, ear tags, bracelets or brands with symbols, letters and/or numbers.
- (4) **Tribal Court** means the Fort McDowell Yavapai Nation Tribal Court.
- (5) **Corral** means any corral, holding pen, enclosed area or structure used for holding livestock for any authorized purpose within the Nation's boundaries or its fee lands.
- (6) **Cruel Mistreatment** means to torture or otherwise inflict unnecessary serious physical injury upon an animal or to kill an animal in a manner that causes protracted suffering to the animal.
- (7) **Cruel Neglect** means failing to provide an animal with necessary food, water, shelter or veterinary treatment.

- (8) **Earmark** means a strong and lasting impression of many different shapes, made by a sharp object, used to identify cattle.
- (9) **Equine** means horses, mules, burros and asses.
- (10) **Fixture** means any personal property annexed to, imbedded in the land such as to be reasonably regarded as part of the real property and therefore the property of the Nation.
- (11) **Fresh Brand** means a brand or mark that has been applied on an animal for less than sixty (60) days, the brand or mark has not yet started to peel or that can otherwise be identified as having been recently placed on the animal.
- (12) **Grazing** means unrestrained livestock roaming and feeding on range within the Nation's boundaries or fee lands.
- (13) **Livestock** means any animals, horses, mules and asses, cattle, equine, sheep, goats and swine.
- (14) **Land Assignment** means a described portion of Tribal Trust Lands issued in accordance with Chapter 20, Article III of the Nation's Law and Order Code issued by the Tribal Council with a defined purpose.
- (15) **Livestock Inspector** means a designated law enforcement officer or other employee appointed by the Nation's Chief of Police.
- (16) **Maverick** means unbranded livestock roaming and grazing within the Nation.
- (17) **Nation** means the Fort McDowell Yavapai Nation.
- (18) **Owner** means an enrolled member of the Fort McDowell Yavapai Nation who has a State of Arizona registered brand.
- (19) **Permit for Corral** means a temporary permit for use on unassigned lands not to exceed six (6) months issued to a Tribal member by the Office of Land Use for the use, construction or assembly of a corral within Nation's boundaries or adjoining fee lands. Permits do not convey any property rights or entitlements other than the temporary use of identified Tribal lands. Permits are revocable by Land Use, may be subject to fees and may require that corrals be removed upon expiration of the permit.
- (20) **Person** means an individual, corporation, partnership, trust, association, cooperative association and any other business unit or organization.
- (21) **Physical Markings** mean permanent marks or patterns of marks that occur naturally.
- (22) **Range** means every unassigned charter of lands, enclosed or unenclosed, lands within the exterior boundaries of the Fort McDowell Yavapai Nation, upon which livestock is permitted by custom, license or permit to roam and feed and which has not been identified by the Nation for other purposes.
- (23) **Registered Brand** means a brand currently registered with the State of Arizona, the Nation's Tribal Council's Secretary's Office and the Nation's Police Department.
- (24) **Slicks** mean unbranded livestock, weaned or unweaned, roaming and grazing within the Nation.
- (25) **Tamper** means any intentional alteration of a brand, earmark, certificate of ownership or certificate of inspection or a copy thereof; or, any intentional act of interference or damage of any premises where livestock can be held, including but not limited to, corrals, catch pens or holding pens.
- (26) **Weaned Animal** means an animal no longer nursing or dependent on its mother.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-41. - Branding.

- A. **Registering a Brand or Earmark.** All brands and earmarks adopted by livestock owners of the Nation shall be registered with the State of Arizona, the Nation's Tribal Council Secretary's Office

and the Nation's Police Department. A copy of the registered brands and earmarks shall be maintained by the Nation's Police Department.

- B. The Nation requires that every owner of livestock adopt and register a brand. All livestock, except equine, sheep, goats and swine, shall be branded with the owner's registered brand.
- C. Before being weaned, all livestock, except equine, sheep, goats and swine, shall be branded with the owner's registered brand that easily ascertains ownership of such livestock.
- D. Equine ownership shall be determined through the use of ownership documents, hauling papers as per the State of Arizona.
- E. A transfer of ownership within the boundaries of the Nation shall be documented in an approved Fort McDowell Yavapai Nation approved Livestock Inspection Form.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-42. - Brands.

- A. All weaned livestock requiring a brand roaming or grazing within the Nation shall bear the registered brand of the respective recorded owner. If proof of ownership cannot be provided, livestock will be seized and held for fifteen (15) days to see if ownership can be determined. If an owner cannot be reasonably determined, the livestock shall become the property of the Nation and branded accordingly.
- B. Grazing of non-tribal member branded or unbranded livestock is prohibited within the exterior boundaries of the Nation unless pursuant to an agreement with the Nation or its enterprises, or livestock which have been seized and held by or on behalf of the Nation
- C. Pasturing, or, holding of non-tribal member branded or unbranded livestock within a tribally approved land assignment issued pursuant to Chapter 20, Article III, of the Nation's Law and Order Code is prohibited and violation of this prohibition may result in revocation of such Land Assignment.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-43. - Ranging of unbranded range livestock.

- A. No owner shall knowingly permit range livestock to roam and feed without being properly branded within the boundaries. An exception to this section is an unweaned animal running with its mother.
- B. Any weaned livestock found unbranded (mavericks and slicks) will be considered by this Ordinance to be property of the Nation and placed in the care and custody of an individual or organization designated by the Nation.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-44. - Certified copy of brand book entered as evidence of ownership.

- A. A certified copy of entry in the State of Arizona's brand book relating to a brand or mark shall be received by the Nation's Tribal Secretary's Office and the Nation's Police Department as prima facie evidence of all the facts required to be entered in the Nation's brand book and the right of the person therein to use such brand or mark for branding or marking animals. The animal bearing a registered brand is the property of the owner of the registered brand unless another individual can demonstrate through written documentation that he or she is the rightful owner of the animal, including but not limited to, bill of sale, transfer of ownership documents or a court order transferring ownership.

- B. When a transfer of ownership occurs within the boundaries of the Nation, a copy of the transfer of ownership documents must be provided to the Nation's Police Department.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-45. - Inspection of livestock (Livestock Inspector).

- A. Livestock Inspectors may authenticate bills of sale of livestock, brands and marks, provide certificates of acknowledgement thereof and take acknowledgements for applications for brands and marks.
- B. Livestock Inspectors shall not issue certificates of inspection of unbranded livestock, except unweaned animals, in accordance to Section 12-47 and 12-49 of this Ordinance.
- C. Livestock Inspectors shall prevent livestock from being shipped, transported or conveyed unless identified by proof or by bill of sale signed by the owner of the livestock,
- D. Livestock Inspectors shall have the powers to enforce the administrative provisions of this Ordinance, including the ability, upon receipt of reliable information that any person has violated such a law, make necessary affidavits for search and arrest warrants.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-46. - Method of inspection.

- A. Livestock Inspectors may inspect livestock for marks and brands at loading stations, at places of exits from the Nation and at places where livestock are gathered to be sold, slaughtered, transported, conveyed, shipped or driven from the range for any purpose whatsoever.
- B. Inspections shall be made during daylight hours and in a manner which enables the Livestock Inspector to personally see, inspect, and record each and every mark and brand. A request for an inspection by the Livestock Inspector requires a minimum of twenty-four (24) hour notice.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-47. - Record and certificate of inspections.

- A. Livestock Inspectors shall maintain a record of all inspections disclosing the place and date of the inspection, its purpose, the kind, sex and description necessary to identify the livestock, the number of head running in every brand and mark, the name of the seller if the livestock is sold, the name of the shipper if the livestock is to be shipped and other necessary information.
- B. The record of inspections shall be made in duplicate, the original shall be provided for the use of the person having the inspections made and a duplicate copy shall be maintained at the Nation's Tribal Council Secretary's Office and the Nation's Police Department.
- C. A copy of the completed original inspection form will then be available for the person requesting the inspection. The certificate of inspection shall have clearly imprinted on its face: "This certificate of inspection is not and shall not be used as a bill of sale."

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-48. - Any person claiming such livestock; unweaned, freshly branded or no brands shall present evidence of ownership.

The following evidence of ownership shall be provided by any person claiming livestock ownership of unweaned, freshly branded or no brand livestock:

1. The branded mother, (Dam-cow), of unbranded or freshly branded livestock offspring; or
2. Ownership certificate made out by a Livestock Inspector; or
3. Other satisfactory documentation of ownership; or
4. A Court Order stipulating livestock is awarded to claimants.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-49. - Prohibited issuing of certificates of inspections.

A Livestock Inspector shall not issue a certificate of inspection of unweaned livestock, freshly branded or unbranded livestock if:

1. The livestock is not branded as required by this Ordinance; or
2. The livestock has brands so mutilated, indistinct, burned or otherwise disfigured beyond identification; or
3. The livestock is freshly branded and not found with its mother; or
4. The livestock has a brand or mark which is not the recorded brand or mark of the owner; or
5. The livestock is earmarked only, without the registered brand of the owner.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-50. - Alteration of certificate of inspection.

No person shall alter a certificate of record of inspection, or copy thereof, issued by a Livestock Inspector.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-51. - Substitution of animals after issuance of certificate of inspection.

No person shall remove an animal and substitute another or add other animals to a lot of livestock for which a Livestock Inspector has issued a certificate of inspection for shipment, sale or slaughter.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-52. - Transportation of livestock without a certificate of inspection.

No person shall sell, gather, carry, transport, ship or convey any livestock outside the exterior boundaries of the Nation without first having the livestock inspected as documented by a certificate of inspection.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-53. - Cruelty to livestock.

A person commits cruelty to livestock by:

1. Failing to provide adequate feed, water and vaccination to livestock under their ownership or control.
2. Intentionally, knowingly or recklessly subjects any livestock under the person's custody or control to cruel neglect, cruel mistreatment or abandonment.
3. Intentionally, knowingly or recklessly fails to provide medical attention necessary to prevent protracted suffering to any animal (livestock) under the person's custody or control.
4. Intentionally, knowingly or recklessly inflicts unnecessary physical injury to any livestock, excluding organized rodeo events.
5. Intentionally, recklessly or knowingly subjects any livestock to cruel mistreatment.
6. Intentionally, knowingly or recklessly harms or kills any livestock under the custody and control of such person without either legal privilege or consent of the owner.
7. Recklessly interferes with, kills or harms a working service animal without legal privilege or consent of the owner.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-54. - Dogs harming livestock.

Any person who discovers a dog, killing, wounding, or discovers a dog under circumstances which shows conclusively that it has recently killed or chased livestock, may pursue and dispose of the dog, if it can be done safely without endangering the community. The owner of the dog, if identified, is liable for damages caused by the dog.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-55. - Sale of livestock without a lawful brand.

No person shall knowingly sell or offer to sell or trade livestock if person does not have his/her registered brand or does not have documented proof of ownership.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-56. - Branding with an unregistered brand.

No person shall knowingly brand livestock with an unregistered brand. However, the Tribal Court, within its discretion, may defer imposition of the sentence if the offender registers the brand within a reasonable period of time set by the court.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-57. - Gathering livestock without consent of the owner.

No person shall knowingly gather range livestock within the boundaries of the Nation for the purpose of a contest for amusement or for reward; nor shall any person cast, rope or throw a horse, cow or other kind of animal without the consent of the owner.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-58. - Taking animals without consent of the owner.

No person shall knowingly take from a range, farm, corral or yard, within the boundaries of the Nation, any livestock and use such livestock without the consent of the owner or the person having the animal lawfully in charge.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-59. - Branding or altering the brand of an animal of another—Civil penalty.

No person shall brand or mark an animal with other than the registered brand of the owner; nor shall any person deface or alter any brand, or by other additional marks disfigure with intent to convert the animal to his or her own use.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-60. - Branding or altering the brand of an animal of another—Criminal penalty.

No person shall brand or mark an animal other than with the registered brand of the owner; nor shall any person deface, alter, disfigure or extend any brand or by additional marks, disfigure with the intent to convert the animal to his or her own use.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-61. - Tampering with property (livestock).

No person shall tamper with a corral, pen or building or area designated to hold livestock within the exterior boundaries of the Nation or its fee lands.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-62. - Stray/seized livestock; impoundment; claim by owner/Nation.

- A. The Livestock Inspector may impound or seize livestock on behalf of the Nation and pursuant to this section. The impounded livestock shall be held for a period not to exceed fifteen (15) days, unless otherwise ordered by the Tribal Court. Notice of impoundment shall be publicly posted in at least three (3) separate locations within the Nation.
- B. The description of livestock impounded or seized, including a report containing all of the circumstances surrounding the impoundment, shall be promptly submitted to the Tribal Court.
- C. In the event that the livestock owner is identified, the Livestock Inspector shall immediately notify the owner of the impounded or seized livestock.
- D. The person or organization contracted with the Nation to provide such services shall provide care to all impounded and seized animals including sufficient water and feed until the matter is finally disposed of pursuant to this title.
- E. Once the impoundment information is submitted to the Tribal Court for review, the Tribal Court shall schedule hearing within five (5) business days of the date of the impoundment.
 1. If the Tribal Court determines by preponderance of the evidence that a valid claim of ownership has been proven, and then the owner may take his livestock from impoundment, after:
 - a. Paying one hundred dollars (\$100.00) per head for the first day of impoundment and thirty dollars (\$30.00) per day, per head, for the feed and care of the impounded for feed and care of the impounded livestock.

- b. Paying the reasonable actual damages known to be caused by the impounded livestock, if any.
 - c. Paying all actual expenses incurred for veterinary care for the impounded livestock, including emergency care.
 - d. Having such livestock properly branded.
2. If the Tribal Court determines that ownership cannot be determined, then the Judge of the Tribal Court shall order the impounded livestock sold at public auction within the State of Arizona without restriction or delay.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-63. - Civil penalties and liabilities.

Any person who violates a provision of this Ordinance other than those offenses listed in Section 12-64 is liable for a civil offense and subject to:

1. The imposition of a fine of up to five hundred dollars (\$500.00) per violation and costs;
2. Payment of restitution for damages and loss and any other costs incurred for the housing, care, treatment, destruction or disposal of an animal and incurred by the victim and/or the Nation; and
3. Any other relief deemed appropriate by the Court.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Sec. 12-64. - Criminal penalties and liabilities.

Any person who violates sections 12-50, 12-51, 12-52, 12-53, 12-55, 12-56, 12-60 or 12-61 and who is subject to the Nation's Tribal Court is guilty of a class III criminal offense and subject to a minimum term of imprisonment of sixty (60) days and a maximum term of incarceration of six months (180 days) and to a fine of not more than one thousand dollars (\$1,000.00) plus costs and restitution.

(Ft. McD. Res. No. 2013-71, ex. A, eff. 11-4-2013)

Secs. 12-65—12-89. - Reserved.

APPENDIX I - Fine Schedule for Animal Control Ordinance

Section	Fine/Sanction
12-11	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-15F	1 st citation = \$100.00 fine plus costs 2 nd and subsequent citations = \$150.00 fine plus costs.

12-16A	1 st citation = \$50.00 fine plus costs 2 nd and subsequent citations = \$100.00 fine plus costs.
12-16B	1 st citation = \$50.00 fine plus costs 2 nd and subsequent citations = \$100.00 fine plus costs.
12-16D	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-16E	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-16F	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-16G	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-16H	\$50.00 fine plus costs
12-16I	\$50.00 fine plus costs
12-16J	\$100.00 fine plus costs

12-16K	\$100.00 fine plus costs
12-16L	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-17A	\$100.00 fine plus costs
12-18A	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-20D	\$100.00 fine plus costs
12-21A	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-21D	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-22A	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.
12-22D	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and

	liabilities provided in Section 12-24 herein.
12-22F	Personal Court Appearance Required Up to \$500.00 fine plus costs and all penalties and liabilities provided in Section 12-24 herein.

(Res. No. 2010-7, ex. A(app. I), 2-2-2010/4-1-2010)

Chapter 13 - HEALTH AND SANITATION

ARTICLE I. - IN GENERAL

Sec. 13-1. - Disposal of dead animals.

Owners of dead animals shall dispose of the carcasses by burial or burning.

(Law & Order Code 2006, § 13-1)

Sec. 13-2. - Pollution of domestic water.

It shall be unlawful for any person to pollute any source of domestic waters, including but not limited to streams, springs and wells, by disposing of garbage, dead animals, refuse or by locating a privy within fifty (50) feet of such domestic water.

(Law & Order Code 2006, § 13-2)

Sec. 13-3. - Illegal dumping.

Any person who shall dump any trash, garbage or refuse within the exterior boundaries of the Nation, except for the designated landfill area, shall be deemed guilty of an offense and upon conviction shall be subject to a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) or to imprisonment not to exceed six (6) months, or both, with costs.

(Law & Order Code 2006, § 13-3)

Sec. 13-4. - Violations.

Any person who violates the provisions of this chapter for which no penalty is otherwise specified or interferes with the performance of official, duty thereunder is guilty of an offense and, upon conviction thereof, shall be subject to a fine of thirty dollars (\$30.00) or thirty (30) days imprisonment, or both, with costs.

(Law & Order Code 2006, § 13-4)

Secs. 13-5—13-20. - Reserved.

ARTICLES II—IV. - RESERVED

Secs. 13-21—13-70. - Reserved.

ARTICLE V. - FOOD SERVICE ESTABLISHMENTS AND RETAIL FOOD STORES

Sec. 13-71. - Policy.

It is the policy of the Fort McDowell Yavapai Nation that food service and retail food store sales organizations operating within the Fort McDowell Yavapai Nation conduct their food-handling businesses in such a way as to protect the public against the hazards to their health and welfare.

(Law & Order Code 2006, § 13-71)

Sec. 13-72. - Definitions.

In this article, unless the context otherwise requires, the following terms shall have the meanings herein ascribed to them:

- A. Business means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, but not casual activities or sale, or activities engaged in which are operated from the residence of the operator, which residence is located within the exterior boundaries of the Fort McDowell Yavapai Nation.
- B. Engaging, when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.
- C. Person means individual, corporation, company, association, firm, copartnership or any group of individuals acting as a unit.
- D. Food service means activities or acts engaged in by any person involving the sale of food at retail, in eating establishments or food stores.

(Law & Order Code 2006, § 13-72)

Sec. 13-73. - License required.

No person shall commence, practice, transact or carry on any business involving food service as defined in this article without having procured a license as provided for in this article.

(Law & Order Code 2006, § 13-73)

Sec. 13-74. - Relationship of license to others.

The license provided for in this article does not supplant any other requirement for the issuances of other licenses under this Code.

(Law & Order Code 2006, § 13-74)

Sec. 13-75. - Application for license.

Application for a license under this article shall be made by the operator of the business engaged in food service on forms furnished by the community manager to the community development department. Every application shall be accompanied by an application fee in the amount of fifty dollars (\$50.00). Upon the granting of the license, the application fee shall be applied to the total required license fee. Annual license fees shall be one hundred fifty dollars (\$150.00).

(Law & Order Code 2006, § 13-75)

Sec. 13-76. - Duration of license.

Each license shall be valid for a calendar year. Subsequent licenses will be issued upon the payment of a license application fee and the submission of a reapplication. There shall be no proration of license fees issued after the beginning of a calendar year.

(Law & Order Code 2006, § 13-76)

Sec. 13-77. - Display of licenses.

All licenses issued under the provisions of this article must be displayed in a conspicuous place in the establishment at which the business dealing in food service is conducted or carried on.

(Law & Order Code 2006, § 13-77)

Sec. 13-78. - Sanitation codes.

There are adopted as the laws of the Fort McDowell Yavapai Nation the United States Department of Health and Human Services "Retail Food Store Sanitation Code of 1982" and the United States Department of Health and Human Services "Food Service Sanitation Manual" of 1976.

(Law & Order Code 2006, § 13-78)

Sec. 13-79. - Intergovernmental agreements and consulting contracts.

The Community Development Department with the consent of the Fort McDowell Yavapai Nation may enter into intergovernmental agreements with departments of the State of Arizona or departments of Maricopa County, Arizona, or with private contractors to provide inspection and other services required under this article.

(Law & Order Code 2006, § 13-79)

Sec. 13-80. - Regulations.

All licenses under this article shall comply with all regulations which are promulgated under the authority of and in compliance with provisions of this article and with the Code of Ordinances of the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 13-80)

Sec. 13-81. - License suspension or revocation.

Upon receiving notice that a licensee in connection with his operations under this article has violated any of the provisions under this article or any of the laws of the Fort McDowell Yavapai Nation or the United States and upon a showing of such violation, after five (5) days, notice thereof to all parties concerned and a hearing before the community manager or his designee, the community manager or his designee may suspend or revoke the license previously granted under this article to such licensee.

(Law & Order Code 2006, § 13-81)

Sec. 13-82. - Appeals; waiver of requirements.

- A. Appeals from the denial, revocation or suspension of a license provided for in this article may be taken to the Fort McDowell Yavapai Nation Tribal Council in accordance with procedures established by the Council for the hearing of administrative appeals.
- B. The President or Vice-President of the Fort McDowell Yavapai Nation may waive application and license fees if the applicant is a member of the Fort McDowell Yavapai Nation and is unable to pay such fees within the year the application is made without undue hardship.

(Law & Order Code 2006, § 13-82)

Sec. 13-83. - Violations.

Any person to whom a license has not been issued or if earlier issued has been revoked or suspended shall cease operation upon receipt of notice from the General Manager or his designee. If such person fails to cease operations, then the Tribal Court, upon application of the community manager for and on behalf of the Tribal Council and after having found a failure to secure a proper license or a suspension or a revocation of a license and failure to cease or desist operations, and upon three (3) days' notice by the United States mails addressed to the place at which the business operations are carried out, and after a hearing to be held no longer than five (5) days after application is made and three (3) days after notice is mailed, shall issue a mandatory injunction requiring such person to vacate the premises and cease the desist operations. The order of the court, as issued, shall be carried out by the Chief of Police of Police Department or Police Officers of the Department of Public Safety assigned by the Chief of Police Department.

(Law & Order Code 2006, § 13-83)

Chapter 15 - EXCLUSION ORDINANCE

[**HISTORICAL NOTE:** This Chapter adopted by Resolution No. 2000-91, effective August 29, 2000.]

Introduction.

By virtue of the authority vested in the Fort McDowell Yavapai Nation Tribal Council ("Tribal Council") by Article V, Section 13(A)(3), A(5) and (14) of the Constitution of the Fort McDowell Yavapai Nation ("Nation"), the Tribal Council hereby enacts this Exclusion Ordinance ("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 Nation and/or who violate tribal laws or ordinances.

(Law & Order Code 2006, intro.; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Sec. 15-1. - Persons subject to removal or exclusion.

- A. Any person, not an enrolled member of the Nation, may be removed or excluded from the Nation 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 Nation or individual members thereof.
 - 2. Non-members who are traveling through the Nation upon federal or state highways within the exterior boundaries of the Nation.

(Law & Order Code 2006, § 15-1; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; Ft. McD. Res. No. 2017-10, 1-31-2017)

Sec. 15-2. - Grounds for removal or exclusion.

The grounds for removal or exclusion shall include:

- A. Interference with the administration, operation and processes of the tribal government or tribal enterprises as authorized by the Constitution of the Nation.
- B. Commission of criminal offense(s) 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 tortious conduct in violation of federal, state or tribal law or that tortious conduct would be a violation of state law had the conduct occurred off the Nation.
- 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 first obtaining the 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 on the Nation, without first obtaining the permission of the Nation.
- I. Failure to register as a sex offender with the Nation's Police Department within three (3) days of establishing residency, employment or education within the Nation. Pursuant to the Fort McDowell Sex Offender Registration Code, a person convicted of a sex offense must register with the Nation's Police Department by providing their name, age, current residential address, fingerprints, current photograph, and conviction information. Failure to register as a convicted sex offender is punishable by tribal, federal and state laws. Non-members are subject to immediate removal from within the exterior boundaries of the Nation. If a non-member exclusion occurs pursuant to Subsection I, the exclusion proceedings pursuant to Section 15-3 shall apply.

(Sec. 15-2I was added by Res. No. 2005-142, 10-4-05)

(Law & Order Code 2006, § 15-2; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; Ft. McD. Res. No. 2005-142, eff. 10-4-2005; Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Sec. 15-3. - Exclusion proceedings: notice, hearing, appeal, and enforcement.

- A. **Notice.** An enrolled tribal member, or the Nation's Police Department on behalf of an enrolled tribal member, may initiate an exclusion proceeding upon a written request to the Tribal Council. Upon a determination by either the Tribal Council or the Office of General Counsel that cause may exist for the exclusion of a non-member from the Nation, the Tribal Council shall appoint an Administrative Hearing Officer. The Office of General Counsel shall cause notice to be served upon such person stating that proceedings have been initiated to exclude him/her from the Nation. Notice under this subsection shall:
1. Be by personal service or certified mail with returned receipt 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) working 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/her 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 at the sole discretion of the Administrative Hearing Officer. The term "good cause" as used in this subsection includes but is not limited to illness, incarceration, and 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 Nation. 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 proper 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 certified mail with returned receipt to the defaulting party at his/her last known address.
 2. The hearing shall be recorded. The enrolled tribal member or Office of General Counsel shall establish the basis for the proposed exclusion action by presenting oral testimony and/or other tangible evidence. There shall be no formal rules evidence 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/her 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 tangible evidence presented.
 - i. Once the enrolled tribal member or Office of General Counsel presents the case for exclusion, the non-member, or his/her attorney may call witnesses and present relevant evidence of any nature supporting non-exclusion. The Office of General Counsel may direct questions to witnesses produced by the non-member and may challenge the validity or accuracy of the tangible evidence presented by the non-member or his/her attorney.
 - ii. Throughout the hearing, the Administrative Hearing Officer may direct relevant questions to either side.

3. Within seven (7) working days following the hearing, the Administrative Hearing Officer shall issue 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 as soon as practical. In such deliberations the following rules shall apply:
 - i. Each decision shall be based only upon the evidence presented at the hearing, as contained in the record of proceedings.
 - 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 law(s) and the factual basis therefore 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 a non-member shall be found to exist by a preponderance of the evidence.
 5. The Tribal Council may:
 - i. Adopt the findings and recommendations of the Administrative Hearing Officer; or
 - ii. Remand the case to the Administrative Hearing Officer for further testimony/consideration; or
 - iii. If substantial basis exists in the record, decline the recommendation of 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. Notice of decision shall be provided to the non-member, relevant offices, agencies, departments and/or enterprises of the Nation, and/or relevant non-Nation entities.
- 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 Nation's Police Department shall be directed to carry out the order of exclusion, using reasonable force when required under the circumstances.

(Law & Order Code 2006, § 15-3; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; Ft. McD. Res. No. 2006-42, § 15-3, adopted 4-25-2006; Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Sec. 15-4. - Removal of non-members without a hearing.

- A. **Conduct.** In circumstances where the presence of a non-member on the Nation 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 Nation 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 Nation. 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 the non-member 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. **Expedited Hearing.** At the time of removal under this section, the non-member who is subject to removal shall be served with a written notice of charges and his/her right to request an expedited

hearing. The hearing shall be held within seven (7) business days after the Nation receives his/her written request for an expedited hearing. Such request shall be conveyed to the officer in charge of securing removal, whose responsibility it shall be, to promptly notify the Tribal Council and the Office of General Counsel of the hearing demand. In the event the non-member requests an expedited hearing, the officer in charge of securing removal shall inform the non-member to contact by telephone the Nation's Chief of Police within forty-eight (48) hours to be informed of the time, date and location of the expedited hearing. The Tribal Council shall, within seven (7) business days after receipt of the written request for an expedited hearing, either 1) appoint an Administrative Hearing Officer to hold a hearing, or 2) proceed to hold a hearing before the Tribal Council. The Administrative Hearing Officer or the Tribal Council may order a continuance upon good cause by written request of either: the person subject to removal, the Nation, or the Administrative Hearing Officer. In the event that no expedited hearing is requested, the hearing procedures set forth in Section 15-3 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. 15-4D. amended by Res. No. 2005-142, 10-4-2005)

(Law & Order Code 2006, § 15-4; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; Ft. McD. Res. No. 2005-142, eff. 10-4-2005; Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Sec. 15-5. - Permanent set aside of exclusion order.

- A. A non-member that has been excluded from the Nation may request the Tribal Council to permanently set aside an exclusion order issued against him/her upon the satisfaction of all of the following:
 - 1. A time period of at least ten (10) years has passed since the non-member was excluded from the Nation; and
 - 2. No substantiated reports of trespass, or no convictions of trespass, in violation of the exclusion ordinance, or the Nation's Law and Order Code in the Nation's Tribal Courts at any time during the time period described in Section 15-5(A)(1).
- B. The excluded non-member must submit a written request to permanently set aside the exclusion order to the Tribal Council. The written request shall contain:
 - 1. The circumstances and grounds for the initial exclusion;
 - 2. If known, the tribal member, that requested the exclusion; and
 - 3. Reasons and specific evidence as to why the exclusion order should be set aside.
- C. The Tribal Council will consult with the tribal member, , if known, that requested the exclusion. If the tribal member is deceased, the Tribal Council will discuss the request with the tribal member's immediate family.
- D. The Tribal Council may in its sole discretion:
 - 1. Deny the request to set aside the exclusion order; or
 - 2. If the Tribal Council determines a need to obtain additional information or permit written comments from the community regarding the excluded non-member, Tribal Council may initiate an exclusion hearing pursuant to Section 15-3 of this Ordinance. Notice of the hearing will be sent to the excluded non-member; the tribal member, that initially requested the exclusion; the Office of General Counsel; and the community at least ten (10) working days prior to the hearing; or
 - 3. Grant the request to set aside the exclusion order.

- E. In the event the Tribal Council permanently sets aside the exclusion order of the non-member, the rescission becomes effective upon the completion of:
 - 1. The non-member offers a form of restitution determined by the Tribal Council and/or a written apology to the tribal member and/or the community during a regular Tribal Council meeting; and
 - 2. Notice of the rescission is provided to the community.

(Adopted by Amendment of April 4, 2006. Retitled and Amended by Amendment of Jan. 31, 2017.)

(Law & Order Code 2006, § 15-5; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; adopted 4-4-2006; Ft. McD. Res. No. 2006-26, § 15-5, adopted 4-10-2006; Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Sec. 15-6. - Temporary set aside of exclusion order.

- A. A non-member that has been excluded from the Nation may request to the Tribal Council to temporarily set aside an exclusion order issued against him/her upon a written request to the Tribal Council. The written request shall contain:
 - 1. The circumstances and grounds for the initial exclusion;
 - 2. If known, the tribal member that requested the exclusion;
 - 3. Reasons and specific evidence as to why the exclusion order should be temporarily set aside; and
 - 4. If any, copies of prior written request(s) for temporary or permanent set aside submitted to the Tribal Council.
- B. A written request may be based on one (1) or more of the following grounds, but is not limited to:
 - 1. Family funeral;
 - 2. Tribal ceremony; or
 - 3. Special event(s).
- C. The Tribal Council may consult with the tribal member, If known, that requested the exclusion. If the tribal member is deceased, the Tribal Council may discuss the request with the tribal member's immediate family.
- D. The Tribal Council may in its sole discretion:
 - 1. Deny the request to set aside the exclusion order; or
 - 2. Grant the request to set aside the exclusion order.
- E. In the event the Tribal Council temporarily sets aside the exclusion order of the non-member, the rescission is limited and only becomes effective for the time period stated in the written notice issued by the Tribal Council, including any and all terms and conditions deemed appropriate by the Tribal Council.

(Adopted by Amendment of Jan. 31, 2017)

(Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Sec. 15-7. - Exception for court ordered appearances.

- A. An excluded non-member may be allowed, under the following conditions, and in response to Nation's Tribal Court summons, subpoena or order to make a limited appearance at the Nation's Tribal Courts for the purpose of appearing at a Nation's Tribal Court hearing referred to in the summons, subpoena or order:
1. The excluded non-member shall appear at the Nation's Tribal Courts no earlier than one-half (½) hour before the scheduled hearing or time indicated to appear on the summons, subpoena or order;
 2. The excluded non-member shall have a written copy of the summons, subpoena or order with him/her when appearing;
 3. Prior to appearing at the Nation's Tribal Court hearing, the excluded non-member shall first sign in at the Nation's Police Department and allow the Police Department to verify the summons, subpoena or order. Likewise, once his/her appearance at the Court hearing is concluded, the excluded non-member shall sign out at the Nation's Police Department;
 4. Other than traveling directly to and from the Nation's Public Safety Building or another location within the Nation as stated in the summons, subpoena or order, the excluded non-member shall not travel anywhere else within the Nation; and
 5. The excluded non-member shall only return to the Nation in accordance with subsequent summons, subpoenas or orders or pursuant to other terms of this ordinance.

(Adopted by Amendment of Jan. 31, 2017)

(Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Sec. 15-8. - 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.

(Formerly, Section 15-5. Renumbered by an Amendment of April 4, 2004. Renumbered again from 15-6 by Amendment of Jan. 31, 2017)

(Law & Order Code 2006, § 15-6; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; Renumbered 4-4-2004; Ft. McD. Res. No. 2017-10, 1-31-2017)

Sec. 15-9. - Severability.

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

(Adopted by Resolution No. Ft. McD. 2002-91, effective August 29, 2000. Formerly, Section 15-6. Renumbered by an Amendment of April 4, 2006. Renumbered again from 15-7 by Amendment of Jan. 31, 2017)

(Law & Order Code 2006, § 15-7; Ft. McD. Res. No. 2000-91, eff. 8-29-2000; Ft. McD. Res. No. 2002-91, eff. 8-29-2000; Renumbered 4-4-2006; Ft. McD. Res. No. 2017-10, eff. 1-31-2017)

Chapter 16 - TRAFFIC CODE

ARTICLE I. - IN GENERAL

Sec. 16-1. - Definitions.

As used in this chapter, the following terms shall have the meaning herein ascribed to them, unless the context requires otherwise. The definition of a word or phrase contained in Arizona Traffic Code shall apply if not otherwise defined herein.

ALCOHOL means any substance containing any form of alcohol, including ethanol, methanol, propynol or isopropynol.

ALCOHOL CONCENTRATION if expressed as a percentage means either:

- A. The number of grams of alcohol per one hundred (100) milliliters of blood.
- B. The number of grams of alcohol per two hundred ten (210) liters of breath.

ATV means an all terrain vehicle.

ALL TERRAIN VEHICLE means a motor vehicle that satisfies all of the following:

- A. Is designed primarily for recreational non-highway all-terrain travel.
- B. Is fifty (50) or fewer inches in width.
- C. Has an unladen weight of eight hundred (800) pounds or less.
- D. Travels on three (3) or more low-pressure tires.
- E. Has a seat to be straddled by the operator and handlebars for steering control.
- F. May be operated on a public roadway or highway.

AUTHORIZED EMERGENCY VEHICLE means any of the following:

- A. A fire department vehicle.
- B. A police vehicle.
- C. An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

BICYCLE means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:

- A. Two (2) tandem wheels, either of which is more than sixteen (16) inches in diameter.
- B. Three (3) wheels in contact with the ground, any of which is more than sixteen (16) inches in diameter.

BUS means a motor vehicle designed for carrying sixteen (16) or more passengers, including the driver.

COMBINATION OF VEHICLES means a truck or truck tractor and semi-trailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semi-trailer.

COMMISSION means the Fort McDowell Public Safety Commission.

CONTROLLED SUBSTANCE means a substance so classified under section 102(6) of the Controlled Substances Act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

CONVICTION means any of the following:

- A. An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.

- B. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
- C. A plea of guilty or no contest accepted by the court.
- D. The payment of a fine or court costs.

COUNCIL means the Fort McDowell Yavapai Nation Tribal Council.

COURT means Fort McDowell Yavapai Nation Tribal Court.

CROSSWALK means:

- A. That part of a roadway at an intersection included within the connections at the lateral lines of the sidewalks on opposite at the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.
- B. Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

DAYTIME means from half an hour before sunrise to a half-hour after sunset. "Nighttime" means at any other hour.

DRIVE means to operate or be in actual physical control of a motor vehicle.

DRIVER means a person who drives or is in actual physical control of a vehicle.

ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE means a self-balancing two (2) non-tandem wheeled device with an electric propulsion system that limits the maximum speed of the device to fifteen (15) miles per hour or less and that is designed to transport only one (1) person.

EXPLOSIVES means any chemical compound or mechanical mixture commonly used or intended for the purpose of producing an explosion and containing any oxidizing or combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, concussion, percussion or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or destroying life or limb.

FARM TRACTOR means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

FLAMMABLE LIQUID means any liquid which has a flash point of seventy (70) degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

GOLF CART means a motor vehicle that has not less than three (3) wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred (1,800) pounds, that is designed to be and is operated at not more than twenty-five (25) miles per hour and that is designed to carry not more than four (4) persons including the driver.

GROSS WEIGHT means the weight of a vehicle without a load plus the weight of any load on the vehicle.

IMPLEMENT OF HUSBANDRY means a vehicle designed primarily for agricultural purposes and used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets all of the following conditions:

- A. Is used exclusively for carrying products of farming from one part of a farm to another part of the same farm or from one farm to another farm.
- B. Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.
- C. Is only incidentally operated or moved on a public roadway or highway whether as a trailer or self-propelled unit.

INTERSECTION means the area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two (2) highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict. If a highway includes two (2) roadways thirty (30) or more feet apart, each crossing of each roadway of the divided highway by an intersecting highway is a separate intersection. If the intersecting highway also includes two (2) roadways thirty (30) or more feet apart, each crossing of two (2) roadways of the highways is a separate intersection.

JUDGE means a judge of the Fort McDowell Yavapai Nation Tribal Court or other judicial officer authorized by the community constitution or an ordinance of the Tribal Council.

LANE ROADWAY means a roadway that is divided into two (2) or more clearly marked lanes for vehicular traffic.

LAW ENFORCEMENT OFFICER means an officer authorized to direct or regulate traffic or make arrests for violations of traffic regulations.

LICENSE means any license, temporary instruction permit or temporary license issued under the laws of any state that pertain to the licensing of persons to operate motor vehicles.

LIMOUSINE means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen (15) passengers including the driver.

METAL TIRE means a tire the surface of which in contact with the highway, is wholly or partly of metal or other hard, non-resilient material.

MOPED means a bicycle that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty (50) cubic centimeters or less, a brake horsepower of one and one-half (1½) or less and a maximum speed of twenty-five (25) miles per hour or less on a flat surface with less than a one (1) percent grade.

MOTOR-DRIVEN CYCLE means a motorcycle, including every motor scooter, with a motor that produces not more than five (5) horsepower.

MOTOR VEHICLE means a self-propelled vehicle but excluding a motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard.

MOTORCYCLE means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor and a moped.

MOTORIZED SKATEBOARD means a self-propelled device that has a motor, a deck on which a person may ride and at least two (2) tandem wheels in contact with the ground.

MOTORIZED WHEELCHAIR means a self-propelled wheelchair that is used by a person for mobility.

NATION means Fort McDowell Yavapai Nation.

OFFICIAL TRAFFIC CONTROL DEVICES means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating warning or guiding traffic.

OPERATOR means a person who drives a motor vehicle on a public roadway or highway, who is in actual physical control of a motor vehicle on a public roadway or highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

OWNER means:

A. A person who holds the legal title of a vehicle.

- B. If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
- C. If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

PARK, if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

PEDESTRIAN means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

POLE TRAILER means a vehicle that is all of the following:

- A. Without motive power.
- B. Designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle.
- D. Used ordinarily for transporting long or irregularly shaped loads such as poles, pipes or structural members capable generally sustaining themselves as beams between the supporting connections.

POLICE OFFICER means an officer authorized to direct or regulate traffic or make arrests for violations of traffic regulations.

PRIVATE ROAD OR DRIVEWAY means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

PUBLIC ROADWAY means that portion of any roadway, street, road, highway or thoroughfare within the exterior boundaries of the Fort McDowell Yavapai Nation improved, designed or ordinarily used for vehicle travel, exclusive of the berm or shoulder.

RESERVATION means the Fort McDowell Yavapai Nation.

RIGHT-OF-WAY, when used within the context of the regulation of the movement of traffic on a public roadway or highway, means the privilege of the immediate use of the public roadway or highway. Right-of-way, when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained, means the lands or interest in lands within the right-of-way boundaries.

SCHOOL BUS means a motor vehicle that is designed for carrying more than ten (10) passengers and that is either:

- A. Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
- B. Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

SEMI-TRAILER means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle.

SIDEWALK means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

STOP, if required, means complete cessation from movement.

STOP, STOPPING OR STANDING, if prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic-control sign or signal.

TAXI means a motor vehicle that has a seating capacity not exceeding fifteen (15) passengers, including the driver, which is registered as a taxi in any state that provides passenger services and that:

- A. Does not operate on a regular route or between specified places.
- B. Offers local transportation for a fare determined primarily on the basis of the distance traveled.

TRAILER means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semi-trailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer.

TRAFFIC means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

TRAFFIC-CONTROL SIGNAL means a device whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

TRUCK means every motor vehicle designed, used or maintained primarily for the transportation of property.

TRUCK TRACTOR means a motor vehicle that is designed for and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

VEHICLE means a device in, on or by which a person or property is or may be transported or drawn on a public roadway or highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.

(Law & Order Code 2006, § 16-1; Res. No. 2006-98, ex.(§ 16-1), 12-12-2006/1-1-2007)

Sec. 16-2. - Record of traffic cases.

- A. **Required.** The Court shall keep or cause to kept a record of every traffic complaint, traffic citation, or other legal form of traffic charge deposited with or presented to the Court, and shall keep a record of every official action by the Court, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal and the amount of fine or forfeiture of bail, and the amount of fine or forfeiture resulting from every traffic complaint or citation deposited with or presented to the Court.
- B. **License Forfeiture.** Whenever any person is convicted of any offense for which this Code requires mandatory revocation of that person's operator's or chauffeur's license or a person forfeits bail for a charge of violating any provision of this chapter or other law regulating the operation of vehicles on roadways or highways, the Tribal Court may require the surrender of the operator's and/or chauffeur's license then held by the person and the Court may forward the licenses to the Arizona Driver's License Division or may retain such licenses at the discretion of the Court.

(Law & Order Code 2006, § 16-2; Res. No. 2006-98, ex.(§ 16-2), 12-12-2006/1-1-2007)

ARTICLE II. - CRIMINAL TRAFFIC

DIVISION 1. - PROCEDURE AND PENALTY

Sec. 16-3. - Criminal procedure.

Chapter 5, Article III of the Fort McDowell Law and Order Code, entitled Criminal Procedure, is applicable to the offenses enumerated in this Article. The procedural terms in this chapter will supersede any conflicting procedural terms in Chapter 5.

(Law & Order Code 2006, § 16-3; Res. No. 2006-98, ex.(§ 16-3), 12-12-2006/1-1-2007)

Sec. 16-4. - Classification of crimes; sentencing ranges.

Any person convicted of a criminal traffic offense within this Article shall be sentenced according to the class of offense. The particular classification of each offense in this Article is expressly designated in the subsection defining it.

The following sentences shall be imposed for each class of offense:

Class A. No more than one (1) year (three hundred sixty-five (365) days) in jail; or a fine not to exceed Five Thousand Dollars (\$5,000.00); or both and costs.

Class B. No more than ninety (90) days in jail; or a fine not to exceed One Thousand Dollars (\$1,000.00); or both and costs.

Class C. No more than thirty (30) days in jail; or a fine not to exceed Five Hundred Dollars (\$500.00); or both and costs.

(Law & Order Code 2006, § 16-4; Res. No. 2006-98, ex.(§ 16-4), 12-12-2006/1-1-2007)

DIVISION 2. - CRIMINAL TRAFFIC OFFENSES

Sec. 16-5. - Parties to a crime.

A person who commits, attempts to commit, conspires to commit, or aids and abets in the commission of any act declared in this Chapter to be a crime, whether individually or in connection with one (1) or more persons or as a principal, agent or accessory, is guilty of the offense; and a person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this Chapter is likewise guilty of the offense.

(Law & Order Code 2006, § 16-5; Res. No. 2006-98, ex.(§ 16-5), 12-12-2006/1-1-2007)

Sec. 16-6. - Failure to appear or respond.

Any person who willfully violates his or her signed promise to appear in court regarding a criminal traffic citation or fails to respond to a Summons or Notice to Appear regarding a criminal traffic matter is guilty of a Class C offense.

(Law & Order Code 2006, § 16-6; Res. No. 2006-98, ex.(§ 16-6), 12-12-2006/1-1-2007)

Sec. 16-7. - Unauthorized destruction of citation.

Any person who knowingly destroys, mutilates or conceals a properly issued citation is guilty of a Class C offense.

(Law & Order Code 2006, § 16-7; Res. No. 2006-98, ex.(§ 16-7), 12-12-2006/1-1-2007)

Sec. 16-8. - Obedience to law enforcement officer.

- A. **Violation.** It is unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of any tribal law enforcement officer, flagger or firefighter having authority to direct, control or regulate traffic. A signal under this subsection means any signal by hand, voice, siren or emergency light.

B. **Penalty.** A person violating this section shall be guilty of a Class C offense.

(Law & Order Code 2006, § 16-8; Res. No. 2006-98, ex.(§ 16-8), 12-12-2006/1-1-2007)

Sec. 16-9. - Refusal to give identification.

A. **Violation.** It is unlawful for any person while operating a vehicle to refuse, when requested by a law enforcement officer, to give his or her name and address and the name and address of the owner of the vehicle, or for such person to give a false name or address.

B. **Penalty.** A person violating this section is guilty of a Class C offense.

(Law & Order Code 2006, § 16-9; Res. No. 2006-98, ex.(§ 16-9), 12-12-2006/1-1-2007)

Sec. 16-10. - Refusal to produce driver's license and/or registration.

A. **Violation.** It is unlawful for any person while operating a vehicle to refuse, when requested by a law enforcement officer, to produce his or her driver's license or the vehicle certificate of registration.

B. **Penalty.** A person violating this section is guilty of a Class C offense.

(Law & Order Code 2006, § 16-10; Res. No. 2006-98, ex.(§ 16-10), 12-12-2006/1-1-2007)

Sec. 16-11. - Vehicular homicide.

A. **Violation.** It is unlawful for any person to cause the death of another person or cause injuries that lead to the death of another person while operating a vehicle:

1. In a reckless manner as defined in Section 16-13; or
2. While under the influence of intoxicating liquor or any drug or both as defined in Section 16-15; or
3. With reckless disregard for the safety of another person.

B. **Penalty.** A person violating this section is guilty of a Class A offense and shall serve a mandatory minimum jail sentence of two hundred seventy (270) days. Absent good cause, this sentence shall run consecutive to all other sentences imposed.

For purposes of this section, "reckless disregard" means the driver is aware of and consciously disregards a substantial and unjustifiable risk that injuries leading to death of another person or death of another person will occur. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A driver who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with regard to such risk.

(Law & Order Code 2006, § 16-11; Res. No. 2006-98, ex.(§ 16-11), 12-12-2006/1-1-2007)

Sec. 16-12. - Vehicular assault.

A. **Violation.** It is unlawful for any person who operates a vehicle:

1. In a reckless manner as defined in Section 16-13, causing serious bodily injury to another person; or
2. While under the influence of intoxicating liquor or any drug or both as defined in Section 16-15, causing bodily injury to another person; or

3. With reckless disregard for the safety of another person.

B. **Penalty.** A person violating this Section is guilty of a Class A offense.

For purposes of this section, "serious bodily injury" means a substantial risk of death, serious permanent disfigurement or protracted loss or impairment of any part or organ of the body.

For purposes of this section, "reckless disregard" means the driver is aware of and consciously disregards a substantial and unjustifiable risk that serious bodily injuries of another person will occur. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A driver who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with regard to such risk.

(Law & Order Code 2006, § 16-12; Res. No. 2006-98, ex.(§ 16-12), 12-12-2006/1-1-2007)

Sec. 16-13. - Reckless driving.

A. **Violation.** It is unlawful for a person to drive a vehicle in willful or wanton disregard for the safety of person or property or who drives a vehicle in excess of the speed limit by more than twenty (20) miles per hour.

B. **Penalty.** A person violating this Section is guilty of a Class B offense.

(Law & Order Code 2006, § 16-13; Res. No. 2006-98, ex.(§ 16-13), 12-12-2006/1-1-2007)

Sec. 16-14. - Implied consent; consequences of refusal.

A. **Implied Consent.** Any person who operates a motor vehicle within the exterior boundaries of Fort McDowell Yavapai Nation shall be deemed to have given his or her consent to a chemical test or other tests of his or her blood, breath or urine for the purpose of determining the alcoholic content or presence of drugs in his or her blood if arrested for any offense where at the time of the arrest, the arresting officer has reason to believe the person has been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor, any drug, a vapor-releasing substance containing a toxic substance or any combination thereof.

B. **Testing.** The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within the Nation while under the influence of alcohol, drugs, a vapor-releasing substance containing a toxic substance or any combination thereof. The law enforcement agency that such officer represents shall designate which of such tests shall be administered in all cases except where circumstances preclude its use.

Following the arrest of, by a law enforcement officer, such officer shall allow a period of fifteen (15) minutes to elapse from the time the violator is stopped before administering any test prescribed by the terms herein. During such period of time the law enforcement officer shall inform the violator that his or her privilege of driving in the Nation will be suspended or denied if he or she refuses to submit to the test.

C. **Persons Incapable of Refusal.** Any person who is dead, unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn consent provided in subsection A and the test or tests may be administered.

D. **Refusal to Submit.** If any person under arrest refuses to submit to a chemical test designated by the law enforcement agency, none shall be given. The Court, upon receipt of a sworn report of the law enforcement officer that he or she had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within the Nation while under the influence of intoxicating liquor, any drug, a vapor-releasing substance containing a toxic substance or any combination thereof and that the person has refused to submit to the test, shall suspend his or her

privilege of operating a motor vehicle within the Nation for a period of six (6) months, subject to review as provided herein.

- E. **Notification of Suspension.** Upon suspending the operating privilege of any person, the Court shall immediately notify the person in writing and, if requested, shall afford him or her an opportunity for a hearing. The hearing shall cover the issues of whether a law enforcement officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within the Nation while under the influence of intoxicating liquor, any drug, a vapor-releasing substance containing a toxic substance or any combination thereof, whether the person was placed under arrest, and whether he or she refused to submit to the test. Based upon a standard of preponderance of the evidence, the Court shall order that the suspension either be rescinded or sustained.
- F. **State Notified.** When it has been finally determined under the procedures of this section that the privilege to operate a motor vehicle within the Nation has been suspended, the clerk of the Tribal Court shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

(Law & Order Code 2006, § 16-14; Res. No. 2006-98, ex.(§ 16-14), 12-12-2006/1-1-2007)

Sec. 16-15. - Driving or actual physical control while under the influence; presumptions.

- A. **Violation.** It is unlawful for a person to drive or be in actual physical control of a vehicle within the Nation under any of the following circumstances:
 - 1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.
 - 2. If the person has an alcohol concentration of 0.08 or more within two (2) hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
 - 3. While there is any drug listed as a "controlled substance" in Schedules I, II, III, IV and V of Title 21, United States Code, Section 812 or its metabolite in the person's body.
- B. **Defense.** It is not a defense to a charge under subsection A of this section that the person is or has been entitled to use the drug under the laws of any state.
- C. **Presumptions in Evidence.** In the trial of any civil or criminal action or proceeding for a violation of this section relating to driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood within two (2) hours of the alleged time of driving as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:
 - (1) If there was at the time 0.05 percent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.
 - (2) If there was at the time in excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
 - (3) If there was at the time 0.08 percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.
 - (4) Paragraphs (1), (2) or (3) of this subsection shall not be construed as limiting the introduction of any competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.

- D. **Basis for Measurements.** Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred (100) cubic centimeters of blood.
- E. **When Test is Considered Valid.** Chemical analysis of the person's blood, urine, breath or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the Arizona department of health services or the Arizona department of public safety and by a person possessing a valid permit issued by the Arizona department of health services or the Arizona department of public safety for such purpose.
- F. **Persons Qualified to Administer Test.** When a person shall submit to a blood or urine under the provisions of the preceding section, only a physician or a registered nurse, a phlebotomist or other qualified person may withdraw blood or take the urine specimen for the purpose of determining the alcohol or drug content therein. Such limitation shall not apply to the taking of breath specimens.
- G. **Person Tested Authorized to use own Physician.** The person tested may have a physician or a qualified technician, chemist, registered nurse or other qualified person of his or her own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure of inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.
- H. **Refusal Admissible in Evidence.** Any person under prosecution for the offense of driving or being in physical control of a motor vehicle under the influence of alcohol or drugs shall not use refusal to take a blood or breath test or tests as a defense to the charge of driving or being in physical control of a motor vehicle while under the influence. The fact that a person has refused to submit to a test or tests of his or her breath of blood shall be admissible in aiding the finder(s) of fact in determining whether or not the person was in fact under the influence of alcohol or drugs or both while driving or in actual physical control.
- I. **Penalty.** A person who violates this Section is guilty of a Class B offense.

(Law & Order Code 2006, § 16-15; Res. No. 2006-98, ex.(§ 16-15), 12-12-2006/1-1-2007)

Sec. 16-16. - Driving or in actual physical control while under the extreme influence of intoxicating liquor.

- A. **Violation.** It is unlawful for a person to drive or be in actual physical control of a vehicle within the Nation if the person has an alcohol concentration of 0.15 or more within two (2) hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
- B. **Penalty.** A person who violates of this Section is guilty of a Class A offense and shall serve a minimum mandatory jail sentence of fifteen (15) consecutive days.

(Law & Order Code 2006, § 16-16; Res. No. 2006-98, ex.(§ 16-16), 12-12-2006/1-1-2007)

Sec. 16-17. - Aggravated driving or actual physical control while under the influence.

- A. **Violation.** A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does any of the following:
 - 1. Commits a violation of Section 16-15 or 16-16 without a driver's license or while the person's driver's license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive.
 - 2. Within a period of sixty (60) months commits a third or subsequent violation of Section 16-15, 16-16 or this section and has previously been convicted of any combination of convictions of 16-

15, 16-16 or this section or acts in another jurisdiction that if committed in this Nation would be a violation of 16-15, 16-16 or this section.

3. Commits a violation of Section 16-15, 16-16 or this section while a child under the age of 15 years is in the vehicle at the time of the violation.

B. **Penalty.** A person who violates this Section is guilty of a Class A offense, and shall serve a minimum mandatory jail sentence of ninety (90) days.

(Law & Order Code 2006, § 16-17; Res. No. 2006-98, ex.(§ 16-17), 12-12-2006/1-1-2007)

Sec. 16-18. - Eluding or attempting to elude a law enforcement officer.

A. **Violation.** It is unlawful:

1. For any driver of a vehicle to willfully fail or refuse to immediately bring his or her vehicle to a stop after being given a visual or audible signal to do so by a law enforcement officer; or
2. For any driver or passenger of a vehicle to willfully flee or attempt to flee the area once the vehicle is stopped pursuant to a lawful stop by a law enforcement officer.

B. **Penalty.** A person who violates this Section is guilty of a Class C offense.

(Law & Order Code 2006, § 16-18; Res. No. 2006-98, ex.(§ 16-18), 12-12-2006/1-1-2007)

Sec. 16-19. - Driving without valid license.

A. **Operator's License Required.** No person shall operate any motor vehicle on public roadways within the Nation unless he or she has obtained a valid operator's license or chauffeur's license issued by any jurisdiction recognized by the Nation.

B. **Operator's License on Person; Display on Demand.** No person shall operate a motor vehicle on public roadways within the Nation unless he or she has a valid operator's license or chauffeur's license issued by any jurisdiction recognized by the Nation on his or her person or within the vehicle operated and shall display the license upon demand of a law enforcement officer. However, no person charged with violating this subsection shall be convicted if he or she produces in court an operator's license or a chauffeur's license issued to him or her and valid at the time of the arrest.

C. **Driving While License is Restricted.** No person shall operate a motor vehicle on a public roadway within the Nation in any manner in violation of the restrictions imposed in a restricted license issued to him or her.

D. **Driving While License is Suspended or Revoked.** No person shall operate a motor vehicle on a public roadway within the Nation when the person's operator's license, chauffeur's license or privilege to drive is suspended, revoked, disqualified, canceled or refused by any jurisdiction.

E. **License to Operate Motorcycle or Motor-Driven Cycle.** Except as otherwise provided in this Chapter, no person shall operate a motorcycle or motor-driven cycle upon a public roadway within the Nation unless he or she has a valid operator's license issued by any jurisdiction recognized by the Nation. This provision shall not apply to electrically powered three-wheeled vehicles or three-wheeled vehicle in which the operator and passenger ride within an enclosed cab.

F. **Penalty.** A person violating any of the subsections of this Section is guilty of a Class C offense. Upon a first conviction under subsections A, C, or D and upon proper evidence that the driver has obtained his or her privilege to operate a motor vehicle or had his or her privilege restored, the Court may impose a fine of up to one hundred dollars (\$100.00).

1. **Second conviction within three (3) years.** A person violating subsections A, C, or D a second time within three (3) years of a previous conviction of subsections A, C, or D of this Section or

as a result of a conviction for an act in another jurisdiction that, if committed in this Nation, would be a violation of subsections A, C, or D of this Section shall serve a mandatory minimum jail sentence of forty-eight (48) hours, except that on proper evidence that his or her driver's privilege has been obtained or restored, the Court may suspend the mandatory jail sentence.

2. **Third or subsequent conviction within five (5) years.** A person violating subsections A, C, or D a third or subsequent time within five (5) years of a previous conviction of subsections A, C, or D of this Section or as a result of a conviction for an act in another jurisdiction that, if committed in this Nation, would be a violation of subsections A, C, or D of this Section shall serve a mandatory minimum jail sentence of fifteen (15) days. No judge may grant only probation to or suspend the imposition of the minimum jail sentence of any person for a third of subsequent conviction.
3. **Prior conviction involving intoxication.** A person who drives a motor vehicle on the public roadways of the Nation when the person's license or privilege to drive a motor vehicle is restricted, suspended, revoked, disqualified, canceled or refused in violation of Sections 16-15, 16-16 or 16-17 of this Chapter or as a result of a conviction for an act in another jurisdiction that, if committed in this Nation, would be a violation of Sections 16-15, 16-16 or 16-17 shall serve a minimum of ten (10) days in jail in addition to any penalty imposed with this subsection. No judge may grant probation to or suspend the imposition of a jail sentence of any person for a conviction under the circumstances set forth in this subsection.
4. **Incident involving injury to another.** If, while operating a vehicle in violation of subsections A, B, C or D of this Section, the driver is involved in an accident resulting in bodily injury to another person, the Court shall impose a mandatory minimum jail sentence of fifteen (15) days.

(Law & Order Code 2006, § 16-19; Res. No. 2006-98, ex.(§ 16-19), 12-12-2006/1-1-2007; Ft. McD. Res. No. 2014-65, ex. A(§ 16-19), adopted 9-16-2014)

Sec. 16-20. - Registration of motor vehicle.

- A. **Registration of Motor Vehicle; Exceptions.** Every owner of a motor vehicle, trailer or semi-trailer shall obtain a certificate of title thereto and registration therefore from the appropriate agency of the United States, a state or a foreign government before the motor vehicle, trailer or semi-trailer is operated upon a public roadway within the Nation.
- B. **Displaying License Plates.** The registered owner of a motor vehicle, trailer or semi-trailer required by law to be registered shall not operate nor permit another person to operate such motor vehicle, trailer or semi-trailer upon any public roadway within the Nation which does not display thereon the number plates assigned thereto for the current registration year.
- C. **Possessing Fictitious Registration Card or Plates.** No person shall display or possess a registration card or registration number plate knowing it to be fictitious or to have been stolen, canceled, revoked, suspended or altered.
- D. **Penalty.** A person violating of any one (1) of these Subsections is guilty of a Class C offense.

(Law & Order Code 2006, § 16-29; Res. No. 2006-98, ex.(§ 16-20), 12-12-2006/1-1-2007)

Sec. 16-21. - Permitting unauthorized person to drive.

- A. **Violation.** No person shall authorize or knowingly permit a motor vehicle owned by him or her or under his or her control to be driven upon any public roadway within the Nation by any person who is not authorized under the provisions of this Chapter or in violation of any of the provisions of this Chapter.
- B. **Penalty.** A person violating this Section is guilty of a Class C offense.

(Law & Order Code 2006, § 16-21; Res. No. 2006-98, ex.(§ 16-21), 12-12-2006/1-1-2007)

Sec. 16-22. - Permitting unauthorized minor to drive.

- A. **Violation.** No person shall cause or knowingly permit any person under the age of eighteen (18) years to drive a motor vehicle upon a public roadway within the Nation when such person is not authorized to operate a motor vehicle under the provisions of this Chapter or in violation of the provisions of this Chapter.
- B. **Penalty.** A person violating this Section is guilty of a Class C offense.

(Law & Order Code 2006, § 16-22; Res. No. 2006-98, ex.(§ 16-22), 12-12-2006/1-1-2007)

Sec. 16-23. - Underage drinking and driving.

- A. **Violation.** It is unlawful for any person under the age of twenty-one (21) years to drive or be in physical control of a motor vehicle while there is any spirituous liquor in his or her body.
- B. **Penalty.** A person violating this Section is guilty of a Class B offense.

(Law & Order Code 2006, § 16-23; Res. No. 2006-98, ex.(§ 16-23), 12-12-2006/1-1-2007)

Sec. 16-24. - Extreme underage drinking and driving.

- A. **Violation.** A person is guilty of Extreme Underage Drinking and Driving who is under the age of twenty-one (21) years, drives or is in physical control of a motor vehicle and had, at the time he or she drove or within two (2) hours thereafter, a blood alcohol concentration of 0.15 or more.
- B. **Penalty.** A person violating this Section is guilty of a Class A offense and shall serve a mandatory minimum jail sentence of ten (10) days.

(Law & Order Code 2006, § 16-24; Res. No. 2006-98, ex.(§ 16-24), 12-12-2006/1-1-2007; Ft. McD. Res. No. 2014-65, ex. B(§ 16-24), adopted 9-16-2014)

Sec. 16-25. - Aggravated underage drinking and driving.

- A. **Violation.** A person is guilty of Aggravated Underage Drinking and Driving who is under the age of twenty-one (21) years, drives or is in physical control of a motor vehicle while there is any spirituous liquor in his or her body and who either:
 - 1. Violates this Section at a time when he or she does not have a valid driver's license or while his or her driver's license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver's license or privilege to drive.
 - 2. Violates this Section within sixty (60) months of a prior conviction for violating this Section or violating the provisions contained in Sections 16-23 or 16-24 or committing acts in another jurisdiction that if committed in this Nation would be a violation of Section 16-23, 16-24 or this Section.
 - 3. Violates this Section while a child under the age of fifteen (15) years is in the vehicle at the time of the violation.
- B. **Penalty.** A person violating this Section is guilty of a Class A offense and shall serve a mandatory minimum jail sentence of ninety (90) days.

(Law & Order Code 2006, § 16-25; Res. No. 2006-98, ex.(§ 16-25), 12-12-2006/1-1-2007; Ft. McD. Res. No. 2014-65, ex. C(§ 16-25), adopted 9-16-2014)

Sec. 16-26. - Consumption or possession of open containers of spirituous liquor in motor vehicles.

A. **Violations.** It is unlawful for any person to:

1. Consume spirituous liquor while operating or while within the passenger compartment of a motor vehicle that is located on any public roadway within the Nation.
2. Possess an open container of spirituous liquor within the passenger compartment of a motor vehicle that is located on any public road within the Nation.

B. **Exemptions.** This section does not apply to:

1. A passenger in any bus, limousine or taxi.
2. A passenger in the living quarters of a motor home.

C. **Penalty.** A person violating either provision of this subsection is guilty of a Class B offense.

(Law & Order Code 2006, § 16-26; Res. No. 2006-98, ex.(§ 16-26), 12-12-2006/1-1-2007)

Sec. 16-27. - Racing and drag races.

A. **Prohibited.** Without a specific permit from Tribal Council, no person shall drive any vehicle in any race, speed competition or contest drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record on a public roadway or highway, and no person shall in any manner participate in any such race, competition, contest, test or exhibition.

B. **Drag race defined.** Drag race is defined as the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other or the operation of one (1) or more vehicles over a common selected course, from the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

C. **Racing defined.** Racing is defined as the use of one (1) or more vehicles in an attempt to out gain, outdistance, or prevent another vehicle from passing.

D. **Penalty.** On a first conviction, a person is guilty of a Class B offense.

1. Second or Subsequent offense. When a second or subsequent violation is committed within a period of twenty-four (24) months, and conviction occurs, a person is guilty of a Class B offense and shall serve a mandatory minimum jail sentence of thirty (30) days and require the forfeiture of the driver's license and shall suspend the person's driving privileges for a period not to exceed ninety (90) days. No judge may grant probation only to or suspend the imposition of the minimum mandatory jail sentence of any person for such a second or subsequent conviction.

(Law & Order Code 2006, § 16-27; Res. No. 2006-98, ex.(§ 16-27), 12-12-2006/1-1-2007)

Sec. 16-28. - Duty to stop upon striking vehicle.

A. **Violation.** The driver of any vehicle which collides with any other vehicle, attended or unattended shall immediately stop at the scene of the accident, or as close as possible, and return to or remain at the scene of the accident until he or she has fulfilled the requirements of Section 16-233. Every such stop shall be made without obstructing traffic more than is necessary. If the stricken vehicle is unattended, the driver of the other vehicle shall leave in a conspicuous place on the stricken vehicle

a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking.

B. **Penalty.** Any person violating this section is guilty of a class C offense.

(Law & Order Code 2006, § 16-28; Res. No. 2006-98, ex.(§ 16-28), 12-12-2006/1-1-2007)

Secs. 16-29. - 16-50. - Reserved.

ARTICLE III. - CIVIL TRAFFIC

DIVISION 1. - GENERALLY

Sec. 16-51. - Purpose.

The Fort McDowell Yavapai Nation adopts this Article to promote the welfare and safety of all persons who use the public roads lying within the exterior boundaries of Fort McDowell Yavapai Nation and to provide fair and efficient disposition of civil traffic infractions.

(Law & Order Code 2006, § 16-51; Res. No. 2006-98, ex.(§ 16-51), 12-12-2006/1-1-2007)

Sec. 16-52. - Jurisdiction.

The Fort McDowell Tribal Court is vested with the power to hear all matters under this Article. The Nation intends this Article to apply to all persons who engage in conduct regulated by this Article within the exterior boundaries of the Nation. The operation of motor vehicles; travel by drivers, passengers, pedestrians, bicyclists and users of off-road vehicles; vehicle safety equipment; and accident reporting, are all activities that directly affect the safety, health and welfare of the Nation.

(Law & Order Code 2006, § 16-52; Res. No. 2006-98, ex.(§ 16-52), 12-12-2006/1-1-2007)

Sec. 16-53. - Explanation of privilege.

The operation of a vehicle within the territorial jurisdiction of the Nation is a privilege that may be granted, denied, suspended or revoked.

(Law & Order Code 2006, § 16-53; Res. No. 2006-98, ex.(§ 16-53), 12-12-2006/1-1-2007)

Sec. 16-54. - Officers to enforce traffic codes.

All law enforcement officers sworn by the Nation shall have the authority to enforce the traffic codes of the Nation. Any law enforcement officer shall, upon request, produce evidence of his or her authority.

(Law & Order Code 2006, § 16-54; Res. No. 2006-98, ex.(§ 16-54), 12-12-2006/1-1-2007)

Sec. 16-55. - Effect of invalidity.

If any provision of this Article or its applicability to any person or circumstance is held invalid, the remainder of this Article or its application to other persons or circumstances is not affected.

(Law & Order Code 2006, § 16-55; Res. No. 2006-98, ex.(§ 16-55), 12-12-2006/1-1-2007)

Sec. 16-56. - Habitual traffic offender.

Any person convicted of six (6) or more civil and/or criminal traffic violations in a period of two (2) years or less shall be declared by the Court to be a habitual traffic offender and his or her driving privileges within the Nation shall be revoked for a period of no less than one (1) year nor more than five (5) years. For purposes of this Section, "traffic infractions" shall include those contained in this Chapter and traffic infractions under the laws of any state, town or city or any other tribal law or federal law.

(Law & Order Code 2006, § 16-56; Res. No. 2006-98, ex.(§ 16-56), 12-12-2006/1-1-2007)

Sec. 16-57. - Fine/sanctions for civil infractions.

A person violating any civil infraction herein shall be subject to the civil fines and sanctions as set forth in Appendix I — Fine Schedule for Civil Infractions.

(Law & Order Code 2006, § 16-57; Res. No. 2006-98, ex.(§ 16-57), 12-12-2006/1-1-2007)

Secs. 16-58—16.60. - Reserved.

DIVISION 2. - CIVIL TRAFFIC INFRACTION PROCEDURE

Sec. 16-61. - Notice of infraction; issuance by law enforcement officer.

A law enforcement officer has the authority to issue a notice of civil traffic infraction:

1. When it occurs in the law enforcement officer's presence;
2. When a law enforcement officer investigating the scene of an accident has reasonable cause to believe a civil traffic infraction has been committed; or
3. When a law enforcement officer discovers an unattended vehicle parked, stopped or standing contrary to this Article. The law enforcement officer shall affix a written citation of civil infraction in plain view on the motor vehicle.

(Law & Order Code 2006, § 16-61; Res. No. 2006-98, ex.(§ 16-61), 12-12-2006/1-1-2007)

Sec. 16-62. - Citation; form and notice.

A written citation of the civil traffic infraction shall include a time for an initial hearing to be held no sooner than five (5) business days and not more than sixty (60) calendar days from the date the citation is served.

With the exception of a written parking citation, a written traffic citation shall be prepared in quadruplicate and shall contain the name, address, birth date and race of the alleged traffic offender, the license number of the vehicle, if any, the offense charged and the date, time and place the alleged traffic offender shall appear in court. A written parking citation shall include a description of the vehicle and the vehicle license number.

A copy of the written traffic citation shall be provided to the alleged traffic offender and he or she shall sign the citation to verify receipt of the same. If the alleged traffic offender refuses or is incapable of signing the citation, the law enforcement officer shall verify the refusal or inability on the citation.

(Law & Order Code 2006, § 16-62; Res. No. 2006-98, ex.(§ 16-62), 12-12-2006/1-1-2007)

Sec. 16-63. - Citation; options for response.

A person shall respond to a non-mandatory court appearance citation for a civil traffic infraction in either of the following ways:

1. Pay the fine. The fine shall be paid to the Fort McDowell Tribal Court on or before the day of the initial hearing. The Court shall then enter judgment that the person committed the civil traffic infraction.
2. Personally appear at the initial hearing to request a trial to determine whether a traffic infraction occurred.

If the citation indicates that a mandatory court appearance is required, the person shall appear at the initial hearing noticed on the citation.

(Law & Order Code 2006, § 16-63; Res. No. 2006-98, ex.(§ 16-63), 12-12-2006/1-1-2007)

Sec. 16-64. - Citation; failure to respond; hearing.

If a person fails to appear and respond as required in Section 16-63 the Court shall enter an order finding that the person committed the traffic infraction, shall assess the appropriate fine and may notify the Arizona Division of Motor Vehicles to prevent the renewal of the person's driver's license until all fines are paid. Failure to appear and respond is a criminal offense under the Fort McDowell Yavapai Nation Law and Order Code. Such failure to appear by any person under the criminal jurisdiction of the Nation may result in the issuance of bench warrant and/or subject the person to criminal contempt. Failure to appear by any person not under the criminal jurisdiction of the Nation may result in the entry of a civil judgment and referral of the matter to a collection agency.

(Law & Order Code 2006, § 16-64; Res. No. 2006-98, ex.(§ 16-64), 12-12-2006/1-1-2007)

Sec. 16-65. - Unauthorized destruction of citation.

Any person who knowingly destroys, mutilates or conceals a properly issued citation shall be subject to criminal charges pursuant to Section 16-7 of the Fort McDowell Yavapai Nation Law and Order Code.

(Law & Order Code 2006, § 16-65; Res. No. 2006-98, ex.(§ 16-65), 12-12-2006/1-1-2007)

Sec. 16-66. - Hearing to contest the citation.

The following rules apply to hearings held to contest the determination that a civil traffic infraction has occurred:

1. The proceeding shall be heard by the Court without a jury;
2. The Nation and the person requesting the hearing may both be represented by legal counsel;
3. The Nation and the person requesting the hearing may have witnesses subpoenaed;
4. The burden of proof is on the Nation to establish the commission of the civil traffic infraction by a preponderance of the evidence;
5. The person requesting the hearing has the right to present evidence and examine the witnesses;
6. After consideration of the evidence and argument, the Court shall determine whether an infraction was committed. Where it has not been established by a preponderance of the evidence that an infraction has been committed, the Court shall enter an order dismissing the

action. Where it has been established by a preponderance of the evidence that an infraction has been committed, the Court shall enter an order accordingly; and

7. The Fort McDowell Yavapai Nation Law and Order Code shall govern any appeal of a final order.

(Law & Order Code 2006, § 16-66; Res. No. 2006-98, ex.(§ 16-66), 12-12-2006/1-1-2007)

Sec. 16-67. - Disposition of civil traffic citation involving juvenile.

Except as stated herein, a court shall not dispose of a traffic violation charge arising from the issuance of a civil traffic citation to a juvenile under eighteen (18) years of age unless a parent or legal guardian of such juvenile appears in court with such juvenile at the time of the disposition of such charge. The Court may waive the appearance of a parent or legal guardian where the Court finds (1) circumstances prevent the parent or legal guardian from appearing and (2) the juvenile is of sufficient age to understand the proceedings and, in that event, shall send written notice to the parent or legal guardian, if such be known, advising them of the charge and its disposition.

(Law & Order Code 2006, § 16-67; Res. No. 2006-98, ex.(§ 16-67), 12-12-2006/1-1-2007)

Sec. 16-68. - Order of Court.

All orders entered by the Court under this Article are civil in nature. The Court may, in its discretion, waive, reduce or suspend the fine. The Court may also order suspension or revocation of the driver's privilege to operate a motor vehicle within the exterior boundaries of the Fort McDowell Yavapai Nation for no more than three (3) years.

(Law & Order Code 2006, § 16-68; Res. No. 2006-98, ex.(§ 16-68), 12-12-2006/1-1-2007)

Sec. 16-69. - Parties to a crime.

A person who commits, attempts to commit, conspires to commit, or aids and abets in the commission of any act declared in this chapter to be a crime, whether individually or in connection with one (1) or more persons or as a principal, agent or accessory, is liable for the offenses; and a person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this chapter is likewise liable for the offense.

(Law & Order Code 2006, § 16-69; Res. No. 2006-98, ex.(§ 16-69), 12-12-2006/1-1-2007)

Secs. 16-70—16-75. - Reserved.

DIVISION 3. - EQUIPMENT INFRACTIONS

Subdivision A. - Generally

Sec. 16-76. - Vehicle to be in good working order.

- A. No person shall drive or move on and no vehicle owner shall cause or knowingly permit to be driven or moved on any public roadway or highway any motor vehicle, trailer, semi-trailer, or pole trailer, or any combination thereof unless the equipment upon any and every such vehicle is in good working order and adjustment as required in this division and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

- B. Nothing contained in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this article.
- C. The provisions of this division with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as made applicable by this article. Every farm tractor equipped with an electric lighting system shall at all times mentioned in section 16-92 display a red tail lamp and head lights meeting the requirements of section 16-93.

(Law & Order Code 2006, § 16-76; Res. No. 2006-98, ex.(§ 16-76), 12-12-2006/1-1-2007)

Sec. 16-77. - Special requirements for motorcycles and motor-driven cycles.

- A. An operator or passenger of a motorcycle, ATV or motor-driven cycle who is under the age of eighteen (18) years shall wear at all times a protective helmet on his or her head in an appropriate manner and safely secured. An operator and passenger of a motorcycle, ATV or motor-driven vehicle shall also wear protective glasses, goggles, or a transparent face shield unless the motorcycle, ATV or motor-driven cycle is equipped with a protective windshield. The provisions of this subsection shall not apply to electrically powered motor vehicles or three-wheeled vehicles on which the operator and passenger ride within an enclosed cab.
- B. A motorcycle, ATV and motor-driven cycle shall be equipped with a rear-view mirror, seat and footrests for the operator. Any motorcycle or motor-driven cycle operated with a passenger shall be equipped with seats, footrests and handrails for such passenger.
- C. A person shall not operate a motorcycle, ATV or motor-driven cycle equipped with handlebars that are positioned so that the hands of the operator are above the operator's shoulder height when the operator is sitting astride the seat and the operator's hands are on the handlebar grips.

(Law & Order Code 2006, § 16-77; Res. No. 2006-98, ex.(§ 16-77), 12-12-2006/1-1-2007)

Sec. 16-78. - Brakes.

- A. **Requirements enumerated.** The following brake equipment is required:
 - 1. Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a public roadway or highway shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle, including two (2) separated means of applying the brakes, each of which means shall be effective to apply the brakes to at least two (2) wheels. If these two (2) separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two (2) wheels.
 - 2. Every motorcycle and every motor-driven cycle, when operated upon a public roadway or highway, shall be equipped with at least one (1) brake which may be operated by hand or foot.
 - 3. Every trailer or semi-trailer of a gross weight of three thousand (3,000) pounds or more when operated upon public roadways or highways shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and the brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.
 - 4. Every motor vehicle, trailer or semi-trailer operated upon public roadways or highways shall be equipped with service brakes upon all wheels of every vehicle, except any motorcycle or motor-driven cycle, and except that any semi-trailer of less than three thousand (3,000) pounds gross weight need not be equipped with brakes and except that three-axle trucks need only be equipped with brakes on all wheels of the two (2) rear axles.

5. In any combination of motor-drawn vehicles, means shall be provided for applying the rearmost trailer brakes of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort in the rearmost wheels at the fastest rate, or means shall be provided for applying braking effort first on rearmost trailer equipped with brakes. Both of the above means capable of being used alternatively may be employed.
 6. Every motor vehicle and combination of vehicles operated within the Nation, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power, provided that failure of the service brake actuation system or other power-assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one pair shall not leave the vehicle without operative brakes.
 7. The brake shoes operating within or upon the rims on the vehicle wheels of any motor vehicle may be used for both service and hand operation.
- B. **Deceleration requirements.** Every motor vehicle or combination of motor-drawn vehicles shall be capable at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service or foot brake, within the distance specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to Stop	Deceleration
(1) Vehicles or combination of vehicles having brakes on all wheels	30	14
(2) Vehicles or combination of vehicles not having brakes on all wheels	40	10.7

- C. **Adjustment of brakes.** All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

(Law & Order Code 2006, § 16-78; Res. No. 2006-98, ex.(§ 16-78), 12-12-2006/1-1-2007)

Sec. 16-79. - Horns and audible warning devices.

- A. **Required.** Every motor vehicle when operated upon a public roadway or highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonable loud or harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to ensure safe operation, give audible warning with the horn but shall not otherwise use the horn when upon a public roadway or highway.

- B. **Prohibited devices.** No vehicle shall be equipped with and a person shall not use on a vehicle any siren, whistle or bell, except as otherwise permitted in this section.
- C. **Theft alarm.** It is permissible but not required that a vehicle be equipped with a theft alarm signal device that is arranged so that it cannot be used by the driver as an ordinary warning signal.
- D. **Emergency vehicle requirements.** An authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet. The siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law or when necessary to serve a civil traffic complaint. During these events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of the approach of the emergency vehicle.

(Law & Order Code 2006, § 16-79; Res. No. 2006-98, ex.(§ 16-79), 12-12-2006/1-1-2007)

Sec. 16-80. - Mufflers and air pollution control devices.

- A. Every motor vehicle shall at all time be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cutout, bypass or similar device upon a motor vehicle on a public roadway or highway.
- B. The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.
- C. Beginning with motor vehicles and motor vehicle engines of the 1968 model year, motor vehicles and motor vehicle engines shall be equipped with emissions control devices that meet the standards established by the State of Arizona.
- D. A person shall not operate a motor vehicle on a public roadway or highway without an emissions control device as required herein or with a device which has been dismantled or disconnected or is otherwise inoperative.

(Law & Order Code 2006, § 16-80; Res. No. 2006-98, ex.(§ 16-80), 12-12-2006/1-1-2007)

Sec. 16-81. - Mirrors.

Every motor vehicle, which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position, shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred (200) feet to the rear of the vehicle.

(Law & Order Code 2006, § 16-81; Res. No. 2006-98, ex.(§ 16-81), 12-12-2006/1-1-2007)

Sec. 16-82. - Windshields.

- A. **Required.** Every passenger vehicle, other than a motorcycle, and every motor truck or truck tractor, except fire trucks, fire engines or other fire apparatus, whether publicly or privately owned, shall be equipped with an adequate windshield. This section shall not apply to implements of husbandry or antique, classic or horseless carriage automobiles when not originally equipped with a windshield.
- B. **Not to be obstructed.** No person shall drive any motor vehicle with any sign, poster or other substance or material upon the front windshield, side wings or side or rear windows of the vehicle which obstructs the driver's clear view of the public roadways or highways.
- C. **Wipers required.** The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as

to be controlled or operated by the driver of the vehicle and which shall be maintained in good working order.

D. Tinting.

1. A person shall not operate a motor vehicle with an object or material placed, displayed, installed, affixed or applied on the windshield or side or rear windows or with an object or material placed, displayed, installed, affixed or applied in or on the motor vehicle in a manner that significantly or hazardously obstructs or reduces a driver's clear view through the windshield or side or rear windows.
2. A person shall not operate a motor vehicle with a transparent material on the windshield or side or rear windows of a motor vehicle if the material significantly or hazardously alters the color or reduces the light transmittance of the windshield or side or rear windows.

(Law & Order Code 2006, § 16-82; Res. No. 2006-98, ex.(§ 16-82), 12-12-2006/1-1-2007)

Sec. 16-83. - Tires.

- A. Every solid rubber tire on a vehicle shall have a rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.
- B. No tire on a vehicle moved on a public roadway or highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances or moveable tracks which will not injure the public roadways or highways.

(Law & Order Code 2006, § 16-83; Res. No. 2006-98, ex.(§ 16-83), 12-12-2006/1-1-2007)

Sec. 16-84. - Rear fender splash guards.

- A. It is unlawful for any person to operate a truck, trailer, semi-trailer or bus upon the public roadways or highways unless such vehicle is equipped with rear fender splashguards, which shall comply with the specifications provided in this section. The splashguards shall be so attached as to prevent the splashing of mud or water upon the windshield of other motor vehicles and shall extend to a length, which shall end not more than eight (8) inches from the ground.
- B. The splash guards shall be wide enough to cover the full tread or treads of the tires being protected and shall be installed close enough to the tread surface of the tire or wheel as to control the side throw of the bulk of the thrown road surface material.
- C. The splashguards may be constructed of a flexible rubberized material, and shall be attached in such a manner that, regardless of movement either in such splashguards, or the vehicle, such splashguards will retain their general parallel relationship to the tread surface of the tire or wheel under all ordinary operation conditions.
- D. Nothing in this section shall be deemed to apply to vehicles commonly known as pickup trucks with a manufacture's rating of three-quarter ($\frac{3}{4}$) tons or less, nor shall the provisions of this section apply to truck tractors or converter dollies when used in combination with other vehicles.

(Law & Order Code 2006, § 16-84; Res. No. 2006-98, ex.(§ 16-84), 12-12-2006/1-1-2007)

Sec. 16-85. - Vehicle restraints.

- A. Each front seat occupant of a motor vehicle that is designed for carrying ten (10) or fewer passengers, that is manufactured for the model year 1972 and thereafter and that is required to be

equipped with an integrated lap and shoulder belt or a lap belt pursuant to the federal motor vehicle safety standards prescribed in 49 Code of Federal Regulations section 571.208 shall either:

1. Have the lap and shoulder belt properly adjusted and fastened while the vehicle is in motion.
 2. If only a lap belt is installed where the occupant is sitting, have the lap belt properly adjusted and fastened while the vehicle is in motion.
- B. The operator of a motor vehicle that is designed for carrying ten (10) or fewer passengers, that is manufactured for the model year 1972 and thereafter and that is required to be equipped with an integrated lap and shoulder belt or a lap belt pursuant to the federal motor vehicle safety standards prescribed in 49 Code of Federal Regulations section 571.208 shall require each passenger under sixteen (16) years of age to either;
1. Have the lap and shoulder belt properly adjusted and fastened while the vehicle is in motion.
 2. If only a lap belt is installed where the passenger is sitting, have the lap belt properly adjusted and fastened while the vehicle is in motion.
- C. If a person is found responsible for a civil traffic violation under this section, such finding shall not be considered for the purpose of determining whether the person's driver's license should be suspended or revoked. The Nation's court shall not transmit abstracts of records of violations of this section to the Arizona Motor Vehicle Division.
- D. This section does not apply to:
1. A child subject to the requirements of section 16-86.
 2. A person possessing a written statement from a physician that the person is unable for medical or psychological reasons to wear a lap and shoulder belt or a lap belt.
 3. A letter carrier of the United States postal service while the letter carrier is performing his or her duties.

(Law & Order Code 2006, § 16-85; Res. No. 2006-98, ex. (§ 16-85), 12-12-2006/1-1-2007)

Sec. 16-86. - Child passenger restraints.

- A. Except as provided in subsection G. of this section, a person shall not operate a motor vehicle on the roadways or highways in the Nation when transporting a child who is under years eight (8) years of age and under four (4) feet, nine (9) inches in height unless that child is properly secured in a child passenger restraint system.
- B. The Nation adopts standards in accordance with 49 Code of Federal Regulations, section 571.213, for the performance, design and installation of child passenger restraint systems for use in motor vehicles as prescribed in this Section.
- C. A person who violates this Section is subject to a civil penalty of fifty dollars (\$50.00), except that a civil penalty shall not be imposed if the person makes a sufficient showing that the motor vehicle has been subsequently equipped with a child passenger restraint system that meets the standards adopted pursuant to subsection B. of this Section.
- D. If a law enforcement officer stops a vehicle for an apparent violation of this Section, the officer shall determine from the driver whether the unrestrained child or children in the vehicle are less than eight (8) years of age and under four (4) feet, nine (9) inches in height.
- E. If the information given to the officer indicates that a violation of this Section has not been committed, the officer shall not detain the vehicle any further unless some additional violation is involved. The stopping of a vehicle for an apparent or actual violation of this Section is not probable cause for the search and seizure of the vehicle unless there is probable cause for another violation of law.

- F. The requirements of this section or evidence of a violation of this Section are not admissible as evidence in a judicial proceeding except in a judicial proceeding for a violation of this section.
- G. This Section does not apply to any of the following:
1. A person who operates a motor vehicle that was originally manufactured without passenger restraint devices.
 2. A person who operates a motor vehicle that is also a recreational vehicle as defined in section 16-1.
 3. A person who operates a commercial motor vehicle and who holds a current commercial driver license issued pursuant to laws of Arizona or any other State.
 4. A person who must transport a child in an emergency to obtain necessary medical care.
 5. A person who transports more than one (1) child under eight (8) years of age and under four (4) feet, nine (9) inches in height in a motor vehicle that because of the restricted size of the passenger area does not provide sufficient area for the required number of child passenger restraint devices, if both of the following conditions are met:
 - (a) At least one (1) child is restrained as require by this Section.
 - (b) The person has secured as many of the other children in child passenger restraint devices pursuant to this Section as is reasonable given the restricted size of the passenger area and the number of passengers being transported in the motor vehicle.

(Law & Order Code 2006, § 16-86; Res. No. 2006-98, ex.(§ 16-86), 12-12-2006/1-1-2007; Ft. McD. Res. No. 2014-65, ex. D(§ 16-86), adopted 9-16-2014)

Sec. 16-87. - Certain vehicles to carry flares or other warning devices.

- A. **Requirements enumerated.** No person shall operate any motor vehicle, truck, passenger bus or track tractor upon any roadway or highway within the Nation at any time from a half-hour after sunset to a half-hour before sunrise unless there shall be carried in the vehicle the following equipment except as provided in subsection B. of this section:
1. At least three (3) flares or three (3) electric red lanterns each of which shall be capable of being seen and distinguished at a distance of five hundred (500) feet under normal atmospheric conditions at night time. Every flare or burning pot torch shall be capable of burning for twelve (12) hours. Every such flare shall be substantially constructed so as to withstand reasonable shocks without leaking. Every such flare shall be carried in the vehicle in a metal rack or box. Every such red electric lantern shall be capable of operating continuously for not less then twelve (12) hours and shall be substantially constructed so as to withstand reasonable shock without breakage.
 2. At least three (3) red burning fusees unless red electric lanterns are carried. Each fusee shall be made in accordance with specifications of the Bureau of Explosives, 30 Vesey Street, New York City, and so marked and shall be capable of burning a least fifteen (15) minutes.
- B. **Vehicles carrying flammable.** No person shall operate at the time and under the conditions stated in subsection A. of this section any motor vehicle used in transportation of flammable liquids in bulk, or transporting compressed flammable gases, unless there shall be carried in the vehicle three (3) red electric lanterns meeting the requirements stated in subsection A. of this section, and there shall not be carried in such vehicle any flares, fusees or signal produced by a flame.
- C. **Portable reflector units.** As an alternative it shall be deemed a compliance with this section in the event a person operating any motor vehicle described in this section shall carry in the vehicle three (3) portable reflector units on standards. No portable reflector unit shall be approved unless it is so designed and constructed as to include two (2) reflectors, one above the other, each of which shall be capable of reflecting red light clearly visible from all distances within five hundred (500) feet to fifty

(50) feet under normal atmospheric conditions at night time when directly in front of lawful upper beams of head lamps.

(Law & Order Code 2006, § 16-87; Res. No. 2006-98, ex.(§ 16-87), 12-12-2006/1-1-2007)

Sec. 16-88. - Display of warning devices when vehicle disabled.

- A. **When required.** When any motor vehicle, truck, passenger bus, truck tractor, trailer, semi-trailer or pole trailer is disabled upon the traveled portion of any public roadway or highway or the shoulder thereof within the Nation at any times when lighted lamps are required on vehicles, the driver of the vehicle shall display the following warning devices upon the public roadway or highway during the time the vehicle is disabled on the public roadway or highway except as provided in subsection B. of this section.
1. A lighted fusee shall be immediately placed on the roadway at the traffic side of the motor vehicle electric lanterns are displayed.
 2. Within the burning period of the fusee and as promptly as possible three (3) lighted flares or three (3) electric lanterns shall be placed on the roadway as follows:
 - (a) One at a distance of approximately one hundred (100) feet to the rear of the vehicle and one at a distance of approximately one hundred (100) feet to the front of the vehicle, in the center of the lane of traffic occupied by the disabled vehicle.
 - (b) One at the traffic side of the vehicle approximately ten (10) feet rearward or forward thereof.
- B. **Vehicles carrying flammable liquids or gases.** When any vehicle used in the transportation of flammable liquids in bulk, or transporting compressed flammable gases in disabled upon a public roadway or highway at any time or place mentioned in subsection A. of this section, the driver of the vehicle shall display upon the roadway the following lighted warning devices:
1. One (1) red electric lantern shall be immediately placed on the roadway at the traffic side of the vehicle.
 2. Two (2) other red electric lanterns shall be placed to front and rear of the vehicle in the same manner prescribed for flares in subsection A. of this section.
- C. **Flame signals prohibited for vehicle carrying flammable.** When a vehicle of a type specified in subsection B. of this section is disabled, the use of flares, fusees or any signal produced by flames as warning signals is prohibited.
- D. **Display of flags.** When any vehicle of a type referred to in this section is disabled upon the traveled portion of a public roadway or highway or the shoulder thereof when the display of fusees, flares or electric lanterns is not required, the driver of the vehicle shall display two (2) red flags upon the roadway in the land of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred (100) feet in advance of the vehicle, and one at a distance of approximately one hundred (100) feet to the rear of the vehicle.
- E. **Portable reflector units.** In the alternative, it shall be deemed a compliance with this section in the event three (3) portable reflector units on standards of a type approved b the commission are displayed at the times and under the conditions specified in this section either during the daytime or at night-time, and the portable reflector units shall be placed on the roadway in the locations as described with reference to the placing of electric lanterns and lighted flares.
- F. **Equipment to comply with requirements.** The flares, fusees, lanterns and flags to be displayed as required in this section shall conform to the requirements of the preceding section applicable thereto.

(Law & Order Code 2006, § 16-88; Res. No. 2006-98, ex.(§ 16-88), 12-12-2006/1-1-2007)

Sec. 16-89. - Vehicles transporting explosives.

Any person operating any vehicle transporting any explosive, as a cargo or part of a cargo upon a public roadway or highway shall at all times comply with the following provisions:

1. The vehicle shall be marked or placed on each side and on the rear with the word "explosives" in letters not less than eight (8) inches high, or there shall be displayed on the rear of the vehicle a red flag not less than twenty-four (24) inches square marked with the word "danger" in white letters six (6) inches high.
2. Every such vehicle shall be equipped with not less than two (2) fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(Law & Order Code 2006, § 16-89; Res. No. 2006-98, ex.(§ 16-89), 12-12-2006/1-1-2007)

Sec. 16-90. - Television installations.

No person shall drive any motor vehicle equipped with any television broadcast viewer, screen or other means of visually receiving a video display which is located in the motor vehicle at any point forward of the back of the driver's seat or which is visible, directly or indirectly, to the driver while operating the motor vehicle.

(Law & Order Code 2006, § 16-90; Res. No. 2006-98, ex.(§ 16-90), 12-12-2006/1-1-2007)

Sec. 16-91. - Projecting loads.

When the load upon any vehicle extends to the rear six (6) feet or more beyond the body of the vehicle there shall be displayed at the extreme rear end of the load, at the time specified in section 16-92, a red light plainly visible from a distance of at least five hundred (500) feet to the side and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of the load a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(Law & Order Code 2006, § 16-91; Res. No. 2006-98, ex.(§ 16-91), 12-12-2006/1-1-2007)

Subdivision B. - Lights, Lamps, Reflectors and Illuminating Devices

Sec. 16-92. - When lamps required to be lighted.

Every vehicle upon a public roadway or highway within this Nation at any time from a half-hour after sunset to a half-hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet ahead shall display lighted lamps and illuminating devices as required by this article for different classes of vehicles, subject to exceptions with respect to parked vehicles as stated in this division.

(Law & Order Code 2006, § 16-92; Res. No. 2006-98, ex.(§ 16-92), 12-12-2006/1-1-2007)

Sec. 16-93. - Head lamps.

- A. Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) headlamps, which shall comply with the requirements and limitations of this division.

- B. Every motorcycle and every motor-driven cycle shall be equipped with at least one (1) and not more than two (2) headlamps, which shall comply with the requirements and limitations of this division.
- C. Every head lamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four (54) inches nor less than twenty-four (24) inches to be measured from the level ground upon which the vehicle rests without a load.

(Law & Order Code 2006, § 16-93; Res. No. 2006-98, ex.(§ 16-93), 12-12-2006/1-1-2007)

Sec. 16-94. - Tail lamps.

- A. Every motor vehicle, trailer, semi-trailer and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with two (2) tail lamps mounted on the rear, which, when lighted shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.
- B. Every tail lamp upon every vehicle shall be located at a height shall be located at a height measured from the center of the tail lamp of not more than sixty (60) inches nor less than fifteen (15) inches to be measured from the level ground upon which the vehicle rests without a load.
- C. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

(Law & Order Code 2006, § 16-94; Res. No. 2006-98, ex.(§ 16-94), 12-12-2006/1-1-2007)

Sec. 16-95. - Reflectors on new motor vehicles.

- A. Every new motor vehicle operated upon a public roadway or highway, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two (2) red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least one (1) reflector, meeting the requirements of this section, and except that vehicles of the type mentioned in section 16-97 shall be equipped with reflector as required in those sections applicable thereto.
- B. Every such reflector shall be mounted on the vehicle a height measured from the center of the reflector of not less than twenty (20) inches or more than sixty (60) inches measured from the level ground upon which the vehicle rests without a load and shall be of such size and characteristics and some mounted as to be visible at night from all distances within three hundred (300) feet to fifty (50) feet from the vehicle when directly in front of lawful upper beams of head lamps, except that visibility from a greater distance is required of reflectors on certain type of vehicles.

(Law & Order Code 2006, § 16-95; Res. No. 2006-98, ex.(§ 16-95), 12-12-2006/1-1-2007)

Sec. 16-96. - Stop lamps required.

It is unlawful for any person to drive a vehicle on the public roadway or highway unless it is equipped with a stop lamp meeting the requirements of section 16-105.

(Law & Order Code 2006, § 16-96; Res. No. 2006-98, ex.(§ 16-96), 12-12-2006/1-1-2007)

Sec. 16-97. - Additional equipment required on certain vehicles.

In addition to other equipment required in this article, the following vehicles shall be equipped as provided by this section:

- A. On every bus or truck, whatever its size, there shall be two (2) reflectors on the rear, one (1) at each side, and one (1) stop light.
- B. On every bus or truck eighty (80) inches or more in over-all width, in addition to the requirements subsection A.:
 - 1. On the front, two (2) clearance lamps, one (1) at each side.
 - 2. On the rear, two (2) clearance lamps, one (1) at each side.
 - 3. On each side two (2) side marker lamps, one (1) at or near the front and one (1) at or near rear.
 - 4. On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.
- C. On every truck tractor:
 - 1. On the front, two (2) clearance lamps, one (1) at each side.
 - 2. On the rear, one (1) stop light.
- D. On every trailer or semi-trailer having a gross weight in excess of three thousand (3,000) pounds:
 - 1. On the front, two (2) clearance lamps one (1) at each side.
 - 2. On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.
 - 3. On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.
 - 4. On the rear, two (2) clearance lamps, one (1) at each side, and two (2) reflectors, one (1) at each side, and one (1) stop light.
- E. On every pole trailer in excess of three thousand (3,000) pounds of gross weight:
 - 1. On each side, one (1) side marker lamp and one (1) clearance lamp which may be in combination, to show to the front, side and rear.
 - 2. On the rear of the pole trailer or load, two (2) reflectors, one (1) at each side.
- F. On every trailer, semi-trailer or pole trailer weighing three thousand (3,000) pounds, gross of less:
 - 1. On the rear, two (2) reflectors, one (1) on each side.
 - 2. If a trailer or semi-trailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then the vehicle shall also be equipped with on stop light.

(Law & Order Code 2006, § 16-97; Res. No. 2006-98, ex.(§ 16-97), 12-12-2006/1-1-2007)

Sec. 16-98. - Mounting of reflectors and clearance and marker lamps.

- A. Reflectors when required by section 16-97 shall be mounted at a height not less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicles stands; except that if the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches, the reflector at the point shall be mounted as high as the part of the permanent structure will permit.
- B. The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.
- C. Any required red reflectors on the rear of a vehicle may be incorporated with the tail lamp, but the reflector shall meet all the other reflector requirements of this article.

- D. Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required by this section with reference to both.

(Law & Order Code 2006, § 16-98; Res. No. 2006-98, ex.(§ 16-98), 12-12-2006/1-1-2007)

Sec. 16-99. - Color of clearance lamps and reflectors.

- A. Front clearance lamps and those marker lamps and reflectors mounted on the rear or on the side near the front of a vehicle shall display or reflect an amber color.
- B. Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.
- C. All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the turn signal device, which may be red, amber or yellow, and except that the light illuminating the license plate or the light emitted by a backup lamp shall be white.

(Law & Order Code 2006, § 16-99; Res. No. 2006-98, ex.(§ 16-99), 12-12-2006/1-1-2007)

Sec. 16-100. - Visibility of reflectors and clearance and marker lamps.

- A. Every reflector upon any vehicle referred to in section 16-97 shall be of such size and characteristics and so maintained as to be readily visible at night time from all distances within five hundred (500) feet to fifty (50) feet from the vehicle when directly in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides and those mounted on the rear shall reflect a red color to the rear.
- B. Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the front and rear, respectively, of the vehicle.
- C. Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the side of the vehicle on which mounted.

(Law & Order Code 2006, § 16-100; Res. No. 2006-98, ex.(§ 16-100), 12-12-2006/1-1-2007)

Sec. 16-101. - Lights on vehicle combinations.

When motor and other vehicles are operated in combination during the times that lights are required, any lamp, except tail lamps, need not be lighted which, by reason of its location on a vehicle of the combination would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

(Law & Order Code 2006, § 16-101; Res. No. 2006-98, ex.(§ 16-101), 12-12-2006/1-1-2007)

Sec. 16-102. - Parked vehicles.

- A. When a vehicle is lawfully parked upon a public roadway or highway during the hours between a half-hour after sunset and a half-hour before sunrise and in the event there is sufficient light to reveal

any person or object within a distance of five hundred (500) feet upon the public roadway or highway, no lights need be displayed upon the parked vehicles.

- B. When a vehicle is parked or stopped upon a public roadway or highway or shoulder adjacent thereto, whether attended or unattended during the hours between a half-hour after sunset and a half-hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred (500) feet upon the public roadway or highway, the vehicle so parked or stopped shall be equipped with one (1) or more lamps which shall exhibit a white or amber light on the roadway side visible from a distance of five hundred (500) feet to the front of the vehicle from a distance of five hundred (500) feet to the front of the vehicle and a red light visible from a distance of five hundred (500) feet to the rear. The foregoing provisions shall not apply to a motor-driven cycle.
- C. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

(Law & Order Code 2006, § 16-102; Res. No. 2006-98, ex.(§ 16-102), 12-12-2006/1-1-2007)

Sec. 16-103. - Lamps on animal-drawn and other equipment or vehicles.

All vehicles, including animal-drawn vehicles and including those all other vehicles not specifically required by this division to be equipped with lamps, shall at the times specified in section 16-92 be equipped with at least one (1) lighted lamp or lantern exhibiting a white light visible from a distance of five hundred (500) feet to the front of the vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred (500) feet to the rear.

(Law & Order Code 2006, § 16-103; Res. No. 2006-98, ex.(§ 16-103), 12-12-2006/1-1-2007)

Sec. 16-104. - Spot and auxiliary lamps.

- A. **Spot lamps.** A motor vehicle may be equipped with not to exceed one (1) spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that not part of the high-intensity portion of the beam will directed to the left of the prolongation of extreme left side of the vehicle nor more than one hundred (100) feet ahead of the vehicle.
- B. **Fog lamps.** A motor vehicle may be equipped with not to exceed two (2) fog lamps mounted on the front to a height not less than twelve (12) inches nor more than thirty (30) inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall, at a distance of twenty-five (25) feet ahead, project higher than a level of four (4) inches below the level of the center of the lamp from which it comes.
- C. **Passing lamps.** A motor vehicle may be equipped with not to exceed two (2) auxiliary passing lamps mounted on the front at a height not less than twenty-four (24) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stand and very auxiliary passing lamp shall meet the requirements limitations set forth in this division.
- D. **Driving lamps.** A motor vehicle may be equipped with not to exceed two (2) auxiliary driving lamps mounted on the front at a height not less than sixteen (16) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands and every auxiliary driving lamp shall meet the requirements and limitations set forth in this division.

(Law & Order Code 2006, § 16-104; Res. No. 2006-98, ex.(§ 16-104), 12-12-2006/1-1-2007)

Sec. 16-105. - Signal lamps and devices.

- A. A motor vehicle may be equipped and, when required under this division, shall be equipped with the following signal lamps or devises:

1. A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service or foot brake and which may but need not be incorporated with a tail lamp.
 2. A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.
- B. A stop lamp shall be plainly visible and understandable from a distance of one hundred (100) feet to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred (100) feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.
- C. All mechanical signal devices shall be self-illuminated when in use at the times mentioned in section 16-92.

(Law & Order Code 2006, § 16-105; Res. No. 2006-98, ex.(§ 16-105), 12-12-2006/1-1-2007)

Sec. 16-106. - Fender, running board and backup lamps.

- A. A motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.
- B. A motor vehicle may be equipped with not more than one (1) running-board courtesy lamp on each side thereof, which shall emit a white or amber light without glare.
- C. A motor vehicle may be equipped with not more than two (2) backup lamps either separately or in combination with other lamps, but a backup lamp shall not be lighted when the motor vehicle is in forward motion.

(Law & Order Code 2006, § 16-106; Res. No. 2006-98, ex.(§ 16-106), 12-12-2006/1-1-2007)

Sec. 16-107. - High beam light usage.

When a motor vehicle is being operated on a public roadway or shoulder adjacent thereto during the times specified in section 16-92, the driver shall use a distribution light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle subject to the following requirements and limitations:

- A. When a driver of a vehicle approaches an oncoming vehicle within five hundred (500) feet, the driver shall use distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light or composite beam specified in subsection (b) of the previous section shall be deemed to avoid glare at all times, regardless of road contour and loading.
- B. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred (200) feet.

(Law & Order Code 2006, § 16-107; Res. No. 2006-98, ex.(§ 16-107), 12-12-2006/1-1-2007)

Sec. 16-108. - Special restriction on lamps.

- A. **Intensity of beam restricted.** Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that

no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

- B. **Red lights.** No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this division.
- C. **Flashing lights.** Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow removal equipment, as warning lights on disabled or parked vehicles or on any vehicle as means of indicating a right or left turn.

(Law & Order Code 2006, § 16-108; Res. No. 2006-98, ex.(§ 16-108), 12-12-2006/1-1-2007)

Sec. 16-109. - Head lamps on motor-driven cycles.

The head lamp(s) upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

- A. Every head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or vehicle at a distance of not less than one hundred (100) feet when the motor-driven cycle is operated at any speed less than twenty-five (25) miles per hour and at a distance of not less than two hundred (200) feet when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles per hour.
- B. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, the lamps shall be so aimed that when the vehicle is loaded not of the high intensity portion of the light at a distance of twenty-five (25) feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(Law & Order Code 2006, § 16-109; Res. No. 2006-98, ex.(§ 16-109), 12-12-2006/1-1-2007)

Sec. 16-110—16-113. - Reserved.

DIVISION 4. - SIZE, WEIGHT AND LOAD

Sec. 16-114. - Effect and scope.

- A. It is unlawful for any person to drive or move for the owner, or to cause or knowingly permit to be driven or moved on any public roadway or highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this division or otherwise in violation of this chapter.
- B. The provisions of this division governing size shall not apply to fire apparatus, road machinery or to implements of husbandry, including farm tractors, temporarily moved upon a public roadway or highway, or to a vehicle operated under the terms of a special permit issued as provided by this article.

(Law & Order Code 2006, § 16-114; Res. No. 2006-98, ex.(§ 16-114), 12-12-2006/1-1-2007)

Sec. 16-115. - Liability for damage resulting from overweight load.

- A. Any person driving any vehicle, object or contrivance upon any public roadway, highway or highway structure shall be liable for all damage which the public roadway, highway or structure may sustain as a result of any illegal operation, driving or moving of the vehicle, object or contrivance, or as result of operating, driving or moving any vehicle, object or contrivance weighting in excess of the

maximum weight of this division but authorized by a special permit issued as provided in section 16-125.

- B. When the driver is not the owner of the vehicle, object or contrivance, but is so operating, driving or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any damage.
- C. Such damage may be recovered in a civil action brought by the Tribal Council.

(Law & Order Code 2006, § 16-115; Res. No. 2006-98, ex.(§ 16-115), 12-12-2006/1-1-2007)

Sec. 16-116. - Width of vehicle and load.

- A. The total outside width of any vehicle or the load thereon shall not exceed eight (8) feet, except as otherwise provided in this section.
- B. Upon enactment of federal regulations allowing the operation of vehicles up to one hundred two (102) inches in width on the interstate system, the Tribal Council may designate highways to conform to the federal regulations.

(Law & Order Code 2006, § 16-116; Res. No. 2006-98, ex.(§ 16-116), 12-12-2006/1-1-2007)

Sec. 16-117. - Projecting loads on passenger vehicles.

No passenger-type vehicle shall be operated on any public roadway or highway with any load carried thereon extending beyond the line of the fenders on the left side of the vehicle and extending more than six (6) inches beyond the line of the fenders on the right side thereof.

(Law & Order Code 2006, § 16-117; Res. No. 2006-98, ex.(§ 16-117), 12-12-2006/1-1-2007)

Sec. 16-118. - Height and length of vehicles and loads.

- A. No vehicle including any load thereon shall exceed a height of thirteen (13) feet six (6) inches.
- B. No vehicle, including any load thereon shall exceed a length of forty (40) feet, extreme overall dimension, inclusive of front and rear bumpers. This provision shall not apply to a semi-trailer as defined in this chapter when used in combination with a truck tractor, but such combination shall not exceed the length of combinations of vehicles as set forth in subsection C. of this section.
- C. No combination of vehicles coupled together shall consist of more than two (2) units except that a truck tractor and semi-trailer will be permitted to haul one (1) full trailer and no such combination of vehicles shall exceed a total length of sixty-five (65) feet.

(Law & Order Code 2006, § 16-118; Res. No. 2006-98, ex.(§ 16-118), 12-12-2006/1-1-2007)

Sec. 16-119. - Length of load projection.

- A. Subject to provisions of section 16-114 through section 16-118, limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three (3) feet beyond the foremost part of the vehicle, and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than six (6) feet beyond the rear of the bed or body of the vehicle.
- B. The limitations as to length of vehicles and loads set forth in section 16-118 and subsection A. of this section shall not apply to any load upon a pole trailer as defined in section 16-2 when transporting

poles or pipes or structural material which cannot be dismembered, provided that no pole or pipe or other material exceeding eighty (80) feet length shall be so transported.

(Law & Order Code 2006, § 16-119; Res. No. 2006-98, ex.(§ 16-119), 12-12-2006/1-1-2007)

Sec. 16-120. - Loads and covers to be secured.

- A. No vehicle shall be driven or moved on any public roadway or highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping there from, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.
- B. No person shall operate on any public roadway or highway a vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

(Law & Order Code 2006, § 16-120; Res. No. 2006-98, ex.(§ 16-120), 12-12-2006/1-1-2007)

Sec. 16-121. - Towed vehicle.

- A. When one (1) vehicle is towing another, the drawbar or other connection shall not exceed fifteen (15) feet from one (1) vehicle to the other, except the connection between any two (2) vehicles transporting poles, pipe, machinery or other object of structural nature which cannot readily be dismembered.
- B. When one (1) vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon the connection a white flag or cloth not less than twelve (12) inches square.

(Law & Order Code 2006, § 16-121; Res. No. 2006-98, ex.(§ 16-121), 12-12-2006/1-1-2007)

Sec. 16-122. - Single-axle load limit.

- A. The gross weight imposed on the public roadway or highway by the wheels of any one (1) axle of a vehicle shall not exceed twenty thousand (20,000) pounds.
- B. For the purposes of this article, the gross weight imposed on the public roadway or highway by the wheels of any one (1) axle equals the total load transmitted to the road by all wheels whose centers are included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(Law & Order Code 2006, § 16-122; Res. No. 2006-98, ex.(§ 16-122), 12-12-2006/1-1-2007)

Sec. 16-123. - Gross weight restrictions of vehicles and loads.

- A. A person may operate a vehicle on all public roadways and highways within the Nation subject to the following maximum gross weights:
 - 1. Twenty thousand (20,000) pounds, including enforcement tolerances, on any one (1) axle.
 - 2. Thirty-four thousand (34,000) pounds, including enforcement tolerances, on a tandem axle.
 - 3. Eighty thousand (80,000) pounds on a vehicle combination of five (5) axles or more.
 - 4. On a group to two (2) or more consecutive axles, including any steering or castering axles, an overall gross weight, including enforcement tolerances, produced by application of the following formula in which W equals overall gross weight on any group of two (2) or more consecutive

axles to the nearest five hundred (500) pounds, L equals distance in feet between the extreme of any group of two (2) or more consecutive axles to the nearest foot and N equals number of axles in any group under consideration, except that two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is thirty-six (36) feet or more if the overall gross weight does not exceed eighty thousand (80,000) pounds, including all enforcement tolerances:

$$W = 500 (LN/(N-1) + 12N + 36)$$

- B. As used in subsection A of this section, "tandem axles" means two (2) or more consecutive axles that are more than forty (40) inches but not more than ninety-six (96) inches apart.
- C. This section does not apply to a vehicle and load that cannot be easily dismantled or divided and that have been issued a special permit to carry a load in excess of the weight limitations contained in this section.
- D. Unless allowed by special permit, a single vehicle or a single vehicle of a combination of vehicles shall not be equipped with more than three (3) axles, including the front steering axles, unless the additional axles are steering axles or castering axles.
- E. A vehicle or combination of vehicles equipped with one (1) or more variable load axles shall have the pressure control preset and located outside of the cab so that the operator of the vehicle cannot vary the weight carried on the variable load axle or axles during transport of a load. The actuating control that raises or lowers the axle or axles may be located inside the cab for safety purposes. This actuating control must completely raise or completely lower the axle or axles when activated.
- F. This section does not apply to a truck that meets all of the following requirements and for which a special permit has been issued:
 - 1. Is equipped with a conveyor bed.
 - 2. Is used solely as a fiber and forage module mover.
 - 3. Does not exceed forty-eight (48) feet in length.
 - 4. Is only operated each year from August 1 through January 30.

(Law & Order Code 2006, § 16-123; Res. No. 2006-98, ex.(§ 16-123), 12-12-2006/1-1-2007)

Sec. 16-124. - Officers authorized to stop vehicles; weight and removal of excess weight requirements.

- A. A law enforcement officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same by any means of either portable or stationary scales and may require that the vehicle be driven to the nearest scales in the event such scales are within ten (10) miles.
- B. When a law enforcement officer, upon weighing a vehicle and load as provided in subsection A. of this section, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit as permitted under this division. All material so unloaded shall be cared for by the owner or operator of the vehicle at the wish of the owner or operator.
- C. Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refused when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section may be charged criminally.

(Law & Order Code 2006, § 16-124; Res. No. 2006-98, ex.(§ 16-124), 12-12-2006/1-1-2007)

Sec. 16-125. - Permit for excess size and weight.

- A. **Commission authorized to grant.** The Fort McDowell Public Safety Commission or Tribal Council may, in its discretion, upon application in writing and good cause being shown therefore, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight or vehicle or load exceeding the maximum specified in this division or otherwise not in conformity with the provisions of this chapter upon public roadways or highways within the Nation.
- B. **Contents of application.** The application of any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular public roadways or highways for which permit to operate is requested, and whether the permit is requested for a single trip or for continuous operation.
- C. **Limitations or permit.** The Fort McDowell Public Safety Commission or Tribal Council is authorized to issue or withhold the permit at its discretion. If the permit is issued, the commission or Tribal Council may limit the number of trips, establish seasonal or other time limitations within which the vehicles described may be operated on the public roadways or highways indicated or otherwise limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces or structures, and may require such undertaking or other security as may be deemed necessary to compensate from any injury to any roadway or road structure.
- D. **Permit to be carried, displayed.** Such a permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer and no person shall violate any of the terms or conditions of the special permit.
- E. **Fees.** The following fees shall be assessed for each permit issued in accordance with the provision of this section:
 - 1. For a single trip and one (1) load—Five dollars (\$5.00).
 - 2. For thirty (30) days—Ten dollars (\$10.00).
- F. **Government vehicles exempt.** No fees shall be assessed for any permit issued in accordance with the provisions of this section for the movement of vehicles or combination of vehicles owned by the United States Government or the Fort McDowell Yavapai Nation, the State of Arizona or any political subdivision thereof.

(Law & Order Code 2006, § 16-125; Res. No. 2006-98, ex.(§ 16-125), 12-12-2006/1-1-2007)

Secs. 16-126—16-130. - Reserved.

DIVISION 5. - TRAFFIC CONTROL DEVICES

Sec. 16-131. - Commission to maintain signs on all public roadways and highways.

The commission shall maintain such traffic-control devices, in compliance with the manual and specifications for uniform system of the traffic control devices adopted by the Arizona Highway Department, upon the public roadways within the Nation, as it deems necessary to indicate and to carry out the provisions of this division to regulate, warn or guide traffic.

(Law & Order Code 2006, § 16-131; Res. No. 2006-98, ex.(§ 16-131), 12-12-2006/1-1-2007)

Sec. 16-132. - Obedience to devices required; exception.

- A. The driver of any vehicle shall obey the instructions of any official traffic-control devices placed in accordance with the provisions of this division, unless otherwise directed by a traffic or law enforcement officer, subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter.
- B. No provision of this division for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. When a particular section does not state that the signs are required, that section shall be effective even though no signs are erected or in place.

(Law & Order Code 2006, § 16-132; Res. No. 2006-98, ex.(§ 16-132), 12-12-2006/1-1-2007)

Sec. 16-133. - Signal legend.

When traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors, green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indication:

- (a) Vehicular traffic facing a green signal may proceed straight through or turn right or left unless a sign at the place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection of an adjacent crosswalk at the same time the signal is exhibited.
- (b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully using the intersection.
- (c) Unless otherwise directed by a pedestrian control signal, as provided in section 16-136, pedestrians facing any green signal, except if the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

- (a) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.
- (b) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in section 16-136, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

3. Red indication:

- (a) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line; but if none, before entering the crosswalk on the near side of the intersection; or if none then before entering the intersection, and shall remain standing until an indication to proceed is shown except as provided in subdivision (b) and (c) of this subsection.
- (b) The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if there is no crosswalk, then at the entrance to the intersection, in obedience to a red signal may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal.

Right turns may be prohibited against a red signal at any intersection when a sign is erected at the intersection prohibiting such turn.

- (c) Unless otherwise directed by a pedestrian control signal as provided in section 16-136, pedestrians facing a steady red signal alone shall not enter the roadway.
- 4. If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions, which by their nature can be no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of a sign or marking the stop shall be made at the signal.

(Law & Order Code 2006, § 16-133; Res. No. 2006-98, ex.(§ 16-133), 12-12-2006/1-1-2007)

Sec. 16-134. - Flashing signals.

When an illuminated flashing red or yellow signal is used in a traffic sign or signal, it shall require obedience by vehicular traffic as follows:

- 1. **Flashing red stop signal.** When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
- 2. **Flashing yellow caution signal.** When a yellow lens is illuminated with rapid intermittent flashes, driver of vehicles may proceed through the intersection or past the signal only with caution.

(Law & Order Code 2006, § 16-134; Res. No. 2006-98, ex.(§ 16-134), 12-12-2006/1-1-2007)

Sec. 16-135. - Stop signs and yield signs.

- A. **Commission's authority to place.** The commission, with reference to the Nation's public roadways, may erect stop or yield signs at specified entrances to public roadways or may designate any intersection as a stop or yield intersection and erect like signs at one (1) or more entrance to the intersection.
- B. **Specifications.** Every stop sign shall bear the word "stop" in letters not less than six (6) inches in height. Every yield sign shall bear the word "yield" in letters not less than six (6) inches in height. The sign shall at nighttime be rendered luminous by steady or flashing internal illumination or by efficient reflecting elements on the face of the sign.
- C. **Placements.** Every stop sign and every yield sign shall be erected as near as practicable to the nearest line of the intersecting public roadway.
- D. **Obedience to stop sign.** Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the entrance of the public roadway where the driver has a view of approaching traffic before entering the public roadway except when directed to proceed by a law enforcement officer or traffic-control signal.
- E. **Obedience to yield sign.** The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another public roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection, provided that if such driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his or her failure to yield the right-of-way.

(Law & Order Code 2006, § 16-135; Res. No. 2006-98, ex.(§ 16-135), 12-12-2006/1-1-2007)

Sec. 16-136. - Pedestrian control signals.

- A. When special pedestrian control signals indicating "walk" or "don't walk" are in place, the signals shall indicate as follows:
 - 1. Walk. Pedestrians facing the signal may proceed across the public roadway in the direction of the signal and shall be given the right-of-way by the drivers of vehicles.
 - 2. Don't walk. No pedestrian shall start to cross the public roadway in the direction of the signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing.
- B. A pedestrian shall not loiter or unduly delay crossing the public roadway after traffic has stopped to give the right-of-way.

(Law & Order Code 2006, § 16-136; Res. No. 2006-98, ex.(§ 16-136), 12-12-2006/1-1-2007)

Sec. 16-137. - Construction or road work site warning devices.

Any contractor, firm, corporation or political subdivision performing work on roads, streets, or public roadways shall post and maintain at the work site, until the work is completed or until such time as the governing body authorized removal, such warning signs, signals, markers and barricades in compliance with the manual and specifications for uniform system of the traffic control devices adopted by the Arizona Highway Department, to warn those using such street, road, or highway.

(Law & Order Code 2006, § 16-137; Res. No. 2006-98, ex.(§ 16-137), 12-12-2006/1-1-2007)

Secs. 16-138—16-140. - Reserved.

DIVISION 6. - OPERATION OF VEHICLES

Subdivision A. - Generally

Sec. 16-141. - Operation of vehicles by nonmembers on land other than public roadways.

- A. **Prohibited.** No person, except members of the Fort McDowell Yavapai Nation, may operate any motor-driven vehicle on any land within the Fort McDowell Yavapai Nation except over public roadways.
- B. **Impoundment of vehicle; notification of owner.** If any vehicle is operated in violation of this section, the vehicle shall be impounded by the law enforcement officers of the Fort McDowell Yavapai Nation and shall be kept at a place of storage within the Nation. Within seventy-two (72) hours of the impoundment, the Fort McDowell Police Department shall notice of the impoundment by sent by certified mail, return receipt requested, to the owner of the vehicle impounded. Such notice shall include, at a minimum, the date and time that the vehicle was impounded, the Code section(s) that were allegedly violated and relied upon for the impoundment and a description of any damage to the vehicle, if any, that existed at the time the vehicle was impounded and a description of the damage allegedly caused by the unlawful operation of the vehicle, if any. A record of the notice will be kept in the Fort McDowell Police Department and a copy of the notice shall be forwarded to the Court.
- C. **Hearing.** If after hearing the matter underlying the impoundment of the vehicle, the court determines that the vehicle was being unlawfully operated and caused damages, the court shall enter its

judgment and the amount of damages caused by the vehicle and shall order that the Fort McDowell Police Department hold the vehicle until the owner of the vehicle pays to the court for the benefit of the Nation the amount of damages which the court determined was caused by the unlawful operation of the vehicle, or the value of the vehicle, whichever is the lesser. A copy of the Court's judgment shall be forwarded to the owner of the vehicle upon the issuance of the judgment.

- D. **Sale of vehicle for recovery of damages.** Any judgment by the Court under this section finding illegal operation and damages shall provide that unless payment of the damages as provided for herein is made within thirty (30) days after the entry of judgment, the vehicle will be sold at public auction after reasonable notice by certified mail to the owner of the vehicle of said sale. Upon payment of such amount within thirty (30) days, the vehicle will be returned to the owner. The proceeds of the sale necessary for the satisfaction of the judgment shall be paid to the Nation as the beneficial owners of the land damaged, and any excess over such judgment shall be paid first to satisfy the expenses incurred by the Fort McDowell Police Department in the impoundment of the vehicle and second to the owner of the vehicle.
- E. **Release of vehicle on posting of bond.** In the event the owner of the vehicle posts a cash bond with the Court in an amount equal to the value of the vehicle, prior to the hearing required by this section, the vehicle will be returned to such owner at the time of the posting of the bond. The value of the vehicle shall be determined the Court.

(Law & Order Code 2006, § 16-141; Res. No. 2006-98, ex.(§ 16-141), 12-12-2006/1-1-2007)

Sec. 16-142. - Driving on the right side of roadway; exceptions.

- A. Upon all public roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:
 - 1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.
 - 2. When the right half of a public roadway is closed to traffic while under construction or repair.
 - 3. Upon a public roadway designated and sign posted for one-way traffic.
- B. Upon all public roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right hand lane then available for traffic, or as close as practicable to the right hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into private road or driveway.

(Law & Order Code 2006, § 16-142; Res. No. 2006-98, ex.(§ 16-142), 12-12-2006/1-1-2007)

Sec. 16-143. - Driving on roadways laned for traffic.

When any public roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules in addition to others consistent with this section shall apply:

- 1. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety.
- 2. Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the public roadway and drivers of vehicles shall obey the directions of every sign.

(Law & Order Code 2006, § 16-143; Res. No. 2006-98, ex.(§ 16-143), 12-12-2006/1-1-2007)

Sec. 16-144. - Driving on divided public roadways.

When any public roadway has been divided into two (2) roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right hand roadway, and no vehicle shall be driven over, across or within the dividing space, barrier or section, except through an opening in the physical barrier or dividing section or space or at a crossover or intersection established by public authority.

(Law & Order Code 2006, § 16-144; Res. No. 2006-98, ex.(§ 16-144), 12-12-2006/1-1-2007)

Sec. 16-145. - Drivers on controlled access roadway to use only authorized entrances and exits.

No person shall drive a vehicle onto or from any controlled access roadway except at entrance and exits established by public authority.

(Law & Order Code 2006, § 16-145; Res. No. 2006-98, ex.(§ 16-145), 12-12-2006/1-1-2007)

Sec. 16-146. - Starting parked vehicle.

No person shall start a vehicle, which is stopped, standing or parked unless and until the movement can be made with reasonable safety.

(Law & Order Code 2006, § 16-146; Res. No. 2006-98, ex.(§ 16-146), 12-12-2006/1-1-2007)

Sec. 16-147. - ATV and motorcycle riders and passengers to ride only on designated seats.

A person operating an ATV or a motorcycle shall ride only upon the permanent and regular seat attached thereto, and the operator shall not carry any other person nor shall any other person ride on an ATV or a motorcycle unless the ATV or motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

(Law & Order Code 2006, § 16-147; Res. No. 2006-98, ex.(§ 16-147), 12-12-2006/1-1-2007)

Sec. 16-148. - Operation of vehicles on approach of authorized emergency vehicle.

- A. Upon the immediate approach of an authorized emergency vehicle equipped with at least one (1) lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, including a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle or bell:
 - 1. The driver of every vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the public roadway clear of any intersection, and shall stop and remain in the position until the authorized emergency vehicle has passed, except when otherwise directed by a law enforcement officer.
 - 2. The driver of any vehicle other than one (1) on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park the vehicle within the block where fire apparatus has stopped in answer to a fire alarm.
- B. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the public roadways.

(Law & Order Code 2006, § 16-148; Res. No. 2006-98, ex.(§ 16-148), 12-12-2006/1-1-2007)

Sec. 16-149. - Operation of vehicle upon approach of school bus.

- A. **Stop required on undivided public roadway.** The driver of a vehicle on a public roadway, upon meeting or overtaking from either direction any school bus which has stopped on the public roadway for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus and shall not proceed until the school bus resumes motion or until signaled by the driver to proceed.
- B. **School bus identification.** Every bus used for the transportation of school children, shall bear upon the front and rear thereon a plainly visible sign containing the words "school bus" in letters not less than eight (8) inches in height. When a school bus is being operated upon a public roadway for purpose other than the actual transportation of children either to or from school, all markings thereon indicating "school bus" shall be covered or concealed.
- C. **Manual stop sign required for bus.** Every bus used for the transportation of school children shall be equipped with a signal with the word "stop" printed on both sides in black letters not less than five (5) inches high on a yellow background. The signal shall not be less than twenty (20) inches long and shall be manually operated by the operator of the school bus in such manner as to be clearly visible from both front and rear when extended from the left of the body of the bus. It shall be displayed only when passengers are being received or discharged from the bus.
- D. **Stop not required on divided public roadway.** The driver of a vehicle upon a public roadway with separated roadways need not stop upon meeting or passing a school bus which is on a different public roadway or when upon a controlled access public roadway and the school bus stopped in loading zone which is a part of or adjacent to the public roadway and where pedestrians are not permitted to cross the roadway.

(Law & Order Code 2006, § 16-149; Res. No. 2006-98, ex.(§ 16-149), 12-12-2006/1-1-2007)

Sec. 16-150. - Following too closely.

- A. The driver of motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the public roadway.
- B. The driver of any motor vehicle drawing another vehicle when traveling upon a public roadway, which vehicle is following another motor vehicle drawing another vehicle shall, when conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger, except that this shall not prevent a motor vehicle drawing another vehicle from overtaking and passing any type vehicle or other vehicles.
- C. Motor vehicles being driven upon any public roadway district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy the space without danger. This provision shall not apply to funeral processions.

(Law & Order Code 2006, § 16-150; Res. No. 2006-98, ex.(§ 16-150), 12-12-2006/1-1-2007)

Sec. 16-151. - Coasting prohibited.

- A. The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of the vehicle in neutral.

- B. The driver of a commercial motor vehicle when traveling upon a downgrade shall not coast with the clutch disengaged.

(Law & Order Code 2006, § 16-151; Res. No. 2006-98, ex.(§ 16-151), 12-12-2006/1-1-2007)

Sec. 16-152. - Turning movements; signals required.

- A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 16-155, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until the movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner provided by this division in the event any other traffic may be affected by the movement.
- B. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.
- C. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided by this division to the driver of any vehicle immediately to the rear when there is opportunity to give the signal.

(Law & Order Code 2006, § 16-152; Res. No. 2006-98, ex.(§ 16-152), 12-12-2006/1-1-2007)

Sec. 16-153. - Signals by hand and arm or device.

Any stop or turn signal when required by this division shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device of a type approved by this Chapter; but when a vehicle is so constructed or loaded that a hand or arm signal would not be visible both to the front and rear of the vehicle, then the signals must be given by a lamp or lamps or signal device.

(Law & Order Code 2006, § 16-153; Res. No. 2006-98, ex.(§ 16-153), 12-12-2006/1-1-2007)

Sec. 16-154. - Method of giving hand and arm signals.

All signals required by this division to be given by hand and arm shall be given from the left side of the vehicle in the following manner and the signals shall indicate as follows:

1. **Left turn.** Hand and arm extended horizontally.
2. **Right turn.** Hand and arm extended upward.
3. **Stop or decrease speed.** Hand and arm extended downward.

(Law & Order Code 2006, § 16-154; Res. No. 2006-98, ex.(§ 16-154), 12-12-2006/1-1-2007)

Sec. 16-155. - Required position and method of turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

1. **Right turns.** Both the approach for a right turn, and a right turn shall be made as close as practicable to the right hand curb or edge of the roadway.
2. **Left turns on two-way roadways.** At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, and approach for a left turn shall be made in the portion of the right half of the roadway nearest the center line thereof and by passing to the right of the center line where it enters the intersection, after entering the intersection to the

right of the center line of the roadway being entered. When practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

3. **Left turns on other than two-way roadways.** At any intersection where traffic is restricted to one (1) direction on one (1) or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left hand lane lawfully available to traffic moving in the direction of travel of the vehicle; and after entering the intersection, the left turn shall be made so as to leave the intersection as nearly as practicable in the left hand lane lawfully available to traffic moving in that direction upon the roadway being entered.

(Law & Order Code 2006, § 16-155; Res. No. 2006-98, ex.(§ 16-155), 12-12-2006/1-1-2007)

Sec. 16-156. - Turning on curve or crest of grade prohibited.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

(Law & Order Code 2006, § 16-156; Res. No. 2006-98, ex.(§ 16-156), 12-12-2006/1-1-2007)

Sec. 16-157. - Backing.

The driver of a vehicle shall not back the same unless the movement can be made with reasonable safety and without interfering with other traffic.

(Law & Order Code 2006, § 16-157; Res. No. 2006-98, ex.(§ 16-157), 12-12-2006/1-1-2007)

Sec. 16-158. - Obstruction of driver's view or interference with driver's control of vehicle prohibited.

- A. No person shall drive a motor vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three (3), as to obstruct the view of the driver to the front and sides of the vehicle or as to interfere with driver's control over the driving mechanism of the vehicle.
- B. No passenger in a motor vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to interfere with his or her control over the driving mechanism of the vehicle.

(Law & Order Code 2006, § 16-158; Res. No. 2006-98, ex.(§ 16-158), 12-12-2006/1-1-2007)

Sec. 16-159. - Use of all terrain or off road vehicles.

The following rules govern the use and operation of All Terrain Vehicles and motorcycles when driven off a public roadway or highway; for purposes of this section hereinafter referred to as "off road vehicles".

- A. Off road vehicles shall not be operated between the hours of 8:00 p.m. and 8:00 a.m. on any given day.
- B. Off road vehicles shall not be operated within fifty (50) yards of any residence without the written consent of the owner or authorized occupant. Off road vehicles shall not be operated within fifty (50) yards of any tribally owned buildings, structures, parking lots or fenced areas or the exterior boundaries of any enterprise or business.
- C. Off road vehicles shall not be operated by anyone under the age of sixteen (16) years.

- D. The Verde River riverbed and that portion of the Nation east of the Verde River and north of Sycamore Creek are designated as off road vehicle use areas with the exception of the Wilderness Mitigation land area, any current or potential eagle nesting sites, and any eagle Foraging Habitat Management Areas as set forth in the Environmental Commitment Plan established by Ft. McD. Resolution No. 92-16 (as may be amended from time to time), and any other area(s) within the above portion of the Nation which subsequently may be excluded by Tribal Council action. The prohibitions of subsections A.—D. of this statute shall apply to these designated areas.
- F. This statute shall not affect or prohibit the use of off road vehicles by law enforcement personnel for law enforcement purposes, or by tribal employees authorized to use off road vehicles in the performance of their duties.

(Law & Order Code 2006, § 16-159; Res. No. 2006-98, ex.(§ 16-159), 12-12-2006/1-1-2007)

Secs. 16-160—16-170. - Reserved.

Subdivision B. - Right-Of-Way and Passing

Sec. 16-171. - Right-of-way of vehicles entering intersections or public roadways.

- A. When two (2) vehicles enter or approach an intersection from different streets or roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This subsection does not apply to vehicles approaching or entering an uncontrolled "T" intersection when the vehicle on the left is on a continuing street or highway and the vehicle on the right is on the terminating street or highway. The right-of-way rule is modified at through highways and otherwise as stated in this article.
- B. Intersecting road crossings between the main roadway of a freeway and acceleration lanes, ramps, or any other approach road shall yield the right-of-way to a vehicle on the main roadway of the freeway entering such merging area at the same time.

(Law & Order Code 2006, § 16-171; Res. No. 2006-98, ex.(§ 16-171), 12-12-2006/1-1-2007)

Sec. 16-172. - Right-of-way of vehicle turning left at intersection.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

(Law & Order Code 2006, § 16-172; Res. No. 2006-98, ex.(§ 16-172), 12-12-2006/1-1-2007)

Sec. 16-173. - Right-of-way of vehicle entering through public roadways or stop intersection.

- A. The driver of a vehicle shall stop as required by section 16-135 at the entrance to a through public roadway and shall yield the right-of-way to other vehicles which have entered the intersection from the through public roadway before so proceeding into or across the through public roadway.
- B. The driver of a vehicle shall likewise stop in obedience to a stop sign at entrances thereto although not a part of a through public roadway, and shall proceed cautiously yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

(Law & Order Code 2006, § 16-173; Res. No. 2006-98, ex.(§ 16-173), 12-12-2006/1-1-2007)

Sec. 16-174. - Vehicle entering public roadway from private road or driveway.

The driver of a vehicle about to enter or cross a public roadway from a private road or driveway shall yield the right-of-way to all closely approaching vehicles on the public roadway.

(Law & Order Code 2006, § 16-174; Res. No. 2006-98, ex.(§ 16-174), 12-12-2006/1-1-2007)

Sec. 16-175. - Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other on the right; and upon roadways having width for not more than one (1) line of traffic in each direction, each driver shall give to the other at least one-half (½) of the main-traveled portion of the roadway as nearly as possible.

(Law & Order Code 2006, § 16-175; Res. No. 2006-98, ex.(§ 16-175), 12-12-2006/1-1-2007)

Sec. 16-176. - Overtaking vehicles on the left, generally.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules stated in this section:

- A. The driver of a vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- B. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right hand side of the roadway before coming within one hundred (100) feet of any vehicle approaching from the opposite direction.

(Law & Order Code 2006, § 16-176; Res. No. 2006-98, ex.(§ 16-176), 12-12-2006/1-1-2007)

Sec. 16-177. - When driving on the left prohibited.

- A. No vehicle shall at any time, be driven to the left side of a public roadway under the following conditions:
 - 1. When approaching the crest of a grade or upon a curve in the public roadway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.
 - 2. When approaching within one hundred (100) feet of or traversing any intersection or where appropriate signs or markings have been installed to define a no-passing zone.
- B. The limitations set forth in subsection A. of this section shall not apply upon a one-way roadway.

(Law & Order Code 2006, § 16-177; Res. No. 2006-98, ex.(§ 16-177), 12-12-2006/1-1-2007)

Sec. 16-178. - Overtaking on the right.

- A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn.
 2. Upon a street or public roadway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction.
 3. Upon a one-way street, or upon any roadway on which traffic is restricted to one (1) direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.
- B. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the movement in safety. In no event shall the movement be made by driving off the pavement or main-traveled portion of the roadway.

(Law & Order Code 2006, § 16-178; Res. No. 2006-98, ex.(§ 16-178), 12-12-2006/1-1-2007)

Sec. 16-179. - No-passing zones.

The commission is authorized to determine those portions of any public roadway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones; and when the signs or markings are in place and clearly visible to an ordinary observant person, every driver of a vehicle shall obey the directions thereof.

(Law & Order Code 2006, § 16-179; Res. No. 2006-98, ex.(§ 16-179), 12-12-2006/1-1-2007)

Secs. 16-180—16-190. - Reserved.

Subdivision C. - Stopping, Standing and Parking

Sec. 16-191. - Vehicles to be parked or stopped off pavement if possible.

- A. Upon any public roadway, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the public roadway when it is practicable to stop, park or so leave the vehicle off that part of the public roadway but in every event an unobstructed width of the public roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicles shall be available from a distance of two hundred (200) feet in each direction upon the highway.
- B. This section shall not apply to:
1. The driver of any vehicle which is disabled while on the paved or main-traveled portion of a public roadway in such manner and to such extent that its impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.
 2. A vehicle or the driver thereof engaged in the official delivery of the United States mail or distribution of official tribal publications shall stop on the right hand side of the public roadway for the purpose of picking up or delivering mail or distributing official tribal publications.

(Law & Order Code 2006, § 16-191; Res. No. 2006-98, ex.(§ 16-191), 12-12-2006/1-1-2007)

Sec. 16-192. - Parking, stopping, standing prohibited in specified places.

- A. No person shall stop, stand or park a vehicle, except when necessary to avoid an accident with other traffic or in compliances with law or the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk.
 2. In front of a public or private driveway.
 3. Within fifteen (15) feet of a fire hydrant.
 4. Within an intersection.
 5. On a crosswalk.
 6. Within twenty (20) feet of a crosswalk at an intersection.
 7. Within thirty (30) feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway.
 8. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the commission indicate a different length by signs or markings.
 9. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite entrance to any fire station within seventy-five (75) feet of the entrance when properly posted.
 10. Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic.
 11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
 12. On any bridge or other elevated structure upon a public roadway or within a highway tunnel.
 13. At any place where official signs prohibit stopping.
- B. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

(Law & Order Code 2006, § 16-192; Res. No. 2006-98, ex.(§ 16-192), 12-12-2006/1-1-2007)

Sec. 16-193. - Curb parking.

- A. Except as otherwise provided in this section, every vehicle stopped or parked upon a public roadway where there are adjacent curbs shall be stopped or parked with the right hand wheels of the vehicle parallel to and within eighteen (18) inches of the right hand curb.
- B. Vehicles may be parked or stopped with the left hand wheels adjacent to and within eighteen (18) inches of the left hand curb of a one-way roadway.

(Law & Order Code 2006, § 16-193; Res. No. 2006-98, ex.(§ 16-193), 12-12-2006/1-1-2007)

Sec. 16-194. - Commission authorized to place signs prohibiting or restricting parking, stopping and standing.

The commission, with respect to public roadways under its jurisdiction, may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any public roadway where, in its opinion, as evidenced by resolution or order entered in its minutes, stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. The signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on the signs.

(Law & Order Code 2006, § 16-194; Res. No. 2006-98, ex.(§ 16-194), 12-12-2006/1-1-2007)

Sec. 16-195. - Parking privilege for physically disabled; insignia required.

A physically disabled person who displays upon the motor vehicle parked by him or her, or under his or her direction and for his or her use, a distinguishing insignia provided for by any governmental body may exercise the parking privileges provided in this section. Such person may be exempt from liability for any violation with respect to such parking, except as provided in sections 16-102 and 16-191, and except where such parking would create a dangerous situation or impede the normal flow of traffic. The distinguishing insignia shall be displayed on the motor vehicle in the manner prescribed by the governmental body issuing the insignia.

(Law & Order Code 2006, § 16-195; Res. No. 2006-98, ex.(§ 16-195), 12-12-2006/1-1-2007)

Sec. 16-196. - Violation of handicapped parking zone.

- A. **Civil Infraction.** Except as provided in subsection B, a person shall not stop, stand or park a motor vehicle within any specially designated and marked handicapped parking space or zone unless the motor vehicle is transporting a person who has been issued a valid placard or international symbol of access special plates and either:
 - 1. The motor vehicle displays the valid permanently disabled or temporarily disabled removable windshield placard.
 - 2. The motor vehicle displays international symbol of access special plates that are currently registered to the vehicle.
- B. **Exception.** A person who is chauffeuring a person with a physical disability without a placard or international symbol of access special plates may park momentarily in a handicapped space or zone provided pursuant to this article for the purpose of loading or unloading the person with a physical disability.
- C. **Penalty.** If a vehicle is found in violation of this section, the law enforcement officer shall issue a citation to the operator or other person in charge of the motor vehicle or, if an operator or person in charge is not present, to the registered owner of the vehicle for a civil traffic violation.

(Law & Order Code 2006, § 16-196; Res. No. 2006-98, ex.(§ 16-196), 12-12-2006/1-1-2007)

Sec. 16-197. - Removal of illegally stopped vehicles.

- A. When any law enforcement officer finds a vehicle standing upon a public roadway in violation of the provisions of section 16-191, the officer is authorized to move the vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of the public roadway or highway.
- B. Any law enforcement officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any public roadway or bridge in such position or under such circumstances as to obstruct the normal movement of traffic.
- C. Any law enforcement officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a public roadway:
 - 1. When a report has been made that such vehicle has been stolen or taken without the consent of its owner.
 - 2. When the person(s) in charge of such vehicle are unable to provide for its custody or removal.
 - 3. When the person driving or in control of such vehicle is arrested for an alleged offense and taken into custody and the vehicle cannot be legally parked.

(Law & Order Code 2006, § 16-197; Res. No. 2006-98, ex.(§ 16-197), 12-12-2006/1-1-2007)

Sec. 16-198. - Stop required before emerging from alley or driveway.

The driver of a vehicle emerging from an alley, driveway or building shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the a public roadway shall stop the vehicle before entering the public roadway and shall yield the right-of-way to all closely approaching vehicles on the roadway.

(Law & Order Code 2006, § 16-198; Res. No. 2006-98, ex.(§ 16-198), 12-12-2006/1-1-2007)

Secs. 16-199—16-210. - Reserved.

Subdivision D. - Speed Restrictions

Sec. 16-211. - Maximum speed limit.

It is unlawful for any person to drive motor vehicle at a speed in excess of the posted speed limit.

(Law & Order Code 2006, § 16-211; Res. No. 2006-98, ex.(§ 16-211), 12-12-2006/1-1-2007)

Sec. 16-212. - Minimum speed limit.

No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(Law & Order Code 2006, § 16-212; Res. No. 2006-98, ex.(§ 16-212), 12-12-2006/1-1-2007)

Sec. 16-213. - Speeds to be reasonable and/or necessary to avoid collision.

- A. No person shall drive a vehicle on a roadway at a speed greater than is reasonable and prudent under the circumstances, conditions and actual and potential hazards then existing.
- B. In every event, speed shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on, or entering or adjacent to the public roadway in compliance with legal requirements and the duty of all person to exercise reasonable care for the protection of others.
- C. Any speeds in excess of the posted limit shall be prima facie evidence that the speed is too great and therefore unreasonable and unlawful.
- D. A reasonable and safe prima facie speed limit shall be effective when appropriate visible signs giving notice thereof are erected at the intersection or other appropriate place or part of the roadway.

(Law & Order Code 2006, § 16-213; Res. No. 2006-98, ex.(§ 16-213), 12-12-2006/1-1-2007)

Sec. 16-214. - Establishment and amendment of speed limits.

When the commission determines upon the basis of an engineering and traffic investigation that any prima facie speed set forth in this division is greater or less than is reasonable or safe under the conditions found to exist at any public roadway or highway, the commission may determine and declare a reasonable and safe prima facie speed limit thereat which shall be effective at such times as may be

determined when appropriate signs giving notice thereof are erected at the intersection or other place or part of the public roadway or highway.

(Law & Order Code 2006, § 16-214; Res. No. 2006-98, ex.(§ 16-214), 12-12-2006/1-1-2007)

Sec. 16-215. - Driving at speed that causes trailer to sway.

No person shall operate a vehicle towing a trailer or semi-trailer at a rate of speed, which causes the trailer or semi-trailer to sway laterally from the line of traffic.

(Law & Order Code 2006, § 16-215; Res. No. 2006-98, ex.(§ 16-215), 12-12-2006/1-1-2007)

Secs. 16-216—16-230. - Reserved.

DIVISION 7. - ACCIDENTS

Sec. 16-231. - Duty upon striking fixtures, livestock or other property upon a public roadway.

The driver of any vehicle involved in an accident resulting in damage to fixtures, livestock or other property legally upon or adjacent to a public roadway shall take reasonable steps to locate and notify the owner or person in charge of the property of that fact and of his name and address and of the registration number of the vehicle he or she is driving, and shall upon request, exhibit his or her operator's or chauffeur's license and shall make report of the accident when and as required in section 16-234.

(Law & Order Code 2006, § 16-231; Res. No. 2006-98, ex.(§ 16-231), 12-12-2006/1-1-2007)

Sec. 16-232. - Immediate reports of certain accidents.

The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication, whether oral or written, give notice of the accident to the Fort McDowell Police Department.

(Law & Order Code 2006, § 16-232; Res. No. 2006-98, ex.(§ 16-232), 12-12-2006/1-1-2007)

Sec. 16-233. - Duty to give information and render aid.

The driver of any vehicle involved in an accident resulting in injury or to death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, registration number of the vehicle he is driving, insurance information and shall upon request, exhibit his operator's or chauffeur's license to the person struck and the driver or occupants of a person attending any vehicle collided with and shall render to any person injured in the accident reasonable assistance, including the making of arrangements for the carrying of the person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the carrying is requested by the injured person.

(Law & Order Code 2006, § 16-233; Res. No. 2006-98, ex.(§ 16-233), 12-12-2006/1-1-2007)

Sec. 16-234. - Written reports of accidents.

- A. The driver of a vehicle involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of one thousand dollars (\$1,000.00) or more shall,

within five (5) days after the accident, forward a written report of the accident to the Fort McDowell Police Department.

- B. The Fort McDowell Police Department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports when the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.
- C. When the driver of a vehicle is physically incapable of making an immediate report of an accident as required in the preceding section, and there was another occupant in the vehicle at the time of the accident capable of making a report, the occupant shall make or cause to be made the report not made by the driver.
- D. When the driver is physically incapable of making a written report as required in the preceding subsection and the driver is not the owner of the vehicle, then the owner of the vehicle involved in the accident shall, within five (5) days after learning of the accident, make the report not made by the driver.
- E. The judge shall suspend the privilege of driving in the Nation of any person failing to report an accident as provided by this section until the report has been filed.

(Law & Order Code 2006, § 16-234; Res. No. 2006-98, ex.(§ 16-234), 12-12-2006/1-1-2007)

Secs. 16-235—16-250. - Reserved.

DIVISION 8. - PEDESTRIAN'S RIGHTS AND DUTIES

Sec. 16-251. - Right-of-way in crosswalks.

- A. When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping, if need be, to so yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in subsection B. of the following section.
- B. When any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(Law & Order Code 2006, § 16-251; Res. No. 2006-98, ex.(§ 16-251), 12-12-2006/1-1-2007)

Sec. 16-252. - Crossing other than at crosswalks.

- A. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
- B. Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(Law & Order Code 2006, § 16-252; Res. No. 2006-98, ex.(§ 16-252), 12-12-2006/1-1-2007)

Sec. 16-253. - Pedestrians on roadways.

- A. Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

- B. Where sidewalks are not provided, any pedestrian walking along and upon a public roadway or highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic, which may approach from the opposite direction.
- C. No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

(Law & Order Code 2006, § 16-253; Res. No. 2006-98, ex.(§ 16-253), 12-12-2006/1-1-2007)

Secs. 16-254—16-270. - Reserved.

DIVISION 9. - ABANDONED AND SEIZED VEHICLES

Sec. 16-271. - Definitions.

As used in this division, unless the context requires otherwise, the following terms shall have the meaning herein ascribed to them:

Lost, stolen, abandoned, or otherwise and unclaimed vehicles means any trailer, vehicle, or semi-trailer of a type subject to registration under the laws of the State of Arizona or any other state or foreign government, which has been abandoned on a public highway, government controlled property or unassigned property within the boundaries of the Fort McDowell Yavapai Nation. Evidence that a vehicle was left unattended for a period of thirty-six (36) hours within the right-of-way of a highway, road, street, or other thoroughfare, shall be prima facie evidence of abandonment.

(Law & Order Code 2006, § 16-271; Res. No. 2006-98, ex.(§ 16-271), 12-12-2006/1-1-2007)

Sec. 16-272. - Abandonment prohibited; presumption; removal.

- A. No person shall abandon a vehicle upon any street or on the right-of-way of any public roadway.
- B. Any officer who has reasonable grounds to believe that a vehicle has been lost, stolen, abandoned, or otherwise unclaimed may remove or cause the removal of such vehicle from any government controlled property or unassigned property within Fort McDowell Yavapai Nation.
- C. The abandonment of any vehicle in a manner provided in this article shall constitute a presumption that the last registered owner of record is responsible for such abandonment, unless the person has filed:
 - 1. An affidavit that the vehicle has been stolen pursuant to the laws of any state or foreign government; or
 - 2. A stolen vehicle report with the tribal police department; or
 - 3. A report with the superintendent of the motor vehicle division of the Highway Department of Arizona pursuant to Arizona Revised Statutes, Section 28.314, shall not be subject to the provisions of this section.

(Law & Order Code 2006, § 16-272; Res. No. 2006-98, ex.(§ 16-272), 12-12-2006/1-1-2007)

Sec. 16-273. - Towed vehicles; required report.

Any vehicle moved, towed, or ordered by an officer into a garage, parking lot, storage yard or wrecking yard, without the consent of the owner, shall be reported within two (2) hours by the person having custody thereof to the Fort McDowell Police Department. Any person who violates this provision shall be subject to a fine up to five hundred dollars (\$500.00).

(Law & Order Code 2006, § 16-273; Res. No. 2006-98, ex.(§ 16-273), 12-12-2006/1-1-2007)

Secs. 16-274—16-280. - Reserved.

DIVISION 10. - BICYCLES AND PLAY VEHICLES

Sec. 16-281. - Application of provisions.

- A. The parent of a child and the guardian of a ward shall not authorize or knowingly permit the child or ward to violate any of the provisions of this division.
- B. The regulations of this chapter in their application to bicycles shall apply when a bicycle is operated upon any public roadway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated in this division.

(Law & Order Code 2006, § 16-281; Res. No. 2006-98, ex.(§ 16-281), 12-12-2006/1-1-2007)

Sec. 16-282. - Traffic laws apply to persons riding bicycles.

Every person riding a bicycle upon a public roadway shall be granted all the rights and shall be subject to all the duties applicable to the driver of a vehicle by this chapter except as to special regulations in this division, and except as to those provisions of this chapter which by their nature can have no application.

(Law & Order Code 2006, § 16-282; Res. No. 2006-98, ex.(§ 16-282), 12-12-2006/1-1-2007)

Sec. 16-283. - Riding on roadways and bicycle paths.

- A. Every person operating a bicycle upon a public roadway shall ride as near the right side of the roadway as practicable exercising due care when passing a standing vehicle or one proceeding in the same direction.
- B. Persons riding bicycles upon a public roadway shall not ride more than two (2) abreast except on paths or parts of public roadways set aside for the exclusive use of bicycles.
- C. Whenever a usable path for bicycles has been provided adjacent to a public roadway, bicycle riders shall use the path and shall not use the public roadway.

(Law & Order Code 2006, § 16-283; Res. No. 2006-98, ex.(§ 16-283), 12-12-2006/1-1-2007)

Sec. 16-284. - Manner of riding.

- A. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
- B. No bicycle shall be used to carry more persons at one (1) time than the number for which it is designed and equipped.

(Law & Order Code 2006, § 16-284; Res. No. 2006-98, ex.(§ 16-284), 12-12-2006/1-1-2007)

Sec. 16-285. - Carrying articles.

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one (1) hand upon the handlebars.

(Law & Order Code 2006, § 16-285; Res. No. 2006-98, ex.(§ 16-285), 12-12-2006/1-1-2007)

Sec. 16-286. - Lamps and other equipment on bicycles.

- A. Every bicycle when in use at night time shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of head lamps on motor vehicles. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.
- B. No person shall operate a bicycle equipped with a siren or whistle.
- C. Every bicycle shall be equipped with a brake, which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(Law & Order Code 2006, § 16-286; Res. No. 2006-98, ex.(§ 16-286), 12-12-2006/1-1-2007)

Sec. 16-287. - Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a public roadway.

(Law & Order Code 2006, § 16-287; Res. No. 2006-98, ex.(§ 16-287), 12-12-2006/1-1-2007)

Secs. 16-288—16-300. - Reserved.

Appendix I - Fine Schedule for Civil Infractions

Section	Offense	Fine/Sanction
Sec. 16-64	Failure to Appear	\$100.00/collection costs
Sec. 16-76	Vehicle to be In Good Working Order	\$100.00
Sec. 16-77	Special Requirements for Motorcycles and Motor-Driven Cycles	\$150.00
Sec. 16-78	Brakes	\$100.00
Sec. 16-79	Horns and Audible Warning Devices	\$100.00
Sec. 16-80	Mufflers and Air Pollution Control Devices	\$100.00

Sec. 16-81	Mirrors	\$100.00
Sec. 16-82	Windshields	\$100.00
Sec. 16-83	Tires	\$100.00
Sec. 16-84	Rear Fender Splash Guards	\$100.00
Sec. 16-85	Vehicle Restraints	\$150.00
Sec. 16-86	Child Passenger Restraints	\$150.00
Sec. 16-87	Certain Vehicles to Carry Flairs or Other Warning Devices	\$100.00
Sec. 16-88	Display of Warning Devices When Vehicle Disabled	\$100.00
Sec. 16-89	Vehicles Transporting Explosives	\$100.00
Sec. 16-90	Television Installations	\$100.00
Sec. 16-91	Projecting Loads	\$100.00
Sec. 16-92	When Lamps Required to be Lighted	\$100.00
Sec. 16-93	Head Lamps	\$100.00
Sec. 16-94	Tail Lamps	\$100.00
Sec. 16-95	Reflectors on New Motor Vehicles	\$100.00
Sec. 16-96	Stop Lamps Required	\$100.00
Sec. 16-97	Additional Equipment Required on Certain Vehicles	\$100.00
Sec. 16-98	Mounting of Reflections and Clearance And Marker Lamps	\$100.00

Sec. 16-99	Color of Clearance Lamps and Reflectors	\$100.00
Sec. 16-100	Visibility of Reflections and Clearance And Marker Lamps	\$100.00
Sec. 16-101	Lights on Vehicle Combinations	\$100.00
Sec. 16-102	Parked Vehicles	\$100.00
Sec. 16-103	Lamps on Animal-Drawn and Other Equipment or Vehicles	\$100.00
Sec. 16-104	Spot and Auxiliary Lamps	\$100.00
Sec. 16-105	Signal Lamps and Devices	\$100.00
Sec. 16-106	Fender, Running Board and Backup Lamps	\$100.00
Sec. 16-107	High Beam Lights Usage	\$100.00
Sec. 16-108	Special Restrictions on Lamps	\$100.00
Sec. 16-109	Head Lamps on Motor-Driven Cycles	\$100.00
Sec. 16-116	Width of Vehicle and Load	\$100.00
Sec. 16-117	Projecting Loads on Passenger Vehicles	\$100.00
Sec. 16-118	Height and Length of Vehicles and Loads	\$100.00
Sec. 16-119	Length and Load Projection	\$100.00
Sec. 16-120	Loads and Covers to be Secured	\$100.00
Sec. 16-121	Towed Vehicle	\$100.00
Sec. 16-122	Single-Axle Load Limit	\$100.00
Sec. 16-123	Gross Weight Restrictions of Vehicles And Loads	\$100.00

Sec. 16-132	Obedience to Devices Requires; Exceptions	\$100.00
Sec. 16-133	Signal Legends	\$150.00
Sec. 16-134	Flashing Signals	\$100.00
Sec. 16-135	Stop Signs and Yield Signs	\$100.00
Sec. 16-136	Pedestrian Control Signals	\$100.00
Sec. 16-137	Construction or Road Work Site Warning Devices	\$100.00
Sec. 16-141	Operation of Vehicles by Nonmembers on Land Other Than Public Roadways	\$100.00/impoundment, seizure, civil damages
Sec. 16-142	Driving on the Right Side of Roadway; Exceptions	\$100.00
Sec. 16-143	Driving on Roadways Laned for Traffic	\$100.00
Sec. 16-144	Driving on Divided Public Roadways	\$100.00
Sec. 16-145	Drivers on Controlled Access Roadway to Use Only Authorized Entrances and Exits	\$100.00
Sec. 16-146	Starting Parking Vehicle	\$100.00
Sec. 16-147	ATV and Motorcycle Riders and Passengers to Ride Only on Designated Seats	\$100.00
Sec. 16-148	Operations of Vehicles on Approach of Authorized Emergency Vehicle	\$100.00
Sec. 16-149	Operation of Vehicle Upon Approach of School Bus	\$150.00
Sec. 16-150	Following too Closely	\$100.00
Sec. 16-151	Coasting Prohibited	\$100.00
Sec. 16-152	Turning Movements; Signals Required	\$100.00

Sec. 16-153	Signals by Hand and Arm or Device	\$100.00
Sec. 16-154	Method of Giving Hand and Arm Signals	\$100.00
Sec. 16-155	Required Position and Method of Turning at Intersection	\$100.00
Sec. 16-156	Turning on Curve or Crest of Grade Prohibited	\$100.00
Sec. 16-157	Backing	\$100.00
Sec. 16-158	Obstructing of Driver's View or Interference With Driver's Control of Vehicle Prohibited	\$100.00
Sec. 16-159	Use of All Terrain or Off Road Vehicles	\$100.00/impoundment, seizure, civil damages
Sec. 16-171	Right-Of-Way of Vehicles Entering Intersection at Same Time; Entering Public Roadway	\$100.00
Sec. 16-172	Right-Of-Way of Vehicle Turning Left at Intersection	\$100.00
Sec. 16-173	Right-Of-Way of Vehicle Entering Through Public Roadways or Stop Intersections	\$100.00
Sec. 16-174	Vehicle Entering Public Roadway From Private Road or Driveway	\$100.00
Sec. 16-175	Passing Vehicles Proceeding in Opposition Directions	\$100.00
Sec. 16-176	Overtaking Vehicles on the Left, Generally	\$100.00
Sec. 16-177	When Driving on the Left Prohibited	\$100.00
Sec. 16-178	Overtaking on the Right	\$100.00
Sec. 16-191	Vehicles to be Parked or Stopped Off Pavement if Possible	\$50.00

Sec. 16-192	Parking, Stopping, Standing Prohibited in Specified Places	\$50.00
Sec. 16-193	Parking Within 18 Inches of Curb	\$50.00
Sec. 16-195	Parking Privilege for Physically Disabled	\$100.00
Sec. 16-196	Violation of Handicapped Parking Zone	\$100.00
Sec. 16-198	Stop Required Before Emerging From Alley or Driveway	\$100.00
Sec. 16-211	Maximum Speed Limit	See Table
MPH in excess of posted	Fine	2 nd /subsequent w/i 1 year or w/i construction zone
0-10	\$100.00	\$200.00
11-15	\$150.00	\$300.00
16-20	\$200.00	\$400.00
21-25	\$250.00	\$500.00
26-30	\$275.00	\$550.00
31-39	\$300.00	\$600.00
40 +	\$400.00	\$800.00
Sec. 16-212	Minimum Speed Limit	\$100.00
Sec. 16-213	Speeds to be Reasonable and/or Necessary to Avoid Collision	\$100.00
Sec. 16-215	Driving at Speed, Which Causes Trailer to Sway	\$100.00/must personally appear in court

Sec. 16-231	Duty Upon Striking Fixtures, Livestock or Other Property Upon a Public Roadway	\$100.00/must personally appear in court
Sec. 16-232	Immediate Reports of Certain Accidents	\$100.00/must personally appear in court
Sec. 16-233	Duty to Give Information and Render Aid	\$400.00/must personally appear in court.
Sec. 16-234	Written Reports of Accident	\$100.00/must personally appear in court.
Sec. 16-251	Right-Of-Way in Crosswalks	\$100.00
Sec. 16-252	Crossing at Other Than at Crosswalks	\$100.00
Sec. 16-253	Pedestrians on Roadways	\$100.00
Sec. 16-272	Abandonment Prohibited; Presumption; Removal	\$100.00
Sec. 16-273	Required Report to Towed Vehicles	\$100.00
Sec. 16-283	Riding on Roadways and Bicycle Paths	\$100.00
Sec. 16-284	Manner of Riding	\$100.00
Sec. 16-285	Carrying Articles	\$100.00
Sec. 16-286	Lamps and Other Equipment on Bicycles	\$100.00
Sec. 16-287	Clinging to Vehicles	\$100.00

(Law & Order Code 2006, app. I; Res. No. 2006-98, ex.(app. I), 12-12-2006/1-1-2007)

Chapter 17 - FORT MCDOWELL YAVAPAI NATION ENROLLMENT ORDINANCE

[**HISTORICAL NOTE:** This Chapter adopted by Resolution No. Ft. McD. 2000-46, effective May 10, 2000 and subsequently amended by Resolution No. Ft. McD. 2001-29, effective May 24, 2001.]

ARTICLE I. - TITLE, PURPOSE, DEFINITIONS, AND NOTICE

Sec. 17-1. - Short title.

This ordinance shall be cited as the Fort McDowell Yavapai Nation Enrollment Ordinance.

(Law & Order Code 2006, § 17-1; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-2. - Purpose.

This ordinance is enacted to define and regulate membership in the Fort McDowell Yavapai Nation in accordance with tribal requirements, and to establish an orderly enrollment procedure which affords due process of tribal law to all persons applying for enrollment as a member of the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 17-2; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-3. - Definition of terms.

For the purpose of this ordinance, the words underlined below shall have the following definitions:

- A. **Applicant** means the person seeking to be enrolled.
- B. **Burden of Proof** means: (1) the job of persuading someone that something is true, or not true; and (2) the job of producing evidence.
- C. **Enrollment Committee** means a committee established by the Fort McDowell Tribal Council with the authority to recommend to the Council whether an application for enrollment should be approved or rejected.
- D. **Enrollment Department** means those person or persons employed by the Fort McDowell Yavapai Nation who are responsible for the maintenance of an Enrollment Office.
- E. **Membership Roll** means the one current Membership Roll of the Fort McDowell Yavapai Nation.
- F. **Sponsor or Person Filing the Application** means the applicant's parents, custodial parent or court appointed legal guardian, to file an application for enrollment on behalf of another person as the applicant.
- G. **Tribal Council** means the Tribal Council of the Fort McDowell Yavapai Nation.
- H. **Nation** means the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 17-3; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-4. - Enrollment committee.

- A. The Enrollment Committee shall be comprised of five (5) Members appointed by the Tribal Council. The term of each Committee Member shall be four (4) years. Initially, three (3) members shall serve four (4) years terms and two (2) members shall serve two (2) years terms, then four (4) year terms unless removed earlier pursuant to the terms of this Ordinance.
- B. Each Committee Member shall be an enrolled member of the Nation who has sufficient knowledge of the history of the Nation and its members to properly evaluate Enrollment Applications. In addition, the person shall be at least thirty (30) years old, and has for the past ten (10) years continuously resided on the Fort McDowell Nation.
- C. The Enrollment Committee shall have the power to establish its own rules and procedures, subject to Tribal Council approval, and to select its own officers from among its members which shall include a Chairperson of the Enrollment Committee.
- D. The Enrollment Committee shall monitor the activities of the Enrollment Department and shall participate in the review and processing of Enrollment Applications in a manner provided by this Ordinance.
- E. Each Committee Member shall be paid reasonable compensation including appropriate expenses as determined by the Tribal Council.
- F. If a Committee Member fails to either: (a) attend three (3) duly noticed consecutive regular or special meetings of the Enrollment Committee, or (b) attend three (3) duly noticed regular or special meetings of the Enrollment Committee meetings within a three (3) month period, the Committee Member's office shall become vacant unless any such absence is excused by a majority of the remaining Enrollment Committee Members because of illness or other good cause. If the Committee Member subject to removal disputes the initial determination of the remaining Committee Members, the Committee Member may request a hearing before the Enrollment Committee within five (5) days after receiving the Enrollment Committee's initial decision for removal. The Enrollment Committee shall hold a hearing and issue a final written decision that includes findings of fact, and a determination whether good cause exists for the removal. The determination of the Enrollment Committee shall be final.
- G.
 - (1) The Enrollment Committee shall meet within the first ten (10) days of every month unless the Chairperson or a majority of the Enrollment Committee elects to hold the regular meeting on an alternative date. If an alternative date is set, all Committee Members shall be provided at least three (3) days notice prior to the new date and a notice shall be posted in the Tribal Administration Office at least three (3) days prior to the new date.
 - (2) Special meetings shall be held at the request of the Chairperson or at the request of three (3) members of the Enrollment Committee, notice shall be given to all members of the Enrollment Committee at least three (3) days before such meeting. In the case of emergency, the three (3) day notice shall be suspended, provided that all members of the Tribal Council are afforded reasonable notice, and further that at least three (3) of the Enrollment Committee Members agree to the meeting.
 - (3) Attendance by a Committee Member at a meeting waives the notice requirement for that particular meeting.
- H. The Enrollment Committee shall call a quorum to transact business. A quorum means a majority of the Committee. When a vacancy occurs in the committee, the remaining members may exercise all the powers of the committee until the vacancy is filled. The Tribal Council shall fill the vacancy within thirty (30) days.
- I. Conflict of Interest. If a majority of the remaining members of the Enrollment Committee agree that an Enrollment Committee member can render a fair and impartial decision pertaining to an enrollment application and/or hearing, the member may participate in such application review or hearing involving an applicant who is an immediate family member. For the purposes of this section, immediate family member shall mean father, mother, husband, wife, son, daughter, sister or brother.

*(Subsection A was amended by Resolution No. Ft. McD. 2002-40, effective July 2, 2002.
Subsection F was amended by Resolution No. Ft. McD. 2001-29, effective April 24, 2001.
Subsection G was amended by Resolution No. Ft. McD. 2001-29, effective April 24, 2001, and
later amended by Resolution No. Ft. McD. 2003-9, effective January 28, 2003.)*

(Law & Order Code 2006, § 17-4; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001; Ft. McD. Res. No. 2002-40, eff. 7-2-2002; Ft. McD. Res. No. 2003-9, eff. 1-28-2003)

Sec. 17-5. - Notice.

- A. Any notice to any person which is required to be or may be given under the provisions of this Article shall be given in writing by certified mail, return receipt requested. Service of such notice shall be deemed effected five (5) days after deposit in the United States mail. All Applicants, Sponsors and other persons filing the Application must provide an address to the Committee for receiving notices required under this Ordinance. If the address provided changes, it is the duty of the Applicant, Sponsor, or other person to provide written notice to the Committee of the change of address.
- B. Nothing contained in the Section shall in any way operate to change or be deemed to affect the time limitations hereafter set forth in this Article.

(Law & Order Code 2006, § 17-5; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

ARTICLE II. - MEMBERSHIP CRITERIA

Sec. 17-6. - Membership criteria.

The membership of the Fort McDowell Yavapai Nation shall consist of those persons specified in Article III of the Constitution of the Fort McDowell Yavapai Nation who meet any one of the following:

- A. All persons whose names appear on the Fort McDowell Indian Nation roll of 1934 shall be members of the Nation.
- B. All descendants of members of the 1934 roll shall be entitled to membership in the Nation if they are as least one-quarter ($\frac{1}{4}$) degree Fort McDowell Yavapai blood and their name does not appear on another Indian tribal roll.
- C. Every person, duly enrolled pursuant to the 1936 Fort McDowell Mohave-Apache Community Constitution and By-laws as of the date of the adoption of the 1999 Constitution is entitled to membership and is hereby an enrolled member of the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 17-6; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

ARTICLE III. - APPLICATION FOR ENROLLMENT

Sec. 17-7. - Written application to be filed with the Enrollment Committee; Enrollment Committee review.

A separate official application for enrollment shall be filed with both the Tribal Council Secretary and the Enrollment Committee Coordinator by or on behalf of each person applying for enrollment as a member of the Nation. The application shall include, but is not limited to, the applicant's parents'

certificate of Indian blood. The Enrollment Committee shall notify the applicant in writing of the Enrollment Committee's receipt of his or her application within forty-five (45) days of receipt of the application.

(Sec. 17-7 was amended by Resolution No. Ft. McD. 2003-9, effective January 28, 2003.)

(Law & Order Code 2006, § 17-7; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001; Ft. McD. Res. No. 2003-9, eff. 1-28-2003)

Sec. 17-8. - Applicants to be numbered and dated.

The Enrollment Committee Coordinator shall assign an identifying number and shall record the date of each enrollment application received.

(Law & Order Code 2006, § 17-8; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

ARTICLE IV. - PROCESSING ENROLLMENT APPLICATIONS

Sec. 17-9. - Enrollment Committee shall review applications and make recommendations to the Fort McDowell Tribal Council.

The Enrollment Committee shall review all enrollment applications and shall consider the information provided in such applications, together with all other available evidence concerning that applicant's eligibility for membership and make its written recommendations to the Tribal Council as to whether the application should be approved or rejected. The Enrollment Committee shall review the application for sufficiency and accuracy to make a preliminary determination as to whether the applicant meets the criteria for membership as contained in Article III of the Fort McDowell Yavapai Nation Constitution. The preliminary determination shall be made within ninety (90) days of the receipt of the application. Where the Committee considers additional information is needed, it may request such information from the person filing the application and may request such person to appear before the Committee for a personal informal interview. If additional information is requested, the time required for the Enrollment Committee's preliminary determination shall be extended a reasonable time.

- A. If an applicant includes a parent that is or may be a member of another Indian tribe, then the Enrollment Department shall request verification from the other tribe that the applicant is not enrolled with that tribe.
- B. A man is presumed to be the father of a child if:
 - 1. He and the mother of the child were married at any time in the ten (10) months immediately preceding the birth or the child is born within ten (10) months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after the court enters a decree of legal separation.
 - 2. Genetic testing performed by a state certified laboratory affirms at least a ninety-five (95) percent probability of paternity.

(Sec. 17-9 was amended by Resolution No. Ft. McD. 2002-59, effective July 23, 2002. Sec. 17-9 further amended by Resolution No. Ft. McD. 2003-9, effective January 28, 2003. Sec. 17-9 further amended by Resolution No. Ft. McD. 2004-153, effective December 14, 2004.)

(Law & Order Code 2006, § 17-9; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001; Ft. McD. Res. No. 2002-59, eff. 7-23-2002; Ft. McD. Res. No. 2003-9, eff. 1-28-2003; Ft. McD. Res. No. 2004-153, eff. 12-14-2004)

Sec. 17-10. - Notice of hearing to be given when application is being recommended or considered for rejection.

- A. **Written Notice Required.** Whenever the Enrollment Committee recommends rejection or the Tribal Council considers that an application for enrollment should be rejected, written notice that a hearing will be held concerning such application shall be given the person filing the application, in the manner hereinafter provided, before a final determination of the applicant's eligibility for enrollment is made by the Tribal Council.
- B. **Contents of Notice.** The written notice required to be given under this section shall (1) indicate the tribal membership requirement or requirements which the applicant failed to establish or other reasons why the application should be rejected, and (2) indicate that if the person filing the application desires a hearing, he must respond within ten (10) days of receipt of the notice by giving notice to the Enrollment Committee that a hearing is wanted and provide the Enrollment Committee a list of the witness(es) that will present relevant evidence on behalf of the applicant, and (3) inform the applicant that the decision of the Tribal Council is final. If the person filing the application fails to respond to the Notice within forty-five (45) days, the Tribal Council shall make its ruling on the record as provided by the Enrollment Committee.
- C. **Manner of Giving Written Notice.** Notice of an enrollment determination hearing shall be given at least twenty (20) days prior to the hearing after which the Enrollment Committee will make its final recommendation of the applicant's eligibility for enrollment. The Enrollment Committee, in its sole discretion, may grant a continuation to the applicant for good cause.

(Law & Order Code 2006, § 17-10; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-11. - The Tribal Council shall hear and determine applicant's eligibility for enrollment.

- A. **Determination of Applicant's Eligibility.** The Tribal Council's final determination as to whether an application for enrollment is approved or rejected by the Tribal Council shall be based upon the Enrollment Ordinance's requirements and the Enrollment Committee's written recommendations. A final determination shall be made by the Tribal Council within ninety (90) days of the receipt of the Enrollment Committee's recommendations. If the Tribal Council does not act within the ninety (90) days, the application shall be deemed to be denied. Each final determination, to include denials, shall be signed by the President of the Tribal Council within thirty (30) days after the Tribal Council's final decision or a deemed denial.
 - 1. Such determination shall also set forth findings of fact indicating whether the Enrollment Committee recommended that the application be approved or rejected, the date of the applicant's birth, and the membership requirement, the requirements which the Enrollment Committee found to be satisfactory, inadequate and/or incomplete.
- B. Tribal Council may direct applicant or applicant's parent, parents or legal guardian to obtain an amended birth certificate prior to the final approval of an eligible applicant's enrollment. This subsection C shall not waive the requirements of establishing paternity or maternity.

(Sec. 17-11 amended by Resolution No. Ft. McD. 2004-153, effective December 14, 2004.)

(Law & Order Code 2006, § 17-11; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001; Ft. McD. Res. No. 2004-153, eff. 12-14-2004)

ARTICLE V. - TRIBAL COURT JURISDICTION OF MATERNITY AND PATERNITY QUESTIONS

Sec. 17-12. - Maternity and paternity questions.

Pursuant to Article VII, Section 2(B) of the Constitution of the Nation, the maternity or paternity of an applicant for enrollment shall be decided exclusively by the Tribal Court and the decision of the Tribal Court shall be final for membership purposes. The Tribal Court shall possess no jurisdiction in relation to the determination of Enrollment other than the authority to determine maternity or paternity.

(Law & Order Code 2006, § 17-12; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-13. - When questions of paternity or maternity exist.

- A. If the Enrollment Committee determines that a question exists regarding the paternity or maternity of an applicant, the question(s) may be resolved by the Enrollment Committee providing written directions to the applicant to pursue a determination through the Tribal Court. Such directions shall give the applicant thirty (30) days to file a paternity case in the Nation's Tribal Court. Applicant's failure to file within the stated time period will be documented in the Committee's recommendation to the Tribal Council.
- B. The Tribal Court shall follow the presumption of paternity standards listed in Section 17-9. Any presumption under Section 17-9 may only be rebutted by clear and convincing evidence. Upon notice by the Enrollment Committee or the Tribal Council to the applicant that a question of maternity or paternity exists, the time-lines as stated in this ordinance shall be stayed pending a final decision of the Tribal Court if the applicant elects to file a request for a paternity/maternity determination.
 1. The immediate family of the applicant, specifically, the biological father, mother, grandparents or applicant's biological siblings, may raise questions as to paternity to the Enrollment Committee.
 2. It is the responsibility of the person requesting an applicant's or their own enrollment to pay for any cost directed by the Enrollment Committee or by the Tribal Court associated with the establishment of paternity or eligibility.
 3. Tribal Court shall waive any filing fees associated with the establishment of paternity or eligibility.
 4. Tribal Court may direct the Tribal member parent or parents to pay any cost incurred by or on behalf of the applicant in establishing paternity or eligibility if such paternity or eligibility is established.
 5. A Legal Guardian, appointed by, or recognized by the Tribal Court through comity or full faith and credit, shall be permitted to apply for enrollment on behalf of a minor child.
 6. The Tribal Court shall recognize that the Constitution of the Fort McDowell Yavapai Nation establishes a specific blood quantity for eligibility for enrollment. Establishing an applicant's eligibility for enrollment is of such significance to the Nation's interest that the Tribal Court shall find that the Nation's interest supercedes any privacy or religious objections.
 7. Eligibility for enrollment entitles a person to substantial benefits from the Nation and from the federal government; therefore, the Court shall consider this to be a compelling interest in determining whether other members shall be required to submit evidence to establish proof of parentage of an applicant.

(Sec. 17-13 amended by Resolution No. Ft. McD. 2004-153, effective December 14, 2004.)

(Law & Order Code 2006, § 17-13; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001; Ft. McD. Res. No. 2004-153, eff. 12-14-2004)

ARTICLE VI. - MISCELLANEOUS

Sec. 17-14. - Tribal membership roll.

The Tribal membership roll shall contain the names of all enrolled members of the Fort McDowell Yavapai Nation arranged in alphabetical order. For each such member, the roll shall also indicate the person's enrollment number, sex, date of birth, degree of Fort McDowell Yavapai blood, the parent's blood, address and a column for remarks, e.g., date of enrollment. The remarks column should also indicate the names and tribal census roll number of the person's parents. Any notations made upon such roll shall indicate by whom such notations were made, and the authority for making such notations.

(Law & Order Code 2006, § 17-14; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-15. - Tribal membership roll to be kept current.

The Tribal Council shall cause the Fort McDowell Yavapai Nation membership roll to be kept current and shall quarterly review the membership roll for such purpose. The names of all persons who are deceased and all persons who have relinquished their membership in the Nation in writing shall be noted in the membership roll and the names of all persons whose applications for enrollment have been approved by the Tribal Council shall be promptly added to the membership roll.

(Law & Order Code 2006, § 17-15; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-16. - Confidentiality.

- A. The Tribal Council, Enrollment Committee and the Enrollment Department shall maintain the highest degree of confidentiality and integrity for all enrollment information as is consistent with the full performance of all duties and responsibilities prescribed by this Article.
- B. All meetings of the Enrollment Committee shall be closed to the public.
- C. All enrollment files shall be restricted and access shall be given by the Enrollment Department, the Chairman of the Enrollment Committee or his/her authorized representative, and the Tribal Council or its authorized representative(s) only.
- D. An alphabetical listing with enrollment numbers may be made available for access by other tribal departments upon written permission granted by the Enrollment Department. All requests shall be submitted in writing to the Enrollment Department, shall clearly set forth the uses to which the list will be put and shall justify the need for access. Any non-Fort McDowell Yavapai Nation requests, including Fort McDowell Tribal members' requests, for any enrollment information shall be submitted in writing to the Enrollment Committee. The Enrollment Committee shall make a written recommendation to the Tribal Council concerning each request. The Tribal Council may, in its sole discretion, elect to release the requested information.

(Law & Order Code 2006, § 17-16; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-17. - Sovereign immunity.

- A. The Fort McDowell Yavapai Nation possesses sovereign immunity. The Nation's sovereign immunity extends to the Nation, the Nation's officers, enterprises, departments and employees except as prohibited by the Nation's Constitution. Nothing in this Ordinance shall be construed to effect a waiver of the Nation's sovereign immunity.

(Law & Order Code 2006, § 17-17; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-18. - Repeal of prior conflicting ordinances and resolutions.

Any existing ordinance or resolution that is in conflict this Enrollment Act shall be repealed to the extent of such conflict.

(Law & Order Code 2006, § 17-18; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-19. - Effective date of ordinance.

The ordinance shall become effective upon its approval by the Tribal Council.

(Law & Order Code 2006, § 17-19; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-20. - Exclusive jurisdiction of the Tribal Council.

Except as provided in Article V of this Ordinance and Article VII, Section 2(b) of the Constitution, the Tribal Council shall have exclusive jurisdiction over membership determinations and no other body or entity, including but not limited to the tribal court, federal court, federal agencies or federal administrative appeal bodies or state courts, shall have jurisdiction to hear enrollment matters of the Nation.

(Law & Order Code 2006, § 17-20; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Sec. 17-21. - Severability clause.

If any provision of this Act shall in the future be declared invalid by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

(Law & Order Code 2006, § 17-21; Ft. McD. Res. No. 2000-46, eff. 5-10-2000; Ft. McD. Res. No. 2001-29, eff. 5-24-2001)

Chapter 18 - PLANNING ORDINANCE

Sec. 100. - General.

100.1 TITLE: This Ordinance shall be cited as "Fort McDowell Yavapai Nation Planning Ordinance", or in short, when not in conflict with other ordinances, as the "Fort McDowell Planning Ordinance".

(Law & Order Code 2006, § 100.1)

100.2 PLANNING ORDINANCE GOAL: To promote the orderly, economic development of the Fort McDowell Yavapai Nation in conformance with the adopted Master Plan for the Nation.

(Law & Order Code 2006, § 100.2)

100.3 PLANNING ORDINANCE DEFINITION: This Planning Ordinance is for the purpose of securing adequate light, pure air and safety from fire and other dangers; conserving the values of the land and amenities within the Nation; lessening or avoiding congestion within the Nation boundaries; and promoting the health, safety, comfort and welfare of the members of the Fort McDowell Yavapai Nation.

Also, this Ordinance is to establish standards for development by regulating: height, number of stories, size of buildings and open space, parking, density of population, location and use of buildings for residential, commercial, industrial, or other purposes, and establishing other restrictions or guidelines for development such as; landscape requirements, signage, construction codes, fee schedules, and other applicable items required for the protection of the land for the benefit of future members of the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 100.3)

100.4 LAND USE CATEGORIES: In order to classify, regulate, and restrict the location of housing, agriculture, commercial, industries or other land uses and to regulate the use and development as defined herein the land within the boundaries of the Nation shall be divided into the following categories, or zones:

CATEGORY (ZONE)	ABBREVIATION
1. Agriculture	AG
2. Neighborhood Convenience	COM-1
3. Neighborhood Center	COM-2
4. Regional Commercial	COM-3
5. Industrial, Heavy	I-H
6. Industrial, Light	I-L
7. Open Space	O-S
8. Open Space, Wilderness	OSW
9. Recreational	REC

10. Residential	RES
11. Resort	RST
12. Special Use	SU

(Law & Order Code 2006, § 100.4)

100.5 BOUNDARIES AND ZONING MAP: The boundaries of each zone are shown upon the map, which is designated as the "MASTER LAND USE PLAN" of the Fort McDowell Yavapai Nation, except that the "COM-1", "COM-2", and "COM-3" zones are to be further delineated by the Planning Board and Tribal Council as the need arises.

(Law & Order Code 2006, § 100.5)

100.6 INTERPRETATION AND CONFLICT:

- 1 INTERPRETATION: When the provisions of this Ordinance are interpreted or applied they shall be held to be the minimum requirements for the promotion of the public safety, health and general welfare of the Nation.
- 2 CONFLICT: The provisions of this Ordinance are not intended to abrogate or annul any action taken or permit previously issued, prior to the enactment of this Ordinance nor is it intended by this Ordinance to abrogate or annul any easement, covenant, or other agreement between parties entered into prior to the enactment of this Ordinance.

(Law & Order Code 2006, § 100.6)

100.7 REPEAL OF PRIOR ZONING ORDINANCE:

REPEALING CLAUSE: Upon the effective date of this Ordinance, all prior Zoning Ordinances shall be repealed.

(Law & Order Code 2006, § 100.7)

100.8 ENFORCEMENT:

- 1 Duties. It shall be the duty of the Planning Board to enforce this Ordinance. The appropriate designated Official shall receive applications required by this Ordinance, issue permits and furnish the prescribed certificates. He/She shall examine all premises for which permits been issued, and shall make necessary inspections to see that the provisions of this Ordinance are complied with. He/She shall, when requested by the Tribal Council, or when the interest of the Nation so require, make investigations in connection with matters referred to in this Ordinance and render written reports on the same. For the purpose of enforcing the regulations necessary to comply with the law he/she shall issue such notices or orders as may be necessary.
- 2 Inspections. Inspections shall be made by the designated Official.

- 3 Rules. The Planning Board may adopt additional rules and procedures consistent with this Ordinance and shall enforce all rules and procedures when approved by the Tribal Council.
- 4 Records.
 - A. The designated Official shall keep careful and comprehensive records of applications, or permits issued, or inspections made, of records rendered, and of notices or orders issued. He/She shall maintain on file copies of all papers in connection with building work so long as any part of the building or structure to which they relate may be in existence.
 - B. All such records shall be open to the public for inspection at reasonable hours, but shall not be removed from the office of the Planning Department.
- 5 Reports. The designated Official shall make a report to the Planning Board each month, or more often if requested, including statements of permits and certificates issued and orders promulgated.

(Law & Order Code 2006, § 100.8)

100.9 AMENDMENTS:

- 1 Ordinance may be amended. The provisions of the Ordinance may from time to time be amended, supplemented, changed, modified or repealed. An amendment may be for either a change in the zoning designation of land on the MASTER LAND USE PLAN or the property development standards of a zone.

Initiation of application to amend; filing fee. Requests to amend this Ordinance may be initiated by the Planning Department, Planning Board, Tribal Council or by a land user. Applications for amendments shall be made in the Planning Department on a form provided thereof and shall be accompanied by a fee of one hundred dollars (\$100.00) no part of which shall be refundable.

Applications initiated by a Tribal Department, Board or the Tribal Council shall not be subject to the requirement of a filing fee.

(Law & Order Code 2006, § 100.9)

Sec. 200. - Definitions.

200.1 PURPOSE: For the purpose of carrying out the intent of this Ordinance, the words, phrases, and terms shall be deemed to have the meaning ascribed to them in the following sections.

(Law & Order Code 2006, § 200.1)

200.2 GENERAL DEFINITIONS: For the purpose of this Planning Ordinance, certain terms and words are hereby defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and words in the plural include the singular number; the word "shall" is mandatory and not permissive; the word "person" includes individuals, partnerships, corporations, clubs or associations. The following words and terms, when applied in this Planning Ordinance, shall carry full force when used interchangeably; lot, plot, parcel or premises; used, arranged, occupied or maintained; sold or dispensed; construct, reconstruct, erect, alter, structurally or otherwise. The term "Nation" shall mean the Fort McDowell Yavapai Nation; "County" shall mean the County of Maricopa; "Board" shall mean Planning Board; "Council" shall mean the Tribal Council.

(Law & Order Code 2006, § 200.2)

200.3 SPECIFIC DEFINITIONS: For purposes of this Planning Ordinance any words, phrases, or meanings which are not included for which definition is necessary in order to accomplish the Planning Ordinance Goal (Section 100.2), "The Random House Dictionary of the English Language, The Unabridged Edition", latest edition shall apply or in the case of disputes, usage, or language difficulties the Council shall be the final arbiter.

ABUTTING: shall mean two (2) adjoining parcels having a common line between them.

ACCESS OR ACCESSWAY: shall mean the place, means, or way by which pedestrians and/or vehicles shall have a safe and usable ingress and egress to a parcel or parcels.

ACCESSORY BUILDING: shall mean a detached subordinate building located on the same parcel with the main building, the use of which is incidental to that permitted in the main building, or to the land upon which the main building is located.

ACCESSORY USE: shall mean a use incidental or subordinate to the main use of the main building or parcel.

ACCESSORY LIVING QUARTERS: see GUEST HOUSE

ACRE: shall mean a parcel of land measuring forty-three thousand five hundred sixty (43,560.0) square feet.

ADJACENT: shall mean a parcel of land or use that is in close proximity, but not necessarily abutting the subject parcel.

AGRICULTURE: shall mean the use of the land for agriculture purpose and the necessary accessory uses for storing, packing, processing and/or treating of agriculture grown on the land. It shall also include necessary buildings and structures, when used for agriculture.

ALLEY: shall mean a right of way designed for vehicular traffic and providing a secondary means of access only to the properties which abut it and is not intended for general traffic circulation. No parcel shall have an alley as its primary access. No alley shall be narrower than twenty (20) feet in width.

ALLOTMENT: not an applicable definition in the context of the Fort McDowell Yavapai Nation.

ALTERED: see STRUCTURAL ALTERATIONS

ANIMAL HOSPITAL: shall mean a place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. The use of the premises as a kennel or a place where animals or pets are boarded for remuneration may be permitted only when incidental to the principal use.

APARTMENT: shall mean a group of rooms used for cooking and living purposes of one (1) family group. Each apartment shall be considered a dwelling unit.

ARTERIAL STREET: shall mean a street or road of major significance to the Nation which carries substantial volumes of traffic, excluding State Route 87 (Beeline Highway) and Shea Boulevard.

AUTOMOBILE SALES LOT: shall mean an open area used for the display, sales and/or rental of new or used automobiles, trailer coaches, and other motor vehicles, however, where no repair, repainting or remodeling is done subject to the provisions of this Ordinance.

AUTOMOBILE SERVICE STATIONS: shall mean an area which provides for the servicing of motor vehicles, including tube and tire repairs, battery charging, storage of merchandise and supplies related to the servicing of motor vehicles, sale of gasoline and lubricants, automobile washing and grease racks but excluding automobile repairs, body and fender work, engine overhauling and other similar activities.

AUTOMOBILE WRECKING: shall mean the wrecking or dismantling of used motor vehicles of trailers, or the storage of, sale of, or dumping of, partly dismantled, obsolete or wrecked motor vehicles, or their parts.

BAR: shall mean a facility which is regularly open for the primary purpose of serving spirituous liquors to guests for compensation and onsite consumption. Any facility providing both food and spirituous

liquor service within the same premises for onsite consumption which does not meet the definition and requirements for a restaurant shall be defined as a bar.

BASEMENT: shall mean a space wholly or partly underground, and having more than one-half ($\frac{1}{2}$) of its height, measuring from its floor to its ceiling below the average adjoining grade; if the finished floor level directly above a basement is more than six (6) feet above grade at any point, such basement shall be considered a story.

BLOCK: shall mean a parcel of land surrounded by public or private streets, alleys, highways, freeways, railroad right-of-ways, flood control channel, creek, wash, river or unsubdivided acreage, or any combination thereof.

BOARDING HOUSE: shall mean a building within which lodging with meals is provided for compensation for not more than five (5) persons unrelated by blood or marriage to the owner or operator but shall not include rest homes or homes for the aged or young.

BUILDING: shall mean any structure having a roof and walls built and maintained for the support, shelter or enclosure of persons, animals, chattel or property of any kind, including an apartment house, hotel or dwelling either single or in combination.

BUILDING, HEIGHT OF: shall mean the vertical distance measured from the adjoining curb level to the highest point of the structure, exclusive of chimneys and ventilators, provided however, that where buildings are set back from the street line, the height shall be measured from the average elevation of the finished grade at the front of the building to the highest point of the roof.

BUILDING OFFICIAL: shall mean that person as directed, hired, or employed by the Council to serve in that designated capacity.

BUILDING GROUP: shall mean two (2), or more, buildings of the same or common, primary usage on a common parcel.

BUILDING, MAIN: shall mean a building, or buildings, in which is conducted the principal use of the parcel on which it is situated. In any residential district, any dwelling shall be deemed to be the main building of the parcel on which the same is situated.

BUSINESS: shall mean the purchase, sale or other transaction involving the handling or disposition, other than that included in the term "Industry" as defined herein, of any article, substance or commodity for profit or gain.

CARPORT: shall mean a permanent roofed structure with not more than two (2) enclosed sides used or intended to be used for automobile shelter and storage.

CARWASH: shall mean a facility for the cleaning and washing of motor vehicles, including interior cleaning vacuuming and waxing, by means of self-service mechanical apparatuses, manual labor or a combination thereof. Any car wash facility also dispensing gasoline shall be considered an automobile service station.

COCKTAIL LOUNGE: see BAR

COMMERCIAL USE: property utilized or maintained for buying, selling, leasing, or storage of real and personal property, or furnishing services for compensation. It shall also mean the parking or storage of equipment, machinery or supplies to be utilized elsewhere for compensation.

COMMON OPEN SPACE: shall mean any meaningful open space, other than private or frontage open space, intended for use by all occupants of a development. This space may include recreation oriented areas.

CONSERVATION: shall mean the protection of the land and resources from urban uses or activities other than in selected locations where the environment will not be adversely affected.

CORNER LOT: a lot abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty-five (135) degrees).

COURT: any space other than a yard on the same lot with a building or a group of buildings, and which is unobstructed and open to the sky above the floor level of any room having a window or door opening on such court. The width of a court shall be its least horizontal dimension.

DAY CARE: The care, supervision and guidance of a child or children, unaccompanied by parent, guardian or custodian, on a regular basis, for periods of less than twenty-four (24) hours per day, in a place other than the child's or the children's own home or homes.

DAY CARE CENTER: any facility in which day care is regularly provided for compensation for five (5) or more children not related to the proprietor. The care of four (4) or less children who are not members of the household shall be considered as "baby-sitting".

DEPARTMENT STORE: a general retail merchandising of diverse household, automotive, apparel, and recreational items with a common occupancy.

DEVELOPMENTALLY DISABLED: shall mean autism, cerebral palsy, epilepsy or mental retardation.

DORMITORY: shall mean a guest room designed, intended or occupied as sleeping quarters by more than two (2) persons. Every one hundred (100) square feet of superficial floor area in a dormitory shall be considered a separate guest room.

DUMP: shall mean a place used for the disposal, abandonment, discarding, dumping, reduction, burial, incineration or by any other means of any garbage, sewage, trash, refuse, waste material, offal or dead animals; provided that this definition shall not include disposal of such substances where such disposal endangers health and safety.

DWELLING: shall mean a building or portion thereof, designed and used exclusively for residential occupancy by persons of Indian descent, including one-family, two-family, and multiple dwellings, but not including hotels, boarding lodging houses, motels, or resorts.

DWELLING UNIT: shall mean one (1) or more habitable rooms in a dwelling designed for occupancy by one (1) family for living purposes and having its own cooking and sanitary facilities. An apartment shall be considered a dwelling unit.

DWELLING, ONE (1) FAMILY: shall mean a detached building designed exclusively for the occupancy of one family.

EASEMENT: shall mean a space on a lot or parcel of land and so indicated on a survey map or in a restriction, reserved for and/or used for public utilities, drainage or other special purposes. No building shall be built within the space so designated.

EDUCATIONAL INSTITUTION: shall mean a school, college or university, supported wholly or in part by public or private funds, and providing general academic instruction equivalent to the standards prescribed by Nation or other appropriate authority.

FAMILY: shall mean an individual or two (2) or more persons related by blood, marriage or adoption, including legal wards of such individuals, living together as a single housekeeping unit in a dwelling unit and using common kitchen facilities. It shall also include convenience living, consisting of not more than three (3) persons.

FARM: shall mean commercial agriculture land use especially for crops, dairy, stock, and poultry production.

FAST FOOD RESTAURANT: see DRIVE-IN RESTAURANT

FEED YARD: a parcel or portion of a parcel, used for the enclosing and fattening of livestock for market and not operated in connection with a bona fide farm.

FRONT WALL: shall mean the wall of a building or structure nearest the street upon which the building fronts, but excluding certain architectural features as cornices, canopies, eaves or embellishments.

FRONT YARD: see YARD, FRONT

GARAGE, PRIVATE: shall mean a detached accessory building or a portion of a main building on the same lot as the dwelling for the placement of vehicles of the occupants of the dwelling, including carports.

GARAGE, STORAGE: shall mean any premises, used exclusively for the storage of vehicles.

GROUP COMMERCIAL DEVELOPMENT: shall mean a commercial development where there are located a number of separate commercial activities, in which there are appurtenant shared facilities, such as parking and pedestrian walkways, and which is designed to provide a single area in which the public can obtain varied products and services. Distinguishing characteristics of a Group Commercial Development may, but need not include, common wall construction, and multiple occupant commercial use of a single or multiple structures.

GUEST ROOM: a room occupied by one (1) or more persons or members of the family in which no cooking facilities are provided. Where such room is detached from the main building, it shall be considered a dwelling unit.

HOME OCCUPATION: shall mean an occupation or profession which:

1. Is customarily carried on in a dwelling unit, or in an attached or unattached building, provided that no commodity is sold upon the premises.
2. Is carried on by a member of the family residing in the dwelling unit.
3. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes.
4. Which conforms to the following additional conditions:
 - (a) The occupations or profession shall be carried on wholly within the principal building, or within an attached building.
 - (b) No one outside of the family shall be employed in a "home occupation".
 - (c) There shall be no exterior storage of materials, and no other exterior indication of the "Home Occupation" or variation from the residential character of the principal building.
 - (d) No offensive noise, vibration, smoke, dust, odors, heat, or glare shall be produced.
 - (e) The activity shall be limited to the hours between seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.

A "Home Occupation" shall not include, among others, the following:

1. Barber shops and beauty parlors.
2. Commercial stables, veterinary office, hospitals and kennels.
3. Real estate offices.
4. Restaurants.

HOSPITAL: a place for the treatment or care of human ailments, and unless otherwise specified, the term shall include sanitarium, preventorium, clinic, maternity home, rest home, homes for the aged and convalescent homes.

HOTEL: a building other than a boarding house as defined herein, which building contains more than five (5) guest rooms.

INDUSTRY: shall mean the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character or appearance thereof.

JUNK YARD: see AUTOMOBILE WRECKING

KENNEL: shall mean any parcel or premises on which more than three (3) dogs, at least four (4) months of age, are kept, boarded or trained for profit or gain.

KITCHEN: shall mean any room designed to be used or maintained for the cooking and/or preparation of food.

LOADING SPACE: shall mean an off-street space or berth on the same parcel with a main building, or contiguous to a group of buildings for the temporary parking of commercial vehicles while loading or unloading. It may abut a street or other appropriate means of ingress or egress.

LODGING HOUSE: see BOARDING HOUSE (In a lodging house no meals are served, consumed, or prepared on the premises for compensation and/or sale).

LOT: shall mean a parcel of land, occupied or to be occupied by a use, building or group of buildings and accessory buildings together with such yards, open spaces, lot width, depth and area as are required by this Ordinance, and fronting upon a street determined by the Board as being adequate for purposes of access. Also, see PARCEL.

LOT AREA: shall mean the total of the lot area, measured in a horizontal plane, within the lot lines of a lot.

LOT, CORNER: shall mean a lot located at the intersection of two (2) or more streets, or a street and an alley, having an angle of intersection of not more than one hundred thirty-five (135) degrees.

LOT DEPTH: shall mean the horizontal distance between the front and rear lot lines.

LOT INTERIOR: shall mean a lot other than a corner or key lot.

LOT, KEY: shall mean any lot where the side lot line abuts the rear lot line of other lots.

LOT LINE, COMMON: shall mean any side or rear line which adjoins or abuts another side or rear line, not including side or rear lines abutting a street or alley.

LOT LINE: shall mean any line bounding a lot as defined herein.

LOT, THROUGH: shall mean a lot having frontage on two (2) parallel or approximately parallel streets. The lot frontage in instances such as this shall be determined by the Board.

LOT WIDTH: shall mean the horizontal distance between the side lot lines measured at right angles to the lot depth at the building set back lines as established for each zone in this Ordinance.

MARQUEE: shall mean a permanent roofed structure attached to and supported by the building.

MOBILE HOME: Same as DWELLING UNIT

MOBILE HOME PARK: any lot, tract or parcel of land, used or offered in use of whole or in part, with or without charge, for the parking (on a semi-permanent basis) of occupied trailers or mobile homes and used solely for living and/or sleeping purposes.

MOTEL: shall mean a building or a group of buildings used for commercial purposes, such as a building or group of two (2) or more detached or attached buildings containing guest rooms with sanitary facilities and automobile parking space provided in connection therewith, which buildings or group is designed, intended or used primarily for the accommodation of transient automobile travelers. Cooking in guest rooms shall be prohibited.

NON-CONFORMING STRUCTURE: shall mean a building existing at the time of the adoption of this Ordinance which does not conform to the regulations for the district in which it is located as set forth in this Ordinance.

NON-CONFORMING USE: shall mean any building or land occupied by a use at the time of passage of this Ordinance which does not conform after passage of this Ordinance or amendment thereto with the use regulations of the district.

OPEN SPACE: shall mean any area reserved for recreational purposes, whether active or passive. It shall also include desert, agriculture reserves, flood plains, wildlife refuge, parks, and other areas that are to be kept in open use including designated green-belts.

OPEN SPACE, WILDERNESS: shall mean any designated lands reserved for no development. These lands are to be managed for the benefit of future generations of the Nation.

PARCEL: shall mean a designated land area for use of those authorized by the Council. The total land area of the Fort McDowell Yavapai Nation is one (1) parcel of land and is owned in common by all Nation members. There are no allotted lands and no lands within the Nation boundaries which are owned in fee.

PARKING LOT: a parcel of land upon which members of the general public may park their motor vehicles for the purpose of utilizing an adjacent use or facility.

PARKING LOT, COMMERCIAL a parcel of land upon which members of the general public may park a motor vehicle by paying a charge or fee for said usage to the owner, lessee, or his agent.

PARKING SPACE, AUTOMOBILE: shall mean space exclusive of driveways, ramps, columns, loading areas, office or work areas, for the parking of one (1) automobile. Such space shall not be less than nine (9) feet in width and twenty (20) feet in length, for ninety (90) degree bays.

PERSON: shall mean individual, agent, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, or any other group or combination acting as an entity.

PROFESSIONAL USE: the rendering of service of a professional nature by:

1. Architects, engineers, and surveyors who are licensed by the Arizona State Board of Technical Registration.
2. Doctors, osteopaths, and dentists, who are licensed by the State of Arizona.
3. Lawyers, who are admitted to practice before the courts of the State of Arizona.
4. Accountants, who are members of the Arizona Society of Certified Public Accountants and/or the Arizona Association of Accountants, Incorporated.
5. Consultants and other practitioners who are recognized and licensed by the State of Arizona.
6. Chiropractors, chiropodists, optometrists and naturopaths.

PROHIBITED USE: shall mean a use not specifically permitted or use not analogous to those specifically permitted.

RECREATIONAL VEHICLE: a vehicular type unit eight (8) feet or less in width and forty (40) feet or less in length primarily designed as temporary living quarters for recreational camping or travel use and is not designed for permanent residential or commercial purposes which either has its own motive power or is mounted on or drawn by another vehicle.

RESIDENTIAL USE: shall be deemed to include single and multiple dwellings, hotel, motels, dormitories, and trailer parks.

REST HOME: Same as HOSPITAL.

RESTAURANT: a facility which is regularly open for the primary purpose of serving food prepared for consumption, either on or off the premises, to customers for compensation. No facility shall be classified as a restaurant unless such facility receives at least forty (40) percent of its gross revenues from serving food.

RESTAURANT, DRIVE IN: a building or structure where prepared food and drink are sold for consumption on the premises by order from and service to vehicular passengers outside the structure.

RESTAURANT, DRIVE THROUGH: a building or structure where prepared food and drink are sold for consumption, or off the premises by order from vehicular passengers outside the structure.

RETAIL: the business of selling personal property directly to the ultimate consumer for any purpose other than for resale.

ROOF: a continuous solid sheathing cover on a structure which provides protection from rain, wind, sun or other natural elements.

ROOM: shall mean an enclosed portion of the interior of a dwelling unit, excluding bathroom, kitchen, closets, hallways and service porches.

SETBACK: the least horizontal distance between a building, structure, wall, property line, or any combination thereof.

SCHOOLS: a place of general instruction in the arts and sciences including college, but excluding institutions such as business colleges or vocational schools, or whose primary purpose is the teaching of physical culture, music or dancing, unless a home occupation, trades or industries, riding academies, or the combination of any two (2) or more of these.

SIGN: shall include all outdoor advertising on any card, cloth, paper, plastic, metal, painted glass, wooden or stone materials and any and all devices, structural or otherwise, lighted or unlighted, painted or not painted, attached to, made a part of, or placed in a window of, in the front, rear, sides, or top of any structure on any land or any tree, wall, bush, rock, post, fence, building or structure and visible from any street, way, thoroughfare, alley or walk, which device announces or directs attention to the name or nature of a business, occupants of a structure, building or land or the nature or type of goods, services or products, produced, sold, stored, furnished or available at the location or at any other location, including signs specifically for the sale of real property. See SECTION 1300.

The term "placed" as used in this Ordinance shall include erected, constructed, posted, painted, printed, tacked, glued, stuck, carved, or otherwise fastened, fixed, or made visible in any manner whatsoever.

SITE AREA, GROSS: the total ground area including any proposed portions to be used for public use as streets, alleys, easements, or other.

SITE AREA, NET: The remaining ground area of the gross site area after deleting all portions for proposed perimeter rights-of-way and alleys.

SITE-BUILDING COVERAGE: the percent of ratio calculated by comparing the total building ground floor area under roof to the net site area.

Site-building coverage, (%) =

Total building ground floor area (x 100); Net Site Area

SITE PLAN: a plan prepared to scale showing all the uses proposed for a specific property. The plan shall show all topography (existing and proposed), buildings, structures, signs, off-street parking layout, loading spaces, points of ingress and egress, fences, walks, refuse locations, and any additional information which may be necessary to clearly define the intended use of the property. See SECTION 1620.

STORY: that portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is not floor above it, then the space between the floor and the ceiling next above it. A basement, the ceiling of which is less than four (4) feet six (6) inches above the grade level shall not be considered a floor. A mezzanine floor shall be considered a story if it exceeds forty (40) percent of the area of the floor next below it.

STREET: shall mean a thoroughfare, either paved or unpaved, other than an alley, which affords the principal means of access to abutting property including the words: avenue, boulevard, drive, lane, place, or road. For purposes of this Ordinance all streets, when determining setbacks, shall be considered to be sixty (60) feet in width from the apparent center of the travelled way (thirty (30) feet on either side of centerline), with the exception of Fort McDowell Road which shall be one hundred (100) feet in width (fifty (50) feet either side of centerline and State Route 87 (Beeline Highway) which shall be governed by the agreement between the Council and the Arizona Department of Transportation.

STRUCTURE: shall mean anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts together in some definite manner, which requires location on the ground or is attached to something having a location on the ground.

STRUCTURAL ALTERATIONS: shall mean any change in the supporting members of a building, such as in a bearing wall, column, beam or girder, floor or ceiling joints, roof rafters, foundations, piles, or retaining walls or similar components.

TRAILER PARK: any lot, tract or parcel of land, licensed, used or offered in use of whole or in part with or without charge for the parking of occupied trailer coaches, used solely for living and/or sleeping purposes.

TRUCK AND TRAILER SALES LOT: shall mean an open area where trucks and/or trailers are sold, leased or rented and where no repairs, repainting or remodeling is done.

USE: the specific purpose for which a building or lot is arranged, intended, designed, occupied or maintained.

USE PERMIT: a discretionary written authorization issued through the Council upon a finding that the allowed activity is in conformance with the intent of this Ordinance, and may be limited to a specific period of time (required in addition to building permit).

UTILITY CORRIDOR: shall mean a designated area parallel to and including a roadway in which utility lines are installed and maintained subject to such conditions or time limitations as may be established.

VARIANCE: shall mean a modification of the literal provisions of this Ordinance.

VISUAL OBSTRUCTION: shall be deemed to be any combination of fencing, hedges, trees, shrubs and wall which limits the visibility of persons at intersecting or intercepting streets and alleys at a point two (2) feet above the ground, measured in a vertical plane in the sidewalk area.

WHOLESALE: the business of selling goods or merchandise to retailers or jobbers for resale to the ultimate consumer.

YARD: a required space other than a court on any lot, unoccupied by a structure and unobstructed from the ground upward except as otherwise provided herein, and measured as the minimum horizontal distance from a building or structure, excluding carports, porches, and other permitted projections, to the property line opposite such building line; provided, however, that where a future width line is established by the provisions of this Ordinance for any street bounding the lot, then such measurement shall be taken from the line of the building to such future width line.

YARD, FRONT: The entire space extending the full width a lot, other than a courtyard, which is open and unobstructed skyward (except as otherwise provided herein) measured from the front property line inward to the required setback specified herein for each zoning district.

YARD, REAR: A yard extending between the side yards of a lot or between the side lot lines in the absence of side yards, and being the minimum horizontal distance between the rear lot line and the rear of the principal building or any projection thereof, other than steps unenclosed balconies, or unenclosed porches. On corner lots and interior lots the rear yard is in all cases at the opposite end of the lot from the front yard.

YARD, SIDE: That portion of a zoning lot lying between the side line of the lot and a line drawn through the nearest point of a main building extended from the front yard to the rear yard, or in absence of either of said yards from the front to the rear lots respectively.

(Law & Order Code 2006, § 200.3)

Sec. 300. - Agriculture district, "AG".

300.1 PURPOSE: The "AG" designation is intended to reserve those lands which have been determined to be suitable for agriculture purposes. Generally all land which is, or can be irrigated, is designated "AG".

Homes for Nation members are allowed in the "AG" zone provided the area for each home shall be a minimum of one (1) acre. Under special conditions a Use Permit for other uses which are a necessary part of agricultural operations may be granted by the Council.

(Law & Order Code 2006, § 300.1)

300.2 USES ALLOWED:

1. The raising of tree, vine, field, forage and other plant life crops of all kind.
2. The maintaining, breeding and raising of poultry and livestock of all kinds, including agricultural specialties such as fish and fur-bearing animals, by members of the Nation on or adjacent to residential lots. No slaughtering of animals for commercial purposes shall be allowed.
3. Residential dwellings for members of the Nation, however, no residential dwelling shall be constructed on, or interfere with, any leveled land already in use for agriculture purposes, and in no case shall a residential dwelling be located closer than three hundred (300) feet to either existing agricultural land nor future agriculture land without written consent of the Tribal Council.
4. Home Occupations.

(Law & Order Code 2006, § 300.2)

300.3 SPECIAL CONDITIONS REQUIRING A USE PERMIT: Some uses are of such character that they are not permitted in the agricultural district without careful review by the Board with approval of the Council. Some of these uses may be completely appropriate in some locations in the agricultural zone and harmful to both agriculture and the resident families in another location. This procedure is intended to safeguard the integrity of the "AG" Zone.

1. The harvesting, curing, processing, packaging, packing, shipping, and selling of agricultural products produced upon these premises, or where such activity is carried on in conjunction with or as part of the bona fide agricultural operation as a clearly secondary purpose.
2. The transportation of agricultural products, supplies or equipment together with the maintenance, storage, repair and servicing of the necessary trucks and equipment thereof.
3. The maintenance of temporary/seasonal camps or permanent camps for agricultural labor when carried on as a secondary function in conjunction with a bona fide agricultural operation.
4. The use, storage, repair and maintenance of tractors, scrapers and land leveling or development equipment devoted primarily to agricultural uses, when they are the property of the lessee, lessor or are rented for their personal on-site use.
5. Apiaries and honey extraction plants subject to the following conditions:
 - A. Adequate fresh water supply available for the bees on the subject property at all times.
 - B. The location shall not be less than two hundred (200) feet from any road, street, or highway, residence or other occupied building other than that of the property owner or occupant of said property except by written permission of the Board.
6. Guest ranches, commercial stables and riding academies.
7. Microwave relay structures.
8. Public buildings, yards, fire and police stations, assembly halls, and community centers, including churches, parsonages, and other religious or philanthropic institutions.
9. Veterinarian offices and related facilities.
10. Educational institutions including public schools, private or parochial schools.

11. The manufacturing, maintenance, repair, servicing, storage, sale or rental of agricultural machinery, implements and equipment of all kinds.
12. The manufacture, storage or sale of farm supplies of all kinds including but not limited to fertilizers, agricultural minerals, and chemicals.
13. Commercial stock feeding yards and feed lots when not operated as a secondary occupation in connection with or as part of a bona fide agricultural operation.
14. Community auction and sale yards for farm animals, products, implements, supplies or equipment.
15. Permanent or temporary roadside stands for the general sale of agricultural products.
16. Airports, heliports and crop dusting landing strips.
17. Sewage disposal and treatment plants and sanitary landfill (dumps).
18. The commercial slaughtering of poultry or rabbits, (not raised upon the premises), and butcher shops.
19. Commercial establishments for the processing of agricultural products when the same is not operated in conjunction with or as part of a bona fide agricultural operation.
20. Construction yards, communications equipment sites or buildings, electric transmission and distribution substations, odorizer stations, petroleum pumping plants and tank farms.

(Law & Order Code 2006, § 300.3)

300.4 USES EXPRESSLY PROHIBITED: All uses not listed above are prohibited.

(Law & Order Code 2006, § 300.4)

300.5 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and buildings in the "AG" Zone.

1. LOT AREA:
 - A. Each lot for residential homes of Nation members shall have a minimum lot area of one (1) acre, subject to SECTION 300.2.3.
 - B. Each lot for family farm use shall have a minimum lot area of five (5) acres, subject to SECTION 300.2.3.
2. LOT DIMENSIONS:
 - A. Minimum width of lot: one hundred (100) feet.
 - B. Minimum depth of lot: one hundred (100) feet measured from the adjacent right-of-way line.
 - C. Building set back lines shall be measured from the right-of-way line.
3. BUILDING HEIGHT:
 - A. Residential structures shall not exceed a height of twenty-five (25) feet.
 - B. Accessory structures (barns, elevators, machine sheds, etc.) shall not exceed a height of fifty (50) feet.
4. YARDS (for all structures):
 - A. Front: forty-five (45) feet minimum.
 - B. Rear: forty-five (45) feet minimum.

- C. Side: twenty (20) feet minimum.
- 5. LOT COVERAGE: Not more than thirty-five (35) percent of any residential lot shall be covered by buildings and/or structures.
- 6. ACCESS:
 - A. There shall be a driveway, for ingress and egress, of not less than sixteen (16) feet in width from the adjacent street.
 - B. No driveway shall be located closer than forty-five (45) feet from an intersecting street or road.
- 7. SIGNS: See SECTION 1300.14.
- 8. GENERAL PROVISIONS:
 - A. All provisions of this Ordinance shall control the use of "AG" land.
 - B. Any use of the land which causes light, glare, noise, odor, or detrimental environmental effects shall be grounds for a Board and Council hearing and possible withdrawal of the use of the land.

(Law & Order Code 2006, § 300.5)

Sec. 400. - Neighborhood convenience district, "COM-1".

400.1 PURPOSE: The "COM-1" zone is intended to contain only light commercial uses and to serve the needs of the Nation for convenience goods and services including offices (general and professional).

(Law & Order Code 2006, § 400.1)

400.2 USES ALLOWED:

- 1. Agriculture.
- 2. Convenience goods and services:
 - Drug store.
 - Grocery store.
 - Butcher shop.
 - Delicatessen.
 - Candy store.
 - Florist.
 - Variety store.
 - Bank.
 - Bakery.
 - Barber shop.
 - Beauty salon.
 - Laundry.

Laundromat.

Shoe repair.

Dry cleaner.

Convenience store (Circle K or 7-11 type facility).

3. Offices (general and professional):

Accounting offices.

Administrative headquarters.

Architectural and engineering offices.

Business associations.

Business and management consulting services.

Governmental offices.

Law offices.

Medical and health services excluding hospitals.

Professional membership associations.

Real estate offices.

Secretarial and clerical services.

(Law & Order Code 2006, § 400.2)

400.3 SPECIAL CONDITIONS REQUIRING A USE PERMIT: Some uses, especially when in combination with other uses, may form a non-intended use within this district. The uses described in 400.2 above, when developed and constructed individually are acceptable but may become unacceptable when in combination. Uses within the "COM-1" zone are intended for the single use of a single good or service, or office. Any combination of the uses described in 400.2 above require a Use Permit (See SECTION 1630) and approval of the Board and Council, including the following:

Athletic, sport, or recreation clubs.

Charitable organizations.

Convention centers.

Country clubs, golf courses, driving ranges, tennis and swimming clubs.

Hospitals.

Religious institutions.

Lodges.

Museums and art galleries.

Libraries.

Nursing homes, convalescent homes and sanatoria.

Nursery schools, Public parks and recreational areas, pursuant to the General Development Plan.

Public schools, pursuant to the General Development Plan.

Private educational institutions.

Mortuaries and funeral homes.

Prescription pharmacy services.

Social and fraternal organizations.

Movie, television and radio stations.

Offices whose functions are compatible with the uses set out herein.

(Law & Order Code 2006, § 400.3)

400.4 USES EXPRESSLY PROHIBITED: All uses not listed in 400.2 above are prohibited. Strip development is prohibited.

(Law & Order Code 2006, § 400.4)

400.5 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and buildings in the "COM-1" zone.

1. LOT AREA: Each lot for convenience goods, services, and offices shall have a minimum lot area of fifteen thousand (15,000 s.f.) square feet.
2. LOT DIMENSIONS:
 - A. Minimum width of lot: one hundred (100) feet.
 - B. Minimum depth of lot: one hundred (100) feet.
3. BUILDING HEIGHT: Building height shall not exceed twenty-five (25) feet or two (2) stories.
4. YARDS:
 - A. Front: fifty (50) feet minimum.
 - B. Rear: twenty (20) feet minimum.
 - C. Side: fifteen (15) feet minimum.
5. LOT COVERAGE: Not more than thirty (30) percent of the lot may be coverage by buildings and/or structures.
6. ACCESS:
 - A. There shall be a minimum of one (1) driveway and a maximum of two (2) driveways for ingress and egress from the adjacent street(s).
 - B. No driveway shall be located closer than fifty (50) feet from an intersecting street.
 - C. Minimum driveway width: twenty (20) feet.
Maximum driveway width: forty (40) feet.
7. SIGNS: Signs shall be in conformance with Section 1300.

8. PARKING: Parking shall be in conformance with SECTION 1100.
9. LANDSCAPING: Landscaping shall be in conformance with SECTION 1200.

(Law & Order Code 2006, § 400.5)

Sec. 420. - Neighborhood center district, "COM-2".

420.1 PURPOSE: The "COM-2" district is intended to provide a boarder range of commercial uses than those allowed in the "COM-1" district while imposing additional restrictions upon the development in the "COM-2" district.

(Law & Order Code 2006, § 420.1)

420.2 USES ALLOWED:

1. All uses listed in "COM-1", SECTION 400.2.
2. Additional uses:
 - Supermarket.
 - Hardware.
 - Paint and wallpaper.
 - Book store.
 - Camera store.
 - Toy store.
 - Leather and luggage.
 - Plants and nurseries.
 - Clothing and shoes.
 - Jewelers.
 - Knitting.
 - Appliances.
 - Hobby shops.
 - Restaurants and cafes.
 - Automobile service stations.

(Law & Order Code 2006, § 420.2)

420.3 SPECIAL CONDITIONS REQUIRING A SPECIAL USE PERMIT: As entitled, the "COM-2" district is intended for development of a neighborhood centers, intending that numerous services will be offered in a common location under a total development concept with a common architectural theme. Single use, such as a supermarket, or an appliance store, or a service station require a Use Permit and approval of the Board and Council. See SECTION 1630.

(Law & Order Code 2006, § 420.3)

420.4 USES EXPRESSLY PROHIBITED: All uses not listed in 400.2 and 420.2 are prohibited. Strip development is prohibited.

(Law & Order Code 2006, § 420.4)

420.5 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and building in the "COM-2" zone.

1. LOT AREA. Each lot intended for "COM-2" development shall be a minimum area of two and one-half (2½) acres and a maximum of ten (10) acres.
2. LOT DIMENSIONS:
 - A. Minimum width of lot: two hundred (200) feet.
 - B. Minimum depth of lot: two hundred (200) feet.
3. BUILDING HEIGHT: Building height shall not exceed thirty-five (35) feet.
4. YARDS:
 - A. Front: fifty (50) feet minimum.
 - B. Rear: forty (40) feet minimum.
 - C. Side: twenty-five (25) feet minimum.
5. LOT COVERAGE: Not more than thirty (30) percent of the lot may be covered by buildings and/or structures.
6. ACCESS:
 - A. There shall be a minimum of two (2) driveways for ingress and egress from the adjacent street(s).
 - B. No driveway shall be located closer than one hundred (100) feet from an intersecting street.
 - C. Minimum driveway width: twenty-five (25) feet.
Minimum driveway width: forty (40) feet.
7. SIGNS: Signs shall be in conformance with SECTION 1300.
8. PARKING: Parking shall be in conformance with SECTION 1100.
9. LANDSCAPING: Landscaping shall be in conformance with SECTION 1200.

(Law & Order Code 2006, § 420.5)

Sec. 430. - Regional commercial district, "COM-3".

430.1 PURPOSE: This district is intended to accommodate establishments providing goods or rendering services which are used in support of the Nation's trade and service establishments or servicing a regional segment of population. Principal activities located in this district are retail and wholesale sales, servicing and repairing of equipment, light warehousing, transportation facilities, distribution and some incidental processing. Such uses are generally located in such an area that they can support and at the same time concentrate their heavy traffic demand on major arteries.

(Law & Order Code 2006, § 430.1)

430.2 USES ALLOWED: All uses are subject to approval of a site development plan in accordance with SECTION 1620.

(Law & Order Code 2006, § 430.2)

430.3 USES EXPRESSLY PROHIBITED: All uses not listed in SECTION 400.2 and 420.2 are prohibited, except that additional uses may be proposed and are subject to Tribal Council approval.

(Law & Order Code 2006, § 430.3)

430.4 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and buildings in the "COM-3" District:

1. LOT AREA: Each lot intended for "COM-3" development shall be a minimum of ten (10) acres.
2. LOT DIMENSIONS:
 - A. Minimum width of lot: five hundred (500) feet.
 - B. Minimum depth of lot: six hundred (600) feet.
3. BUILDING HEIGHT: Building height shall not exceed forty-five (45) feet.
4. YARDS: Same as "COM-2".
5. LOT COVERAGE: Same as "COM-2".
6. ACCESS: Same as "COM-2".
7. SIGNS: Signs shall be in conformance with SECTION 1300.
8. PARKING: Parking shall be in conformance with SECTION 1100.
9. LANDSCAPING: Landscaping shall be in conformance with SECTION 1200.

(Law & Order Code 2006, § 430.4)

Sec. 500. - Industrial, heavy district, "I-H".

500.1 PURPOSE: All uses are subject to approval of a site development plan in accordance with SECTION 1620. Intensive manufacturing, fabricating and storage for concentrated industrial uses.

(Law & Order Code 2006, § 500.1)

500.2 USES PERMITTED:

1. Any use permitted in the "I-L" District.
2. Any industrial, manufacturing, storage or warehousing operation provided the limitations listed under SECTION 500.5, GENERAL REGULATIONS, are adhered to, including the following:
 - Auto wrecking and salvage.
 - Cement and paving material mixing plant.
 - Exterminator and insect poison, manufacturing.

Foundry casting lightweight, nonferrous metal.

Gasoline and petroleum bulk storage tanks, subject to Tribal Council approval.

House movers, equipment, storage or wrecking yards.

Junk yard.

Metals crushing for salvage.

Millwork (woodworking, manufacturing).

Planning mills.

Planting works, bulk (galvanizing).

Manufacture of brick and all clay, cinder, concrete, synthetic, cast stone, plastic and pumice stone products.

Rock crushing.

Sand blasting yard.

Sewage disposal or treatment plant.

Seed treatment, processing, extraction of oil.

Steel fabrication (plate, structural, misc. iron, reinforcing).

Storage yards, bulk material.

(Law & Order Code 2006, § 500.2)

500.3 SPECIAL CONDITIONS REQUIRING A USE PERMIT: Any other similar use to those listed above when approved by the Tribal Council.

1. A mobile home or trailer as a residence for a caretaker or operator employed on the premises. The residence may not house children under the age of eighteen (18) and the residence shall be limited to three (3) persons.

(Law & Order Code 2006, § 500.3)

500.4 USES EXPRESSLY PROHIBITED: All uses not listed in SECTION 500.2 above are prohibited.

(Law & Order Code 2006, § 500.4)

500.5 GENERAL REGULATIONS:

1. Every use shall be so separated that the volume of sound, inherently and recurrently generated, does not exceed eighty (80) decibels at any point of any boundary line of the lot on which the use is located.
2. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point of any boundary line of the lot on which the use is located.

3. Every use shall be so operated that it does not emit an obnoxious or dangerous degree of heat, glare, radiation or fumes beyond any boundary line of the lot on which the use is located.
4. All outdoor storage facilities for fuel, raw materials and products stored outdoors shall be enclosed by a solid block wall adequate to conceal such facilities for fuel, raw materials, and products from adjacent residential, agricultural and commercial districts.
5. No materials or wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces.
6. All materials or wastes which might cause fumes or dust, or which constitute a fire hazard or which may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors, only in closed containers.
7. Proof of non-compliance of these limitations shall be determined by measurements based upon standardized criteria established by noise and pollution experts and recorded by standardized instruments. If found to be in violation, the cost of said work and measurements shall be borne by the occupant of the use in violation of those regulations.
8. All lots shall be landscaped between the travelled way and the solid block wall along the lot frontage.

(Law & Order Code 2006, § 500.5)

500.6 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and buildings in the "I-H" District:

1. LOT AREA: Each lot area intended for "I-H" development shall be a minimum of two (2) acres.
2. LOT DIMENSIONS:
 - A. Minimum width of lot: two hundred (200) feet.
 - B. Minimum depth of lot: three hundred (300) feet.
3. BUILDING HEIGHT: Building height shall not exceed forty (40) feet.
4. YARDS:
 - A. Front: fifty (50) feet minimum.
 - B. Rear: fifty (50) feet minimum.
 - C. Side: twenty-five (25) feet minimum.
5. LOT COVERAGE: Not more than fifty (50) percent of the lot may be covered by buildings and/or structures, excluding carports.
6. ACCESS:
 - A. There shall be a minimum of two (2) driveways for ingress and egress from the adjacent street(s).
 - B. No driveway shall be located closer than seventy-five (75) feet from an intersecting street.
 - C. Minimum driveway width: twenty-five (25) feet.
 - D. All access roads and/or streets to and from any use in the "I-H" District shall be paved.
7. SIGNS: Signs shall be in conformance with SECTION 1300.
8. PARKING: Parking shall be in conformance with SECTION 1100.
9. LANDSCAPING: Landscaping shall be in conformance with SECTION 1200.

(Law & Order Code 2006, § 500.6)

Sec. 510. - Industrial, light district, "I-L".

510.1 PURPOSE: All uses subject to approval of a site development plan in accordance with SECTION 1620. Warehousing, wholesaling, assembling and manufacturing of building materials, machinery, and other commodities to provide employment centers and production within planned light industrial developments.

(Law & Order Code 2006, § 510.1)

510.2 USES PERMITTED:

1. Industrial, scientific, or business research, development and testing laboratories and offices.
2. Electronic instruments and devices, assembling and manufacturing.
3. Computer centers.
4. Motion picture studios.
5. General offices buildings.
6. Medical and dental office buildings and clinics.
7. Farming, landscaping and agricultural supplies and equipment, wholesaling and storage.
8. Manufacture, compounding, processing, packaging, bottling, or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, soap, toiletries, beverage and food products, and other personal articles and household goods.
9. Manufacture, compounding, assembling or treatment of articles of merchandise from the following previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, rubber, leather, paper, plastics, precious or semi-precious metals or stones, shell, plastics, textiles, tobacco, wood, wool, yarn; except as hereinafter specified.
10. Manufacture of instruments, toys, novelties, rubber and metal stamps, cameras and photographic equipment, business and household machines and appliances.
11. Manufacture, fabrication, or assembly, including contractor's facilities, of building materials and construction equipment: acoustical materials, air conditioners, heating and ventilating equipment, bolts, cement and concrete products, ceramics, decorative metals and wrought iron, tools, insulation, lumber yards, machines, nuts, paving and road building equipment, plaster, plastics, plumbing supplies and sewer pipes, pumps, scaffolds, screens, screws, tile, welding equipment, windows; or other similar items.
12. Manufacturing, processing and assembly of malleable metals, signs, monuments, industrial machinery and carbonic ice.
13. Public utility plants and storage.
14. Spraying supplies equipment wholesaling and storage.
15. Towed or motor vehicle assembling, new and used auto parts storage, repairing including body and fender shops.
16. Manufacturing of wood cabinets, boxes, or furniture shall be subject to approval of the Tribal Council.
17. Truck, bus and heavy equipment garages, dispatching and weighing stations.
18. Warehouses and distribution centers.

19. Mini-warehouses, for storage purposes only. No retailing is permitted from these facilities.
20. Retail commercial operations directly related to the primary industrial use, may be permitted, provided they do not exceed ten (10) percent of the gross floor area.
21. A mobile home or trailer as a residence for a caretaker or operator employed on the premises. The residence may include the family of the caretaker.
22. Outdoor events such as rodeos, circuses, dances, and auctions and other associated activities.
23. Any use similar to, and not more detrimental than the uses permitted herein, as determined by the Tribal Council may be permitted.

(Law & Order Code 2006, § 510.2)

510.3 SPECIAL CONDITIONS REQUIRING A USE PERMIT: Any other similar use to those listed above when approved by the Tribal Council.

(Law & Order Code 2006, § 510.3)

510.4 USES EXPRESSLY PROHIBITED: All uses not listed in SECTION 510.2 above are prohibited.

(Law & Order Code 2006, § 510.4)

510.5 GENERAL REGULATIONS:

1. Conformance with SECTION 500.5 is mandatory.
2. All buildings must be of reinforced concrete, masonry, or wood construction. Corrugated metal buildings shall not be permitted.
3. Trailers of any size shall not be permitted to be used as offices except during project construction.
4. At least ten (10) percent of the floor area shall be devoted to office or research.
5. All lots shall be landscaped between the travelled way and the front of the building. Additionally, any portion of the lot visible from any adjacent travelled way shall be landscaped. See SECTION 1200.

(Law & Order Code 2006, § 510.5)

510.6 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and buildings in the "I-L" District.

1. LOT AREA: Each lot area intended for "I-L" development shall be a minimum of one (1) acre.
2. LOT DIMENSIONS:
 - A. Minimum width of lot: one hundred (100) feet.
 - B. Minimum depth of lot: one hundred (100) feet.
3. BUILDING HEIGHT: Building height shall not exceed thirty (30) feet, or three (3) stories.
4. YARDS:
 - A. Front: thirty (30) feet minimum.
 - B. Rear: twenty (20) feet minimum.

- C. Side: fifteen (15) feet minimum.
- D. All yard areas shall be landscaped.
- E. Parking areas and maneuvering areas may not be located in the required yard areas.
- 5. LOT COVERAGE: Not more than thirty (30) percent of the lot may be covered by buildings and/or structures, excluding carports.
- 6. ACCESS:
 - A. There shall be a minimum of one (1) driveway for ingress and egress from each adjacent street.
 - B. No driveway shall be located closer than fifty (50) feet from an intersecting street.
 - C. Minimum driveway width: twenty-five (25) feet.
Maximum driveway width: thirty (30) feet.
 - D. All access roads and/or streets to any use in the "I-L" District shall be paved.
- 7. SIGNS: Signs shall be in conformance with SECTION 1300.
- 8. PARKING: Parking shall be in conformance with SECTION 1100.
- 9. LANDSCAPING: Landscaping shall be in conformance with SECTION 1200.

(Law & Order Code 2006, § 510.6)

Sec. 600. - Open space district, "O-S".

600.1 PURPOSE: The purpose of the "O-S" zone is to reserve, and to preserve, the predominately open space (undeveloped) lands which exist in the Nation and to maintain, for the future, the wilderness characteristics of areas so designated.

(Law & Order Code 2006, § 600.1)

600.2 USES ALLOWED:

- 1. Residential dwellings for members of the Nation provided, that each dwelling shall occupy not less than five (5) acres.
- 2. Agriculture. All agriculture shall be for the direct use of a residential dwelling and shall be of such size and scale as to not constitute a commercial or business venture for profit.
- 3. Animal grazing.
- 4. Nature trails may be developed provided:
 - A. The trails are not paved.
 - B. The trail is developed for educational purposes.
 - C. There is a person, group, committee, etc. charged with the responsibility of maintenance, upkeep, etc. acceptable to the Council.
- 5. Horseback Riding. The "OS" zone is open for both commercial and non-commercial horseback riding provided that all commercial (for profit) ventures shall obtain approval of the Planning Board and the Council prior to operation by obtaining a use permit and a lease.
- 6. Hunting by Nation members and their invited guest only.

(Law & Order Code 2006, § 600.2)

600.3 USES EXPRESSLY PROHIBITED: All uses not listed above are expressly prohibited without approval of the Council.

(Law & Order Code 2006, § 600.3)

600.4 SPECIAL USE PERMIT: The Council may, after conducting an investigation and holding a public hearing, issue a special use permit for uses which are not listed in 600.2 above.

(Law & Order Code 2006, § 600.4)

Sec. 610. - Open space, wilderness, "OSW".

610.1 PURPOSE: The purpose of the "OSW" zone is to reserve, and to preserve, those areas within the Nation which have not been disturbed, or disrupted, by past activities of man. These areas are to be left undisturbed.

(Law & Order Code 2006, § 610.1)

610.2 USES ALLOWED:

1. Animal grazing.
2. Horseback Riding. The "OSW" zone is open for both non-commercial and commercial (for profit) ventures. For profit ventures shall obtain approval of the Planning Board and the Council prior to operation by obtaining a use permit and lease.
3. Hunting by Nation members and invited guest only.

(Law & Order Code 2006, § 610.2)

610.3 USES EXPRESSLY PROHIBITED: All uses not listed above are expressly prohibited without approval of the Council.

(Law & Order Code 2006, § 610.3)

610.4 SPECIAL USE PERMIT: The Council may, after conducting an investigation and holding a public hearing, issue a special use permit for uses which are not listed in 610.2 above.

(Law & Order Code 2006, § 610.4)

Sec. 700. - Recreational district, "REC".

700.1 PURPOSE: The "REC" designation is intended to reserve those lands, including the Verde River and an area two hundred (200) feet on either side of its normal banks, which have been determined to be suitable for recreational purposes.

(Law & Order Code 2006, § 700.1)

700.2 USES ALLOWED SOUTH OF BEELINE HIGHWAY:

1. Parks and associated playfields such as football and baseball fields, and soccer fields.

2. All recreational activities either approved as a part of SECTION 1620, Site Plan Review, or as approved by the Tribal Council.
3. Rafting, swimming, fishing by daily permit.
4. Camping, recreational vehicle parking. See SECTION 800.5.1.
5. Picnic areas.

(Law & Order Code 2006, § 700.2)

700.3 CAUTION: All improvements below elevation 1372 are subject to inundation, flooding, and potential damage during the one hundred (100) year flood event on the Verde River. Elevations shall be taken from the closest Arizona Department of Transportation bench mark. Contact the Planning Department for further information.

(Law & Order Code 2006, § 700.3)

700.4 USES ALLOWED NORTH OF BEELINE HIGHWAY:

1. The Planning Board and Tribal Council shall determine the acceptability of all recreational proposals for the area north of the Beeline Highway.
2. The land north of the Beeline Highway to the north Nation boundary, Verde River and within the area known as the "Old Fort" is reserved strictly for the recreational activities of tribal members.
3. EXCEPTION: The area on the west side of the Verde River at the north Nation boundary is reserved for Resort Development. Upon proper application and subsequent approvals the recreational portions of a resort development may be approved for construction prior to actual resort construction. In general, this would be limited to a golf course and associated ancillary facilities.

(Law & Order Code 2006, § 700.4)

700.5 SPECIAL CONDITIONS REQUIRING A USE PERMIT: All uses for "REC" District land are subject to Site Plan Review, SECTION 1620 and approval of the Tribal Council after the requirements of SECTION 1630, Use Permit, have been met.

(Law & Order Code 2006, § 700.5)

Sec. 800. - Residential district, "RES".

800.1 PURPOSE: The purpose of the "RES" zone is to establish areas within the Nation which are to be used primarily for housing by Nation members.

(Law & Order Code 2006, § 800.1)

800.2 USES PERMITTED:

1. One-family dwellings.
2. Churches, libraries, schools, golf courses, gymnasiums, playgrounds, football and baseball fields, activity centers, clinics, Nation owned buildings, and recreational facilities.
3. Fire and police stations.

4. Home occupations, provided that not more than twenty-five (25) percent of the dwelling is used for such purposes.
5. Accessory buildings and uses customarily incident to the uses permitted.
6. Electric substations and gas regulator stations provided:
 - A. For each electric substation where transformers are exposed there shall be a site obscuring fence at least six (6) feet high.
 - B. The height requirements may be exceeded, provided that for each additional one (1) foot of height an additional one (1) foot of front, rear and side yards shall be required.

(Law & Order Code 2006, § 800.2)

800.3 CONDITIONAL USES: The following uses may be permitted provided that a use permit is obtained from the Council, following Planning Board approval:

1. Water reservoirs, water storage tanks, water pumping stations and sewer lift stations, provided:
 - A. For each instance the proposer shall provide the Planning Board with plot plans showing the proposed installation and its relationship to any nearby property.
 - B. The Planning Board shall prescribe conditions as to setbacks, etc., for each installation.
 - C. The Council shall review, approve, or deny all requests.
2. Cemeteries, provided:
 - A. An investigation is conducted by the Planning Board and recommendations are given to the Council.
 - B. A public hearing is held by the Planning Board after notice of such hearing is given by publication and posting.
 - C. A permit is granted by the Council after the above outlined procedure has been followed.
3. Recreational vehicle park. See SECTION 800.5.1 to 800.5.3.
4. Mobile home park. See SECTION 800.6.1 to 800.6.4.
5. Multiple-family dwellings.

(Law & Order Code 2006, § 800.3)

800.4 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and buildings in the "RES" zone except as modified for other than one-family dwellings.

1. LOT AREA:
 - A. Each lot for residential (single family) homes of Nation members shall have a minimum lot area of one (1) acre.
 - B. Lot areas for other permitted uses listed in SECTION 800.2.2, 800.2.3, and 800.2.6 shall be determined by the Planning Board.
2. LOT DIMENSIONS:
 - A. Minimum width of lot: one hundred (100) feet.
 - B. Minimum depth of lot: one hundred (100) feet measured from the right-of-way line. See "STREET" definition.

- C. Building set back lines shall be measured from the right-of-way line. See "STREET" definition.
- 3. BUILDING HEIGHT:
 - A. Residential structures shall not exceed a height of thirty (30) feet.
 - B. Other structures as listed in SECTION 800.2.2, 800.2.3, and 800.2.6 shall be determined by the Planning Board.
- 4. YARDS:
 - A. Residential:
 - 1. Front: twenty-five (25) feet minimum.
 - 2. Rear: twenty-five (25) feet minimum.
 - 3. Side: twenty (20) feet minimum.
 - B. Other structures. Yard requirements for all other structures in "RES" zone shall be determined by the Planning Board.
- 5. LOT COVERAGE: Not more than thirty-five (35) percent of any residential lot shall be covered by buildings and/or structures. Structures allowed under SECTION 800.2.2, 800.2.3 and 800.2.6 shall be reviewed and approved by the Planning Board.
- 6. ACCESS:
 - A. There shall be a driveway, for ingress and egress, of not less than sixteen (16) feet in width from the adjacent street to serve each residential lot.
 - B. No residential driveway shall be located closer than forty-five (45) feet from an intersecting street.
 - C. Other structures in the "RES" zone shall have points of ingress and egress, driveway widths, locations, etc. as approved by the Planning Board.
- 7. SIGNS:
 - A. Signs which give the address of each residential lot shall be visible from the adjacent street.
- 8. PARKING: See SECTION 1100.

(Law & Order Code 2006, § 800.4)

800.5.1 RECREATIONAL VEHICLE PARK: Within the "RES" zone Recreational Vehicle Park(s) (RVP) may be developed. Each permitted RVP shall comply with all sections of the Planning Ordinance. The purpose of the RVP is to allow travel trailers, motor homes, campers on pickups, and tent campers to visit the area so developed for short periods of time (not to exceed 30 days).

(Law & Order Code 2006, § 800.5.1)

800.5.2 PERMITTED USES:

- 1. One travel trailer, motor home, camper on a pickup, or tent camper per space.
- 2. When constructed and utilized within the RVP designated area:
 - A. Recreational facilities.
 - B. Laundry building and facilities.
 - C. Managers living unit.

- D. Managers office.
- E. Managers storage area.
- F. Bathroom facilities:
 - 1. Toilets.
 - 2. Showers.
 - 3. Sinks.

(Law & Order Code 2006, § 800.5.2)

800.5.3 DEVELOPMENT AND DESIGN REQUIREMENTS:

1. Maximum density of twelve (12) spaces per acre.
2. Recreation area of one hundred fifty (150) square feet per space (in addition to the space area requirements).
3. Drives. Minimum width of all drives shall be twenty-five (25) feet. All drives shall be graded and surfaced, at a minimum, with crushed rock. No parking on drives shall be allowed.
4. All utilities shall be underground.
5. Vehicle parking. One-half (½) of the total camping spaces shall have one (1) graded, graveled, parking space. The balance of the spaces shall have two (2) graded, graveled, parking spaces.
6. Street lighting shall be provided.
7. Masonry walls, with appropriate finish and paint, or chain link fencing a minimum of four (4) feet high to a maximum of six (6) feet high shall be constructed on the exterior boundary of the parcel. Masonry walls are also required around refuse areas and storage yards.
8. Minimum lot area shall be five (5) acres for RVP use.
9. The interior landscape plan, and the exterior plantings adjacent to the street shall be subject to approval of the Planning Board.
10. No building height shall exceed twenty-five (25) feet.
11. Yard setback requirements shall conform to Section 800.4.
12. Each space shall have the following utilities available:
 - A. Electrical service.
 - B. Sanitary sewer connection.
 - C. Domestic water service.
13. The applicant shall submit for Planning Board approval a fire protection plan for the entire area within the Recreational Vehicle Park.
14. The applicant shall conform with SECTION 1620-SITE PLAN REVIEW.

(Law & Order Code 2006, § 800.5.3)

800.6.1 MOBILE HOME PARK: Within the "RES" zone Mobile Home Park(s) (MHP) may be developed. Each permitted MHP shall comply with all sections of the Planning Ordinance. The purpose of the MHP is to allow for the placement and occupancy of mobile homes for residential purposes on rented or leased lots. No lot may be sold.

(Law & Order Code 2006, § 800.6.1)

800.6.2 PERMITTED USES:

1. One (1) mobile home per approved space.
2. When constructed and utilized within the MHP designated area:
 - A. Community recreation buildings and areas, including swimming pool.
 - B. Laundry building and facilities.
 - C. Managers living unit and office.
 - D. Boat and trailer storage areas.
 - E. Child care facilities with fencing.
 - F. Other uses for the direct, exclusive, benefit of the MHP residents.

(Law & Order Code 2006, § 800.6.2)

800.6.3 DEVELOPMENT AND DESIGN REQUIREMENTS:

1. Maximum residential density shall be six (6.0) mobile home spaces per gross acre.
2. Maximum height of any building or structure shall be twenty-five (25) feet.
3. Minimum ratio of community use areas shall be four hundred (400) square feet of such area for each mobile home space. Such land may include all land devoted to recreation and service facilities, interior landscaping not included within lots, and accessory parking areas. Such land shall not include boat and trailer storage areas, streets, and boundary landscaping areas.
4. Minimum width of private streets shall be thirty (30) feet as measured from back of curb to back of curb. Said streets shall have curbs and be paved with asphaltic concrete or equivalent material. Subject to the approval of the Planning Board.
5. All utility lines shall be placed underground within the park. Each mobile home lot shall be provided with water, sanitary sewer, electric lines, and telephone lines, and gas lines as needed, in compliance with applicable Codes. Fire Hydrants shall be installed as required by the Planning Board.
6. Guest automobile off-street parking areas shall be provided at a minimum ratio of one (1) parking space for each five (5) mobile home lots.
7. Street lighting shall be provided along the streets for the safety of pedestrians.
8. Refuse collection areas shall be screened from public view.
9. A minimum of two (2) vehicular entrances shall be provided for each mobile home park.
10. Exterior boundaries of the park shall be bounded by a six (6) foot high masonry wall with appropriate finish and paint or chain link fence.
11. Exterior boundaries of the parking abutting a street shall be provided with a masonry wall having a minimum height of five (5) feet and a maximum height of six (6) feet and designed in an irregular or undulating pattern to create an attractive border. The land between the wall and the street improvements shall be landscaped in accordance with a plan approved by the Planning Board and shall be maintained in good condition by the park operator.
12. Trailer and boat storage area shall be provided at the minimum ratio of seventy-five (75) square feet of land for each mobile home space.

(Law & Order Code 2006, § 800.6.3)

800.6.4 INDIVIDUAL MOBILE HOME LOT REQUIREMENTS:

1. The minimum area of any mobile home lot shall be three thousand (3,000) square feet.
2. The minimum width of any mobile home lot shall be forty (40) feet, except that at least one-half ($\frac{1}{2}$) of all lots in the park shall have a minimum width of fifty (50) feet.
3. The minimum depth of any mobile home lot shall be seventy (70) feet.
4. A minimum of two (2) off-street parking spaces shall be provided on each mobile home lot. The spaces and the drive shall be paved with asphaltic concrete or equal. Said spaces may be arranged in a tandem design if approved by the Planning Board.
5. Minimum distances from any portion of the mobile home, its accessory structures, or its parking spaces from the following lines shall be as specified:
 - a. From the front lot line - five (5) feet.
 - b. From the rear lot line - five (5) feet.
 - c. From exterior boundary of the park - fifteen (15) feet.
 - d. From another mobile home, accessory structure, or parking space on an adjoining lot - ten (10) feet.
6. Refuse containers on mobile home lots shall be screened from view except on collection days.
7. Placement of a mobile home on an approved lot and the connecting of utilities thereto shall be subject to a permit and inspection for each mobile home. Any alteration or additions on said mobile home lot shall be subject to the same requirements.
8. Minimum lot area shall be ten (10) acres for MHP use.
9. The interior landscape plan, and the exterior plantings adjacent to the street shall be subject to the approval of the Planning Board.
10. The applicant shall conform with Section 1620 - SITE PLAN REVIEW.

(Law & Order Code 2006, § 800.6.4)

Sec. 900. - Resort district, "RST".

900.1 PURPOSE: The resort district is intended primarily to provide for accommodations for seasonal visitors. The controlled access, deep setbacks and landscaping requirements are intended to enhance the value, safety and aesthetics quality of both the highway frontage and the adjacent property.

(Law & Order Code 2006, § 900.1)

900.2 USES PERMITTED: Buildings, structures or premises within the "RST" District shall hereafter be erected, altered or enlarged only for the following uses, all of which are subject to site plan approval. See SECTION 1620.

1. Resorts.
2. Hotels.
3. Motels.
4. Guest Ranches.

5. Commercial uses appurtenant thereto, such as restaurants, cocktail lounges, small retail shops; provided that the entrance to any such appurtenant use shall be from the lobby, arcade or interior patio.
6. Dwelling units having either party walls or walled courtyards made available for rent or lease.
7. Accessory building and uses customarily incidental to the permitted uses, including golf courses, tennis courts, private garage, home occupations, swimming pool, recreation buildings and walled driveway entrance.
8. Municipal uses.

Provided, that for each square foot of building and parking area, including the area of all multi-floor buildings and parking structures there shall be a minimum of two (2) square feet of functional recreational area.

(Law & Order Code 2006, § 900.2)

900.3 PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to all land and buildings in the Resort district:

1. LOT AREA: The overall site shall contain a minimum of seven and one-half (7½) acres.
2. LOT DIMENSIONS:
 - A. Width. The overall site shall have a minimum width of three hundred (300) feet.
3. DENSITY:
 - A. The minimum gross land area per guest room shall be four thousand one hundred (4,100) square feet.
 - B. The minimum gross land area per dwelling unit having either party walls or walled courtyards made available for rent or lease shall be five thousand seven hundred seventy (5,770) square feet in addition to 1. above.
 - C. Buildings may cover an aggregate area of twenty-five (25) percent of the lot area.
 - D. The Tribal Council shall regulate concentrations of density by site plan approval. See SECTION 1620.
4. BUILDING HEIGHT:
 - A. No building shall exceed thirty-five (35) feet in height.
5. YARDS:
 - A. Guest Rooms:
 1. Front: fifty (50) feet.
 2. Side: twenty-five (25) feet.
 3. Rear: twenty-five (25) feet.
 - B. Residential Dwelling Units:
 1. Front: thirty (30) feet.
 2. Side: five (5) feet.
 3. Rear: twenty-five (25) feet.
 - C. Major Structures (over one (1) story):
 1. Front: one hundred (100) feet.

2. Side: fifty (50) feet.
3. Rear: fifty (50) feet.
- D. Ancillary Structures (one (1) story maximum height): minimum twenty-five (25) feet to any other structure.
6. ACCESS: The number and location of all access points shall be approved by the Planning Board so as to protect lives and property.
7. SIGNS: See SECTION 1300.
8. PARKING: See SECTION 1100.
9. LANDSCAPING: See SECTION 1200.
10. AMENITIES: In order to qualify a project under this section the proposer must submit a complete package of amenities, including but not limited to:
 - A. Golf course (nine (9) hole minimum).
 - B. Restaurants.
 - C. Tennis courts.
 - D. Sport courts.
 - E. Swimming pools.
 - F. Jogging/walking trails and/or paths.

(Law & Order Code 2006, § 900.3)

900.4 APPROVALS: See SECTION 1620, Site Plan Review.

(Law & Order Code 2006, § 900.4)

Sec. 1000. - Special use district, "SU".

1000.1 PURPOSE: The purpose of the Special Use District is to encourage proposals for large projects, for which approvals, in another area of the Nation, the County, or the State, may be difficult to obtain.

Some examples of the land uses which may be considered, for this district, by the Tribal Council include:

1. A multi-purpose stadium (football, baseball, and/or track).
2. Dog racing track.
3. Automobile racing track (oval and drag).
4. Horse racing track.

(Law & Order Code 2006, § 1000.1)

1000.2 REQUIREMENTS: Since the Fort McDowell Yavapai Nation is limited in its overall land area it will be essential that any proposal considered by the Tribal Council must be in the best financial interest of the Nation as a whole.

A business plan focusing on the benefits to the Nation must be presented.

An environmental impact statement will be required which addresses:

Earth.

Air.

Water.

Plants.

Animals.

Energy and Natural Resources.

Environmental Health.

Noise.

Views.

Housing.

Aesthetics.

Light and Glare.

Recreation.

Historic and Cultural Preservation.

Transportation.

Public Services.

Utilities.

(Law & Order Code 2006, § 1000.2)

1000.3 APPROVALS: Prior to detailed studies or investigations the proposer should approach the Tribal Council with a concept plan to determine the possibility of future acceptance of the proposal.

(Law & Order Code 2006, § 1000.3)

Sec. 1100. - Parking.

1100.1 PURPOSE: The purpose of this section is to establish standards for adequate off-street parking, loading and maneuvering spaces for the uses permitted in this Planning Ordinance in a manner which is safe, efficient, convenient and visually attractive.

(Law & Order Code 2006, § 1100.1)

1100.2 APPLICABILITY:

1. Off-street parking and/or loading spaces shall be provided as prescribed herein at the time of:
 - a. Construction of a new building.
 - b. Any new uses of land.

- c. Enlargement or addition of any new nonresidential building or use of land.
- d. Creation of a new residential unit by adding to or subdividing an existing residential unit.

All required spaces shall be located on the lot or a contiguous lot, upon which the primary use is located.

- 2. Prior to the construction of any parking lot or the conversion of any land area for parking use, there shall be submitted to the Planning Board a Parking Plan graphically describing the location and size of all parking stalls, driveways, walkways, landscaped areas, retention basins, and other improvements. The Parking Plan may be submitted as part of the Site Plan requirement as outlined herein if the parking lot is proposed for construction in conjunction with a building or structures.

(Law & Order Code 2006, § 1100.2)

1100.3 DEFINITIONS:

- A. **Gross Floor Area:** the sum total of the areas of the floors of a building measured from the exterior faces of exterior walls or from the centerline of walls separating two (2) buildings; but not including underground parking spaces, uncovered steps, exterior balconies and exterior walkways.
- B. **Off-street Parking Space:** a properly drained area, enclosed or unenclosed, required by this Ordinance to be permanently reserved for parking one (1) motor vehicle. The size of such space shall be determined by SECTION 1100.6.
- C. **Commercial Vehicle:** any motor vehicle with a manufacturer's chassis rating greater than one (1) ton.

(Law & Order Code 2006, § 1100.3)

1100.4 GENERAL REQUIREMENTS:

- A. All required off-street parking spaces shall be connected with a street by a driveway.
- B. All parking areas and driveways shall have a surface of masonry, concrete or asphalt except in the AG or RES Districts.
- C. Minimum driveway widths with no adjacent parking shall be twenty (20) feet for two-way drives and fourteen (14) feet for one-way drives.
- D. Required parking spaces shall not occupy the required front or street side yard in residential districts.
- E. Tandem arrangement of required parking spaces is prohibited unless authorized by the Planning Board.
- F. All commercial, industrial and multi-family uses are prohibited from using alleys as access points to parking areas unless authorized by a Use Permit.
- G. Where access to a parking lot or space for uses other than single-family residential is provided by an alley, said alley shall be minimum twenty (20) feet wide.
- H. Motor vehicles may be parked in the front yard only when on an improved driveway.
- I. On residential lots one (1) acre in size or larger, one (1) commercial vehicle of any size or manufacturer's rating may be parked thereon subject to the following conditions:
 - a. The vehicle must be parked behind the rear wall of the main building on the property;
 - b. There must be ten (10) feet between the vehicle and any property line;

- c. The vehicle must be screened from street view and the views from adjacent property by combinations of walls, shrubbery, and tree plantings.
- J. All off-street parking lots shall be screened from street view and landscaped in accordance with this Ordinance.
- K. All vehicular egress from parking lots to rights-of-way shall be forward motion only, except in the case of single-family and two-family residences fronting on a street.
- L. Except where a wall is required, six (6) inch vertical concrete curbing shall be required around the perimeter of the parking area to protect landscaped areas and control vehicular circulation and the flow of storm water, and except in the AG and RES Districts.

(Law & Order Code 2006, § 1100.4)

1100.5 REQUIRED PARKING SCHEDULE: Except where noted, required parking is based on the gross square footage of the building.

A. Residential Uses:

Type	Required Parking
Single-family	2 spaces/unit
Two-family	2 spaces/unit
Mobile Home/Manufactured Housing	2 spaces/unit

B. Institutional Uses:

Churches:	
Main assembly building or area:	1 space/100 sq. ft.
Classrooms and other buildings	1 space/200 sq. ft.
Elementary and Junior High School:	1 space/classroom plus 1 space/200 square feet floor area in office use
High Schools, Colleges	1 space 200 sq. ft.
Trade or Business Schools	1 space 200 sq. ft.
Hospitals	3 space/bed

Convalescent Home	1 space/3 beds
Governmental Offices	1 space/200 sq. ft.

C. Commercial:

Auditorium, theatres, stadium or place of assembly	1 space/160 sq. ft. or 1 space/4 seats whichever is greater
Private Clubs, Lodges (no overnight accommodations)	1 space/200 sq. ft. or 1 space/5 seats in main assembly whichever is greater
Dance Halls, Skating Rinks, Amusement Center, Recreation Centers	1 space/200 sq. ft.
Day Care Center	4 spaces plus 1 space per 10 children that center is licensed to accommodate
Funeral Homes	1 space/4 seats in main assembly area or 1 space/300 sq. ft.
Medical & Dental Offices, Clinics	1 space/150 sq. ft.
General Offices & non-retail commercial	1 space/200 sq. ft.
Hotels, Motels, Boarding Homes, Guest Homes	1 1/3 spaces per sleeping room
Restaurants, Cafes, Bars, Cocktail Lounges	1 space/50 sq. ft. and 1 space/200 sq. ft. outdoor area
Retail Sales & Professional Offices	1 space/250 sq. ft.
Bulk Merchandise Sales, Nurseries, Building Materials, Equipment Rental	1 space/300 sq. ft.
Banks and Personal Service	1 space/150 sq. ft.
Bowling Alleys	4 spaces/lane

Tennis, Handball Courts	3 spaces/court
Golf Course	1 space/200 sq. ft. in main building Plus 4 spaces per green

D. Industrial (light and heavy):

Manufacturing, warehousing	1 space/500 sq. ft. PLUS 1 space/200 sq. ft. office
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- E. In the case of mixed uses, the total requirement for off-street parking space shall be in the sum of the requirements of the various uses computed separately as specified above.
- F. Cumulative parking space requirements for mixed-use occupancies may be reduced where it can be demonstrated that the peak requirements of the several occupancies occur at different times. Special exceptions to the total number of spaces required by the addition of all the uses shall be considered through the Use Permit procedure of this Ordinance if supported by a parking demand study.

(Law & Order Code 2006, § 1100.5)

1100.6 PARKING AND ACCESS STANDARDS:

A. Parking Space Sizes:

- The standard parking space shall be nine (9.0) feet wide by twenty (20) feet long unless specified otherwise by this Code.
- Parking spaces within long term parking areas servicing offices or industry may be reduced in size to eight (8) feet by eighteen (18) feet, provided the spaces are "designated" for employee parking through markings on wheel stops or pavement, use of directional signage, and/or segregation by separate driveways.

B. Parking lot aisle widths shall be in accordance with the following schedule:

	NO PARKING	ANGLE OF PARKING			
		30	45	60	90
One way aisle	14'	14'	14'	18'	24'
Two way aisle	20'	20'	20'	22'	24'

Parallel parking spaces shall be twenty-five (25) feet long.

- C. A two (2) foot wide landscape strip for vehicle overhand is permitted at the front of a parking space. Such landscape strip shall not count towards the minimum amount of landscaping required by this Ordinance.

(Law & Order Code 2006, § 1100.6)

Sec. 1200. - Landscaping.

1200.1 PURPOSE: This section is to provide standards for the installation of landscaping so as to promote the general welfare of the Nation by encouraging the creation of an attractive appearance along Nation streets and by screening the view of those uses which may be unattractive.

(Law & Order Code 2006, § 1200.1)

1200.2 APPLICABILITY: This section shall apply to all new buildings, to all new uses of land, and to additions of at least twenty-five (25) percent to existing buildings and uses in all districts. If any other Section of this Ordinance specifies a greater requirements as to landscaping requirements, that greater requirement shall prevail.

(Law & Order Code 2006, § 1200.2)

1200.3 LANDSCAPING: May include trees, shrubs, ground cover, vines, walkways, ponds, fountains, sculpture, and other organic and inorganic materials used for creating an attractive appearance.

(Law & Order Code 2006, § 1200.3)

1200.4 STANDARDS OF DESIGN AND DEVELOPMENT:

1. Commercial Districts:

- A. Each parcel to be developed shall be required to provide landscaped areas equal to a minimum of five (5) percent of the total ground floor area of buildings located on the property or two and one-half (2½) percent of the total land area of the property, whichever is greater. The area between the street right-of-way and the ultimate sidewalk may be included in the lot area both for computing land area and the area to be landscaped, if desired.
- B. Landscaping shall be established along the street frontages in the area lying between the sidewalk and any buildings, parking areas, loading area, or actual storage area on the property except for necessary driveways. Where other building or nearby parcels are built to the street property line, the required landscaping along the frontage may be modified or located elsewhere upon approval of the Planning Board.

2. Industrial Districts:

- A. Any part of the total lot area not required for buildings, structures, loading and vehicular access ways, streets, parking and utility areas, pedestrian walks and hard surfaced activity areas shall be landscaped with grass, trees, shrubs, and may include other organic materials such as water and aggregate. All landscape areas and material shall be maintained in a healthy, neat, clean, weed-free condition. Dead plant material shall be replaced with plant material of equal size and maturity.

3. Other Standards:

- A. Retention basins, where required, will be landscaped. This landscaping shall be established by the submission of a landscape plan for approval to the Planning Board.
 - B. Individual lot fencing may be required before issuance of an occupancy permit. As a part of the landscaping plan, a master fencing plan of proposed fences within the development, as well as the various materials and designs which are to be used in the fence construction shall be submitted to the Planning Board. A minimum of one (1) elevation, up to a maximum of three (3) elevation, may be submitted. Approval will be based on compatibility between the different types of fencing. Upon completion of construction, final inspection shall take place.
 - C. All landscape plans shall be stamped and signed by a registered landscape architect in the State of Arizona.
4. Screening:
- a. All outdoor storage areas for materials, trash, equipment, vehicles, or other similar items shall be provided with a screen wall, view-obscuring fence, or dense hedge at least five (5) feet in height to screen such areas from view. Automobile parking areas and areas for the display of vehicles actively for sale shall not require such screening but shall be provided with landscaping as specified in SECTION 1200.5 of this section.
5. Type and Size:
- a. Plant materials shall be of a type and size to provide a reasonable amount of vegetation within two (2) years. Provision shall be made for water service to all landscaped areas requiring water.

(Law & Order Code 2006, § 1200.4)

1200.5 PROCEDURE: Each proposed building or use shall be shown on a Site Plan indicating the location of existing and proposed buildings, parking areas, street improvements, and locations and types of landscaped areas. See SECTION 1620, Site Plan Review.

- 1. The Site Plan shall be submitted to the Planning Board as part of the application for a Building Permit. The Public Works Department shall review and approve the Site Plan prior to issuance of a Building Permit or Occupancy Permit for the property.
- 2. Prior to the actual installation of landscaping, two (2) copies of a final landscape plan shall be submitted to the Public Works Department.
- 3. All landscaping shall be installed in accordance with the approved final landscape plan prior to issuance of an Occupancy Permit.
- 4. Where the unusual nature, size, or location of specific property justifies the modification of these requirements, the Planning Board may, approve a site development plan with lesser requirements than those specified in this section.

(Law & Order Code 2006, § 1200.5)

1200.6 MAINTENANCE: Landscaped areas shall be reasonably maintained by the lessor of the property as to pruning, trimming, watering, or other requirements to create an attractive appearance for the development. Lack of maintenance shall constitute a violation of the Planning Ordinance.

(Law & Order Code 2006, § 1200.6)

1200.7 STREET TREES:

1. Street Tree and Shrub Planting List: Following is the approved plant list for material in, or adjacent to, the right-of-way. Other types of plant material are permitted with approval of the Planning Board.

- A. Trees: All trees shall have a minimum size of fifteen (15) gallons or one and one-half (1½) inch caliper, minimum.

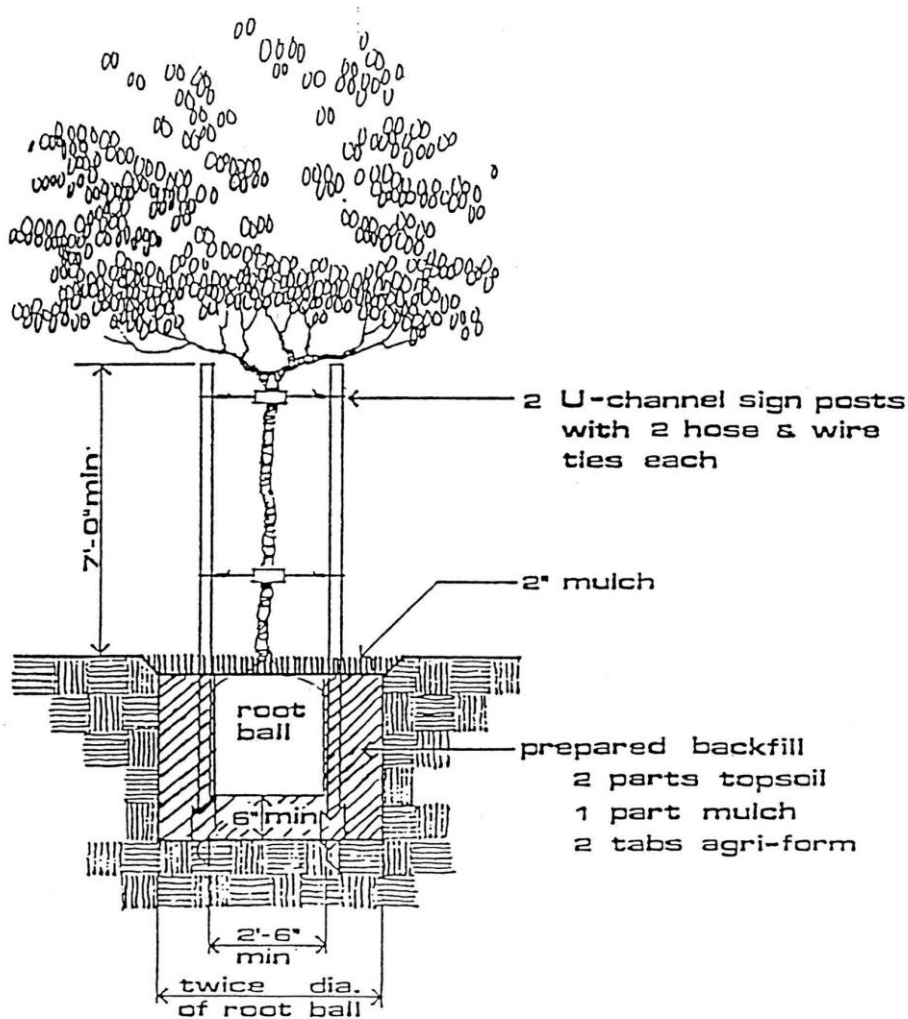
Common Name	Botanical Name
African Sumac	Rhus Lancea
Alleppo Pine	Pinus halepensis
Blue Palo Verde	Cercidium floridum
Bottle Tree	Brachychiton populneum
California Pepper	Schinus molle
Canary Island Pine	Pinus canariensis
Chilean Mesquite	Prosopis chilensis
Desert Gum	Eucalyplus rudis
Evergreen Ash	Fraxinus uhdei
Evergreen Elm	Ulmus parvifolia
Evergreen Pear	Pyrus Kawakamii
Mexican Fan Palm (5' min. height)	Washington robusta
Mexican Palo Verde	Parkinsonia aculeata
Mimosa	Albizzia julibrissin
Mondell Pine	Pinus Eldarica
Oleander Tree	Thevetia nereifolia
Olive (multi-trunk)	Olea europaea

Queen Palm	Locos plumosa
Silk Oak	Grevillea robusta
Sweet Acacia	Acacia Farneslana

B. Shrubs: All shrubs shall be a minimum five (5) gallons in size.

Common Name	Botanical Name
Bird of Paradise Bush	Poinciana Gilliesii
Feathery Cassia	Cassia Artemisioides
Fountain Grass	Pennisetum Setaceum
Japanese Privet	Ligustrum Japonicum
Juniper	Juniperus varieties
Heavenly Bamboo	Nandina Domestica
Lysiloma	Lysiloma Microphylla
Purple Hop Bush	Dodonaea Viscosa Purpurea
Pyracantha	Varieties
Silverberry	Elaeagnus Pungens
Texas Sage	Leucophyllum Texconum
Xylosma	Xylosma Senticosa

2. Street Tree Planting Detail: All street trees shall be planted in accordance with the following:



For larger trees (twenty-four (24) inches box, two and one-half (2½) inches caliper and over) a ground linked guying system with turnbuckles may be required.

(Law & Order Code 2006, § 1200.7)

Sec. 1300. - Sign Code.

1300.1 TITLE: This chapter shall be known and cited as the Fort McDowell Yavapai Nation Sign Code.

(Law & Order Code 2006, § 1300.1)

1300.2 PURPOSE: The purpose of this chapter is to regulate signs as defined herein. Also:

1. To preserve and protect the public health, safety and welfare within the Fort McDowell Yavapai Nation.
2. To encourage development of projects in harmony with the desired character of the Nation while providing due regard for the multiple interests involved.

3. To promote the effectiveness of signs by preventing their over-concentration, improper placement, and excessive size.
4. To protect the general public from damage and injury which may be caused by the faulty and uncontrolled construction of signs within the Fort McDowell Yavapai Nation.
5. To protect pedestrians and motorists of the Fort McDowell Yavapai Nation from damage or injury caused, or partially attributable to the distraction and obstructions which are hereby declared to be caused, by improperly situated signs.
6. To enhance the flow of traffic and convenience, ease and enjoyment of travel within the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 1300.2)

1300.3 INTERPRETATION OF CHAPTER:

1. Where there is a conflict between the provisions of this section and provisions of other regulations of the Fort McDowell Yavapai Nation, the provisions of this section shall apply.
2. The provisions of this section shall apply to the erection, construction, alteration, use, location, and maintenance of all signs within the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 1300.3)

1300.4 REQUIREMENT OF CONFORMITY:

It shall be illegal for a sign to be placed or maintained within the Fort McDowell Yavapai Nation except as provided by this section.

1. All signs maintained contrary to the provisions of this section are declared to be nuisances, and such nuisances may be abated as provided by the Tribal Council.
2. Any person, firm or corporation violating any provision of this section or failing to comply with any order or regulations made hereunder shall be guilty of a misdemeanor.

(Law & Order Code 2006, § 1300.4)

1300.5 NONCONFORMING SIGNS:

1. Any nonconforming sign, as defined in this section, may be continued in use and reasonable repair and maintenance made to same.
2. If any such sign is damaged or vandalized, such sign must be restored in a like manner within ninety (90) days or it shall be removed at the owner's expense.

(Law & Order Code 2006, § 1300.5)

1300.6 ENFORCEMENT:

1. Authority. The Tribal Council or its designated representative is hereby authorized to enforce all provisions of this section in conformance with the regulations and procedures specified herein.
2. Board of Appeals. In order to provide for reasonable interpretation of the provisions of this chapter, the Planning Board is hereby designated the Board of Appeals.

(Law & Order Code 2006, § 1300.6)

1300.7 VIOLATIONS AND PENALTIES:

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use or maintain any sign or structure within the Fort McDowell Yavapai Nation, or cause or permit the same to be done contrary to, or in violation of any of the provisions of this section. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a separate offense for each and every day or portion thereof during which any violation or failure to comply with this section is committed, continued or permitted. Upon conviction of any such violation, such person shall be punishable by a fine of not more than three hundred dollars (\$300.00), and costs of the removal of the sign.

(Law & Order Code 2006, § 1300.7)

1300.8 REVOCATION OF PERMITS:

The Tribal Council or its designated representative shall have the authority to revoke any permit which has been granted when it has been determined by the Tribal Council or its designated representative that the sign authorized by the permit has been constructed or is being maintained in violation of the permit.

1. Notice of the decision to revoke a sign permit shall be served on the holder of the permit by:
 - a. Delivering a copy of the notice to the holder of the permit, mail return receipt requested, to the last-known post office address of the holder of the permit; and by
 - b. Leaving a copy of the notice with any person in charge of the premises; or
 - c. In the event no such person can be found on the premises, by affixing a copy of the notice in a conspicuous position at or near the entrance to the premises.
2. The holder of the permit may appeal the decision of the Planning Board or its designated representative to the Tribal Council. This appeal must be made within thirty (30) days from the date when the notice was served.
3. If no appeal has been filed by the end of the thirty-day appeal period, then the permit is revoked and the sign is illegal. The Tribal Council shall then initiate the removal of the illegal sign.

(Law & Order Code 2006, § 1300.8)

1300.9 REMOVAL OF SIGNS:

The Tribal Council shall require the removal of any illegal sign as defined by this section.

1. Before bringing action to require the removal of any illegal sign, the Tribal Council or its designated representative shall give written notice to the owner of the sign or the owner of the premises on which the sign is located. The notice shall state reasons for removal, listing the deficiencies or defects in the sign with reasonable definiteness, and the violations charged. The notice shall include what repairs if any will make such an installation conform to the requirements of this chapter. The notice shall specify that the sign must be removed or made to conform with the provisions of this chapter within the time period listed below. Service of notice may be given personally to the owner or lessee, or by certified mail addressed to the owner or lessee at the address specified in the permit or last-known address.
2. The period of notice for permanent signs as defined by this section shall be thirty (30) days. The period of notice for temporary signs as defined by this chapter shall be three (3) working days.
3. The re-erection of any sign or substantially similar sign on the same premises after a removal notice has been issued shall be deemed a continuance of the original violation.

4. If the owner or lessee of the premises where the sign is located has not complied with this chapter by the end of the notice period, the Tribal Council may remove the sign at the owner or lessee's expense.

(Law & Order Code 2006, § 1300.9)

1300.10 EMERGENCY REMOVAL OR REPAIR:

1. The Tribal Council or its designated representative is hereby authorized to cause the immediate removal or repair of any sign or signs found to be unsafe, defective, or a traffic hazard to the extent that it creates an immediate and emergency hazard to persons or property. Actual notice to the owner or lessee shall not be required. The Tribal Council or its designated representative shall make a reasonable effort to notify the owner or lessee that the defective and unsafe sign must be removed or repaired immediately.
2. All actual costs incurred by the Tribal Council or its designated representative in the removal or repair of said sign shall be paid by the owner of the sign or the lessee of the premises where the sign is located. Action for recovery may be brought by the tribal attorney.

(Law & Order Code 2006, § 1300.10)

1300.11 DEFINITIONS:

1. Abandoned Sign: A sign, other than a billboard, which no longer correctly directs or exhorts any person, advertises a bonafide business, owner, product, activity conducted or product available on the premises where such sign is displayed.
2. Appraiser: Any licensed person, firm or corporation whose primary occupation or service is the erection, installation, renovation or alleviation of signs in the State of Arizona.
3. Attached Sign: Any sign which is attached, fastened, connected or supported in whole or in part by a building or structure which is supported wholly by the ground.
4. Banner: A temporary sign of fabric, plastic, paper or other light pliable material not enclosed in a rigid frame, and is mounted so as to allow movements of the sign by atmospheric conditions.
5. Billboard: A structure portraying information not related to a business, commodity, service, entertainment or product existing on the premises or property upon which the sign is located.
6. Block: At least six hundred sixty (660) feet of street or road frontage.
7. Building Front Foot: The distance measured along the property line on which the lot fronts. In the event that a building fronts on two (2) or more streets, one (1) of which is primarily residential, the property owner shall be given the option of selecting one (1) street frontage for the purpose of computing allowable sign area. For corner lots abutting major streets, the owner may use both streets for computing sign area.
8. Business Front Foot: The lineal distance of a building measured along a straight line parallel to the street. Where a building is not parallel to the street, the front foot shall be measured along the exterior front wall of the building.
9. Business, Outdoor Type: A business in which all or most of the business is conducted or items displayed in an open area.
10. Curbline: The line at the face of the curb nearest the street or roadway. In the absence of a curb, the curbline shall be determined by the tribal engineer.
11. Fascia: A parapet-type wall used as part of the fascia of a flat-roofed building and projecting not more than six (6) feet from the building face. Such a wall shall enclose at least three (3) sides of the project flat roof and return to a parapet wall or the building.

12. Grand Opening: The introduction, promotion or announcement of a new business, store, shopping center or office or the announcement, introduction or promotion of an established business or the changing of ownership.
13. Ground level: The finished grade of existing sidewalk; or where there is no sidewalk, the street center line elevation shall be the established ground level.
14. Height of Sign: The distance measured from average ground level to the top of the sign.
15. Illegal Sign: Includes any sign except the following:
 - (a) A sign allowed by this section and not requiring a permit.
 - (b) A sign allowed by this section with a permit.
 - (c) A sign not allowed by this section but which has been legalized by variance and proper permit.
 - (d) A sign allowed by this section subject to a use permit, provided the use permit has been granted and a proper permit is in force.
 - (e) A nonconforming sign as defined by this section.
16. Indirect lighting: A source of external illumination located a distance away from the sign, which lights the sign, but which lighting is itself not visible to persons viewing the sign from any normal viewing position.
17. Internal lighting: A source of illumination entirely within the sign which makes the contents of the sign visible at night by means of the light being transmitted through a translucent material but where in the source of the illumination is not visible.
18. Internal Indirect Lighting: A source of illumination entirely within the sign visible at night by means of lighting the background upon which the freestanding character is mounted. The character itself shall be opaque, and thus will be silhouetted against the background. The source of the illumination shall not be visible.
19. Maintenance: The replacing or repairing a part or portion of a sign made unusable by ordering wear or tear, not exceeding fifty (50) percent of the sign's value, as determined by an appraiser.
20. Marquee: A permanent roofed structure attached to and supported by the building and projecting over public property walks, drives, etc.
21. Multiple-Tenant Commercial Building: A commercial building or development in which exists two (2) or more separate commercial activities, where appurtenant shared facilities exist (such as parking or pedestrian mall, and which is designed to provide a single area in which the public can obtain varied products and services). Distinguishing characteristics may but need not include common wall construction or multi-occupant commercial use of a single structure.
22. Parapet Wall: A wall extending above the plate line of the building.
23. Plate Line: The point at which any part of the roof structure first touches or bears upon an external wall.
24. Roof Line: The height of the main roof structure but not to include cupolas, projections or other minor raised portions of the roof.
25. Sign: Any visual communications which is used to attract the attention of the public, when the display is visible beyond the boundaries of the property. The term "sign" shall not include any flag, insignia or badge of any governmental or government agency or of any civic, charitable, religious, patriotic or fraternal organization, window displays construction, and maintenance of official traffic, fire, police signs, signals, markings or other devices required by any tribally authorized agency.
26. Sign area: The entire area within a single continuous perimeter of the sign or any existing border of the sign to exclude the necessary supports or uprights on which the sign is placed. In

any event, composition of allowable sign area includes all existing signs on the premises, whether such signs be conforming or nonconforming under the terms of this chapter. Where a sign is double faced or V-shaped, both sides shall be used to determine sign area.

27. Sign, Change Panel: A sign designed to permit immediate change of copy which may be other than the name of the business.
28. Sign, Directory: A sign designed to show the relative locations of the shopping center or other multi-tenant development and/or building.
29. Sign, freestanding: A sign which is supported by one (1) or more uprights or poles, and braced in or upon the ground, including billboards.
30. Sign, Low-Profile: A sign not exceeding a six-foot height. The finished grade of existing sidewalk, or where there is no sidewalk, the street center line elevation shall be the established ground level.
31. Sign, Nonconforming: Any sign which is not permitted by this SECTION, but which, when first constructed, was legally permitted by the Tribal Council.
32. Sign, On-Site: A sign directing attention to a business commodity, service or entertainment conducted, sold or offered on the same premises as those upon which the sign is located.
33. Sign, Permanent: Any sign constructed and intended to be of enduring and lasting condition, remaining unchanged in character, condition (beyond normal wear) and position.
34. Sign, Portable: any sign not permanently attached to the ground or to a structure on the property it occupies.
35. Sign, Projecting: Any sign attached to a building or other structure and extending in whole or in part not more than eighteen (18) inches beyond the building line.
36. Sign, Temporary: Any sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, or other like materials, with or without frames, intended to be displayed for a short period of time (less than thirty (30) days).
37. Sign, V-Shaped: Signs erected upon common or separate structures which present a V-shape appearance and having an exterior angle between faces of not more than forty-five (45) degrees with a distance between faces of such signs at their closest point not exceeding two (2) feet.
38. Sign, Vehicle: Any sign mounted or painted upon or otherwise erected on a trailer, truck, automobile or other vehicle so parked or placed so that the signs thereon are visible from a street or right-of-way.
39. Sign, Window: Any permanent sign affixed to the interior or exterior of a window so as to attract the attention of persons outside the building.
40. Uniform Building Code: The edition of the Uniform Building Code adopted for use by the Fort McDowell Yavapai Nation.
41. V/C Case Type Materials: Those which have a flame spread rating of two hundred twenty-five (225) or less when tested in accordance with Uniform Building Code Standard No. 42-1 in the way intended for use, or a smoke density rating no greater than seventy-five (75) when tested in the thickness intended for use by the Chamber Method of test under Uniform Building Code Standard No. 52-2. The products of combustion shall be no more toxic than those of untreated wood when burned under similar conditions.

(Law & Order Code 2006, § 1300.11)

1300.12 REQUIREMENTS AND PROCEDURES:

1. Permits Required: No sign shall hereafter be erected, re-erected, constructed or altered except as provided by this SECTION. A separate permit shall be required for a sign, or signs, for each business entity, and/or separate permit shall be required for each group of signs on a single supporting structure. Where signs are illuminated electrically, a separate electrical permit shall be obtained as required by the National Electrical Code.
2. Exceptions: A permit shall not be required for the following signs; however, such signs shall be subject to any and all applicable provisions of this SECTION:
 1. Nameplate signs.
 2. Any sign six (6) square feet or less in area not otherwise prohibited by this SECTION.
 3. Repainting and/or copy change.
 4. Relocation as required by the Tribal Council.
 5. Signs erected during the Christmas holidays as identification of temporary sales areas for Christmas trees and other holiday oriented items; such signs shall not be erected before Thanksgiving and shall be removed within ten (10) working days after New Year's Day.
 6. Political signs, as permitted in SECTION 1300.15.
 7. Interior signs not visible to public right-of-way.
 8. Grand opening signs as provided for in SECTION 1300.15.
 9. Nothing contained herein shall prevent the erection, construction, and maintenance of official traffic, fire and police signs, signals, devices, or the posting of notices required by the Tribal Council.
3. Permit Application and Expiration:
 1. Permit Required. Except as otherwise noted in this section, it shall be unlawful for any persons to erect, alter, construct or relocated any sign within the Fort McDowell Yavapai Nation without first obtaining a permit. In addition, electrical permits are required for electrically illuminated signs.
 2. Application. A sign permit application shall be made in writing upon forms provided by the Planning Department. This application shall contain the location by street and number of the proposed sign, as well as the name and address of the business owner and/or the sign contractor. Two (2) copies of plans and specifications shall be submitted with the application for each sign, one (1) copy being returned to the applicant at the time the permit is issued. All plans shall show complete details, to include size, materials, method of support or attachments, name and address of the persons firm designing said and plot plan showing location of sign on the premises. Billboards or free-standing signs may require a Tribal Council approved lease.
 3. Revocation of permits for non-use. If actual work is not commenced under any permit issued under the provisions of this SECTION within ninety (90) days from the date of such permit, or upon completion of building, such permit shall become null and void.
4. Permit Fees: Before issuing any sign permit required by this SECTION, the Planning Department shall collect a fee in accordance with the following schedule:

Five (5) percent of the value of the sign plus fifty cents (\$0.50) per square foot, minimum fee of fifty dollars (\$50.00). If work for which a permit is required by this section is started before a permit has been issued, the fees specified above shall be doubled; but the payment of such double fee shall not relieve any persons from complying fully with the requirements of this SECTION in the execution of the work or from any penalties prescribed herein.
5. Construction Requirements:

1. Code conformance. All signs shall be designed and constructed in conformance with all applicable adopted codes, See SECTION 1610.
2. Lighting. When allowed, lighting shall not be installed so as to create a traffic hazard as determined by the tribal engineer.
6. Guy Wires: In no case shall any such sign be secured with wires or strips of wood which are visible and are not on an integral part of the sign.
7. Prohibited Lighting and Movement:
 1. Lighting sources. No exposed incandescent bulbs exceeding forty (40) watts each, neon or similar tube type of illumination exceeding thirty (30) milliamps shall be permitted. No flashing, blinking or rotating lights shall be permitted, nor shall the sign contain audible sound, odor or visible matter (excluding time/temperature signs).
 2. Action signs. There shall be no movement of the sign body or any segment thereof such as rotating, moving up and down, or any other type of action involving a change in position of the sign body or segment thereof, whether caused by mechanical or any other means.
8. Required Signs: Every building or group of buildings must be identified by a street number not to exceed three (3) square feet in area legible from the adjacent street(s).
9. Location Requirements:
 1. Clearance from fire escapes, exits or standpipes. No sign or structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit or standpipe.
 2. Obstructions of openings. No sign shall obstruct traffic by obstructing the vision of motorists as determined by the tribal engineer.
 3. Construction over public property. No person, firm or corporation shall erect or cause to be erected any sign which projects over any public sidewalk, street, alley or public place.
 4. Signs on vehicles. No sign shall be erected or attached to any vehicle except for standard advertising or identification markings which are painted on or permanently attached to a business or commercial vehicle. The primary use of such vehicles shall be in the operation of the business and not in advertising or identifying the business premises.
 5. Signs in public right-of-way. No sign shall be erected or maintained in the public right-of-way except as provided herein.
10. Inspections: All signs for which a permit is required shall be subject to the following inspections:
 1. Footing inspection on all freestanding signs exceeding fifty (50) square feet in area.
 2. All signs containing electrical wiring shall be subject to the National Electrical Code and the electrical components shall bear the label of an approved testing agency.
 3. Inspection of all braces, anchors, supports and connection, including wall signs.
 4. Shop and/or site inspection to ensure that the sign has been constructed according to approved application and valid sign permit.
11. Identification:
 - (a) All permanent signs regulated by this SECTION shall be marked with the maker's name and the person or firm erecting such sign, the date of installation, and the permit number. This identification shall be permanently attached to the exterior surface of the sign in a location where the information will be readily visible, legible, and accessible after installation of the sign. Such identification shall be furnished by the sign maker.
 - (b) Temporary signs shall be marked to show permit number and expiration date.

12. Maintenance: Each sign shall be maintained in good order and repair at all time so that it constitutes no danger or hazard to public safety.

(Law & Order Code 2006, § 1300.12)

1300.13 PROHIBITED SIGNS:

Signs prohibited under this chapter include the Following:

1. A-frame signs and portable signs of any nature, other than those provided in SECTION 1300.15.
2. Outlining of a building by means of neon lighting, incandescent lighting or other exposed artificial lighting.
3. A fixed balloon used as a sign. (Means any lighter-than-air or gas-filled balloon attached by a tether to a fixed place).
4. Signs over forty-five (45) feet in height.
5. Abandoned signs.

(Law & Order Code 2006, § 1300.13)

1300.14 SIGNS PERMITTED:

1. Single-Family Residence: A single-family residence is allowed one (1) nameplate sign only, not to exceed five (5) feet in height or two (2) square feet in area, if it is freestanding. The sign shall not be illuminated, except by indirect lighting.
2. Multiple-Family Residence:
 1. The total permanent sign area allowed, including wall signs and freestanding signs, is one (1) square foot for each dwelling unit, with a minimum area of three (3) square feet. However, in no instance shall this total sign area exceed sixty (60) square feet, with no more than thirty-two (32) square feet fronting on any one (1) street.
 2. For other permitted buildings, the sign area permitted shall not exceed thirty-two (32) square feet.
 3. Traffic directional signs are allowed on the site.
3. Mobile Home Parks: Signs in mobile home parks are the same as provided for multiple-family residence.
4. Public Uses, Institutional Uses, Schools, Churches and Other Permitted Buildings:
 1. For public uses, schools, churches, and other permitted buildings, the total permanent sign area allowed, including wall signs and freestanding signs, is thirty-six (36) square feet.
 2. Temporary signs as provided in section 1300.15 are permitted.
 3. One-half (½) of the freestanding sign area may be a change panel sign.
 4. Traffic directional signs are allowed on the site.
5. "COM-1" District. In the "COM-1" District, signs shall not exceed one (1) square foot in area for each one (1) linear foot of business frontage, relating only to service, articles and products offered within the building. Said signs shall be wall, or window mounted, on or under an architectural projection. The sign shall not project more than two (2) feet from the building. One (1) detached sign, not to exceed one hundred (100) square feet in total area, is allowed per

developed area with multitenants, to reflect the name, address, and nature of occupancy. No sign shall exceed twenty (20) feet in height.

6. "COM-2" District. Signs shall meet the following requirements in the "COM-2" District:
 1. Signs shall not exceed two (2) square feet in area for each linear foot of business frontage, relating only to service, articles and products offered within the building. Said signs shall be wall, or window mounted, on or under an architectural projection. The sign shall not project more than two (2) feet from the building. No attached sign shall exceed two hundred (200) square feet in area.
 2. One (1) detached sign for each developed area or parcel no to exceed one (1) square foot of sign area for each linear foot of business frontage. Where the developed parcel has an excess of three hundred (300) feet of street frontage, one (1) additional detached sign may be erected for each additional three hundred (300) feet street frontage, not to exceed two (2) detached signs per block. In no event will said additional signs be located closer than three hundred (300) feet to each other.
 3. In no event shall the total combined area of all detached signs exceed four hundred (400) square feet for each developed parcel.
 4. Traffic directional signs are permitted, provided they are no higher than three (3) feet. The sign may be internally illuminated or nonilluminated. Traffic directional signs are subject to approval of the Tribal engineer.
 5. No sign shall exceed thirty (30) feet in height.
7. "COM-3" Highway Commercial District: Signs shall meet the following requirements in the "COM-3" District:
 1. Signs shall not exceed two (2) square feet in area for each linear foot of business frontage, relating only to service, articles and products offered within the building. Said signs shall be wall, or window mounted, on or under an architectural projection. The sign shall not project more than two (2) feet from the building. No attached sign shall exceed two hundred fifty (250) square feet in area.
 2. One (1) detached sign for each developed area or parcel not to exceed one and one-half (1½) square feet of sign area for each linear foot of business frontage. Where the developed parcel under single ownership has an excess of three hundred (300) feet of street frontage, one (1) additional detached bonus sign may be erected for each additional three hundred (300) feet of street frontage, not to exceed two (2) detached signs per city block. In no event will bonus signs be located closer than three hundred (300) feet to each other.
 3. In no event shall the total combined area of all detached signs exceed four hundred fifty (450) square feet.
 4. No sign shall exceed thirty-five (35) feet in height.
 5. Traffic directional signs are permitted, provided they are no higher than three (3) feet. The sign may be internally illuminated or nonilluminated. Traffic directional signs are subject to approval of the tribal engineer and not included in area calculations.
 6. Billboards are permitted along the Beeline Highway only. Such signs are permitted only by a lease and subject to the following:
 - A. Outdoor advertising signs may be internally illuminated, indirectly illuminated, or directly illuminated.
 - B. No such sign structure shall be erected in any block in which fifty (50) percent or more of the lots in that block are being used for a residential purpose. If a sign is erected on a corner lot, that sign shall be considered to be in the block along the street to which the sign is oriented.

- C. No part of a sign structure shall be erected closer than six (6) feet to a future street right-of-way or the front setback of a building which is within one hundred (100) feet whichever is the greater; however, when a sign is erected between two (2) buildings which are within one hundred (100) feet of the sign, the sign shall not be erected closer to that street than a line drawn from the nearest front corner of each building. When a sign is erected within three (3) feet of a building only that building setback need to be maintained.
 - D. Such sign structure must maintain a side yard setback from any adjacent residential zoning district or residential use equal to that of the residential zoning district or half the sign's structure height, whichever is greater.
 - E. No such sign structure may be closer than one thousand (1,000) feet to any other such sign structure on the same side of the same street and oriented to that street unless said structures are back-to-back, or V-shaped. No such sign shall be closer than eight (8) feet to ground level or thirty-five (35) feet in height. For purposes of this section, a sign structure may be back-to-back, or V-shaped.
 - F. No such sign structure face area or combination of sign structure face areas shall exceed three hundred twenty (320) square feet unless double-faced or V-shaped.
 - G. Embellishments shall not extend more than five and one-half (5½) feet above or below the horizontal edges of the sign structure face area and not more than three (3) feet beyond any vertical edge of the sign structure face area. Neonized embellishments shall conform to the requirements of the National Electrical Code. The total area of all such embellishments shall not increase the total area of the outdoor advertising structure face area to which they are attached by more than twenty (20) percent.
 - H. On any lot contiguous to a residential zoning district or separate therefrom only by an alley, no such illuminated sign structure may be placed within one hundred (100) feet of said residential district in such a manner that any portion of the face of the sign is visible to the adjacent residential district.
 - I. Outdoor advertising signs shall not be erected or painted upon the roof or wall of any building, nor shall any such sign be partially or totally supported by the roof structure of any building.
 - J. Any variance or exception to the foregoing shall be approved by the Planning Board.
8. Industrial Zones: In industrial zones, permitted signs shall be in accordance with provisions in the "COM-3" District.
 9. "AG" District. In "AG" District:
 1. Single family homes in the "AG" district shall comply with SECTION 1300.14.1.
 2. Farms, or commercial farming operation, in the "AG" district shall be permitted one (1) identification sign not exceeding twenty-four (24) square feet in area.
 3. Billboards are permitted in accordance with the provisions set forth in the "COM-3" zone.
 10. Shingle Signs: Shingle signs are used to identify businesses whose front entrance is under a roof overhang. These signs are included as part of permitted sign area.
 1. Only one (1) sign shall be allowed for each business front, and a permit is required for such sign.
 2. The sign must be perpendicular to the building front and shall contain not more than four (4) square feet.
 3. The sign shall be a minimum of eight (8) feet above the sidewalk.
 4. No part of the sign shall project beyond the overhang of the roof or any corner of the building.

5. The shingle sign shall contain the name of the business only.
11. Window Signs: Window signs may be painted on or otherwise displayed from the surface of any window, showcase or other similar facility. The area of such signs shall not exceed twenty-five (25) percent of the area of the window on which it is displayed. The area of said sign shall be included in the total allowed sign area.

(Law & Order Code 2006, § 1300.14)

1300.15 TEMPORARY SIGNS:

1. Contractor Signs: Contractor signs designating the contractor or subcontractor engaged in the construction or repair of a building or buildings on each parcel of the shall be allowed one (1) nonilluminated sign.
 1. The area of any single sign shall not exceed thirty-two (32) square feet in area nor exceed eight (8) feet in height.
 2. The sign shall be removed within ten (10) days of completion of the work by the contractor or subcontractor on the property.
 3. All contractors or subcontractors sign shall be consolidated on one (1) sign. The area of a consolidated sign is calculated at six (6) square feet per contractor or subcontractor listed with a maximum sign area of one hundred (100) square feet for six (6) or more contractors. Said sign shall not exceed eight (8) feet in height or be located closer than ten (10) feet to a public right-of-way.
2. Development Signs:
 1. A sign permit shall be required for the erection of a development sign and is valid for a period of one (1) year.
 2. One (1) single or double-faced freestanding sign is allowed upon the parcel of property to be developed unless it is a corner lot, in which case one (1) such sign per street front.
 3. The face area of said sign shall not exceed thirty-two (32) square feet for the first acre or portion thereof. When the proposed parcel for development exceeds one (1) acre in size, the sign area may be increased four (4) square feet for each additional acre or portion thereof, not to exceed ninety-six (96) square feet.
 4. These signs shall not exceed fifteen (15) feet in height or be located closer than ten (10) feet to a public right-of-way.
 5. Such sign or signs shall be removed within ten (10) days after completion of the announced development or one (1) year, whichever is first.
3. Grand Opening Signs:
 1. A grand opening sign is a temporary sign which calls attention to a new business or institutional use. These signs are allowed in any district in which the commercial, industrial or institutional uses are permitted.
 2. The sign or signs shall not be displayed for more than thirty (30) days.
 3. Only one (1) grand opening sign shall be allowed per use.
4. Political Signs.
 1. Political and campaign signs on behalf of candidates for public office or urging action on primary, general or special election ballots are permitted in all planning districts.

2. The display is limited to sixty (60) days immediately preceding any primary, general or special elections to which they refer, and shall be removed ten (10) days following said election.
3. The person, party or parties responsible for the erection or distribution of any such signs shall be jointly and individually liable for their removal.
4. The total sign area in residential districts shall not exceed ten (10) square feet per home, nor five (5) feet in height. Total sign area in commercial and industrial districts shall not exceed fifty (50) square feet in area, nor eight (8) feet in height.
5. The sign shall not be placed in or upon any public right-of-way and/or including utility poles in said right-of-way.

(Law & Order Code 2006, § 1300.15)

Sec. 1400. - Certificates of occupancy.

1400.1 CERTIFICATE OF OCCUPANCY FOR A BUILDING: Certificate of Occupancy for a new building or the reconstruction or alteration of an existing building shall be applied for coincident with the application for a building permit. Said certificate shall be issued within three (3) days after the request for same shall have been made in writing to the Planning Department after the erection or alteration of such building or part thereof shall have been completed, in conformity with the provisions of this Ordinance.

(Law & Order Code 2006, § 1400.1)

1400.2 TEMPORARY CERTIFICATE OF OCCUPANCY: Pending the issuance of a regular certificate, a temporary certificate of occupancy may be issued by the Planning Department for a period not exceeding one (1) year, during the completion of alterations, compliances with conditions as defined herein, or during partial occupancy of a building pending its completion. The issuance of temporary certificates shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the Nation relating to the use or occupancy of the premises of any other matter covered by this Ordinance. Such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the health, safety and welfare of the occupants.

(Law & Order Code 2006, § 1400.2)

1400.3 STATEMENT OF COMPLIANCE WITH LAW, RECORD, COPIES AND FEES: Certificate of Occupancy shall state that the building or proposed use of a building or land complies with all the building and health laws and ordinances and with the provisions of this Ordinance. A record of all certificates shall be kept on file in the office of the Planning Department and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building affected. No fee shall be charged for a Certificate of Occupancy.

(Law & Order Code 2006, § 1400.3)

Sec. 1500. - Architectural and engineering reviews.

1500.1 INTENT AND PURPOSE: To protect and enhance the distinctive character and natural attractiveness of the Fort McDowell Yavapai Nation in furtherance of the health, safety, and welfare of the people. It is also the intent of this provision to protect the Nation against bizarre, out of scale development and to guard against the destruction of areas of cultural and historical significance.

(Law & Order Code 2006, § 1500.1)

1500.2 REVIEW REQUIREMENTS AND PROCEDURE:

1. Prior to the preparation of final architectural or engineering drawings and the issuance of a construction permit for any building project within the Fort McDowell Yavapai Nation, the proposed developer shall submit the following for review.
 - A. An application, to be furnished by the Planning Department, which shall include applicant's name, mailing address, location of property, legal description of property and such other information as deemed necessary by the Planning Department for the Architectural and/or Engineering Review.
 - B. Three (3) sets (for preliminary and/or final submittals) of the site plans drawn to scale, the area covered by building, parking areas, landscaping treatment, grading, paving, water, sewer, or other utilities, and specifications.
 - C. Rendered elevations of the front, sides, and rear of the building, to scale, adequately illustrating the building's character and treatment.
 - D. A list of all construction materials, and specifications, and colors.
 - E. After bid award, a list of all subcontractors.
2. Prior to the issuance of a building or construction permit, the Planning Department shall determine (1) if a review panel shall be called, or (2) approve the plan(s) and certify that the plans conform with permit or application and that the time limitations imposed by this Ordinance shall not have elapsed.
3. Prior to any change in the exterior character of a building the property user or his designated agent shall secure approval of the Planning Department.
4. An Architectural or Engineering Review panel may impose on establish such conditions as it may deem necessary in order to fully carry out the provisions and intent of this Ordinance. A notation of the action shall be indelibly imprinted on each sheet of the plans. One (1) set shall be retained in the Planning Department's file and one (1) set shall be returned to the developer.
5. The Planning Department shall insure that all plans as approved are undertaken and completed according to the approval. An action for injunctive relief may be instituted if such work is attempted without or contrary to the approval and may take such other action as is authorized by law.
6. The Review Panel shall be composed of such professional architects or engineers as required for the proposed development or improvement and shall include representatives of the various Nation departments affected by such review.
7. In considering any application for Architectural or Engineering Review, the Director of Planning shall be guided by the following criteria:
 - A. The architectural character of the proposed structures or structure shall be in harmony with and compatible to those structures in the neighboring environment.
 - B. The architectural character of the proposed structure or structures shall be in harmony with, and compatible to, the architectural character for any given areas which may hereinafter be adopted.
 - C. Excessive similarity or dissimilarity of design, unless an extension of an existing building may be considered harmful and inappropriate.

(Law & Order Code 2006, § 1500.2)

Sec. 1600. - Preliminary site plan review.

1600.1 PURPOSE: The purpose of these special regulations is to define the requirements necessary for project development review within the Nation.

(Law & Order Code 2006, § 1600.1)

1600.2 PRELIMINARY SITE PLAN AND LAND USE REVIEW:

1. **PRELIMINARY PROJECT REVIEW:** Prior to submitting any documents for Planning Department review all applicants shall meet with the Planning Department staff for an initial, conceptual, review of the proposed project. The applicant shall be prepared to discuss the proposed scope, general size, and desired location of the project. NOTE: All lands within the Nation boundary are under the control of the Tribal Council. No attempt shall be made to survey, walk, or fly over for the purpose of aerial photography, any lands without the written permission of the Planning Department.

The Planning Department staff will review with the applicant the Master Plan, the Planning Ordinance, and any other documents, information, and/or reports which may be of assistance to the applicant.

2. **PRELIMINARY SITE PLAN AND PROJECT NARRATIVE:** The applicant shall, at his sole expense and risk, prepare a preliminary site plan of the project in accordance with SECTION 1620.

During preparation of the preliminary site plan and with written Planning Department approval the applicant and/or his architect, engineer, surveyor, or others may have access to the general site location for the purpose of obtaining surface (vegetation, topography, drainage, etc.) information. Subsurface investigations and any damage to native vegetation is strictly prohibited. The applicant may with Planning Department approval install four (4), three (3) foot long wooden lath with fabric (not plastic) ribbon attached to assist the Planning Department staff, The Planning Board, and the Tribal Council in locating the subject parcel.

A project narrative shall be prepared by the applicant. This narrative shall be a written description of the project describing in detail:

- A. The nature of the project, size, description of materials, hours of operation, type of use, etc.
- B. The desired location for the project and the reasoning why this particular location was chosen. Described alternate suitable locations.
- C. The projected number of employees; full and part-time in yearly increments until full employment, or occupancy, is achieved.
- D. The proposed financing for the project, including bank references.
- E. Projected gross revenues for each of the first five (5) years.
- F. Personal and/or partnership and/or corporate financial statements.
- G. Any possible adverse environmental impacts caused by the proposed project such as air, water, noise, and light pollution. Discuss proposed mitigation measures.
- H. The proposed benefits to the Nation in terms of:
 1. Training and/or employment of Nation residents.
 2. Use of CNation available building materials.
 3. Use of CNation nursery and landscape materials.
 4. Use of other CNation resources and services.

5. Revenue to the CNation.
6. Other benefits.
 - I. All utility requirements including water supply, sewerage disposal, solid waste disposal, electrical, and storm water detention.
 - J. Similar projects developed or constructed by the applicant including location, size, and other pertinent data. Include photographs.
3. PRELIMINARY SUBMITTAL: The applicant shall submit ten (10) copies of the preliminary site plan (18"x24" or 24"x36") and ten (10) bound copies of the project narrative to the Planning Department staff.
4. STAFF REVIEW: Planning Department staff shall notify the applicant within ten (10) working days after the preliminary submittal of either:
 1. A need for additional information or
 2. The date upon which the staff will present the preliminary site plan and project narrative to the Tribal Council for their initial review.

Upon presentation to the Tribal Council the staff shall submit, in writing, its recommendations for 1.) approval, 2.) approval with conditions, 3.) revisions and resubmission, or 4.) denial.
5. TRIBAL COUNCIL PRELIMINARY REVIEW: The applicant will not be present during the review and presentation of the preliminary submittal to the Council unless requested to appear by the staff. The Tribal Council shall have thirty (30) calendar days in which to review the preliminary submittal, visit the proposed and alternate sites, visit projects of similar scope and size, contact applicant references, and in general analyze the project and its impacts upon the CNation.
6. TRIBAL COUNCIL DECISION: The Tribal Council will review each application and render a decision which will be transmitted to the applicant by the Planning Department.

(Law & Order Code 2006, § 1600.2)

Sec. 1610. - Codes, registrations, and design.

1610.1 APPLICABLE CODES: The purpose of this section is to define those codes, used in the design and construction process, which shall be employed for the development and building plans specifications. All codes and/or design manuals cited shall be the latest editions.

(Law & Order Code 2006, § 1610.2)

1610.2 ADOPTED CODES:

1. UNIFORM BUILDING CODE.
2. UNIFORM MECHANICAL CODE.
3. UNIFORM FIRE CODE.
4. NATIONAL ELECTRICAL CODE.
5. UNIFORM PLUMBING CODE.
6. UNIFORM STANDARD DETAILS FOR PUBLIC WORKS CONSTRUCTION BY MARICOPA ASSOCIATION OF GOVERNMENTS.
7. UNIFORM STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION by MARICOPA ASSOCIATION OF GOVERNMENTS.

(Law & Order Code 2006, § 1610.2)

1610.3 PROFESSIONAL REGISTRATIONS:

1. All engineering designs shall be performed by State of Arizona professional engineers, duly qualified in the field for which the plans and specifications are being submitted.
2. All architectural designs shall be performed by State of Arizona registered architects, duly qualified in the field for which the plans and specifications are being submitted.
3. All other professions utilized in the preparations of plans and specifications for construction projects shall be registered in the State of Arizona. This shall include surveyors, landscape architects, geologists, etc.

(Law & Order Code 2006, § 1610.3)

1610.4. DESIGN.

1. General. Designs shall conform to a southwest theme. All architectural designs may be subject to SECTION 1500.
2. Civil. The civil engineering designs for storm sewer, sanitary sewer, on-site detention/retention, street lighting, grading, paving, etc. shall be the same as those required by the City of Mesa.

(Law & Order Code 2006, § 1610.4)

Sec. 1620. - Site plan review.

1620.1 PURPOSE: The principal intent of this SECTION is to provide for the detailed review of a Site Plan where new developments are proposed. This review is necessary to eliminate or minimize land use conflicts and to prevent incompatible relationships and uses.

Also, it is intended that SITE PLAN REVIEW occur concurrently with the requirements as set forth in SECTION 1600.

- A. PROCEDURE: Site Plan approval is required by this Ordinance. The applicant shall submit to the Planning Department the following information:
 1. A Site Plan drawn to scale and in such manner as to clearly indicate precisely what is planned for the subject property and shall include all of the following information:
 - a. Lot dimensions.
 - b. All buildings and structures existing and proposed.
 - c. Yards and space between buildings.
 - d. Walls, fences, and landscaping.
 - e. Vehicular, pedestrian, and service access.
 - f. Off-street parking facilities including number of spaces and dimensions of parking area.
 - g. Signs and lighting including location, size, height, and method of illumination.
 - h. Outdoor storage and activities.
 - i. Drainage and grading plans.
 - j. Waste disposal facilities.

- k. Street locations and improvements of each.
 - l. Other such data as may assist in determining the effect of the development on surrounding property.
 - m. Topography (existing and proposed).
- 2. The Planning Board shall meet to review and approve the stipulations being necessary to protect the Nation's interest or to deny the Site Plan.
- 3. The Planning Board may find that special conditions require one (1) or more of the following:
 - a. Additional building setbacks.
 - b. Height limitations.
 - c. Limited vehicular access.
 - d. Walls, fences, and screening devices.
 - e. Off-site improvements in rights-of-way adjacent to the subject property.
- 4. The Planning Board's decision shall be final unless the applicant files, in writing, within five (5) working days of the receipt of the decision a request that a public hearing be scheduled before the Tribal Council.

(Law & Order Code 2006, § 1620.1)

Sec. 1630. - Use permits.

Land uses permitted by a Use Permit are identified under each district established within this Code. Approval of Use Permits shall be subject to the following procedure:

1630.1 APPLICATION: Application procedures for Use Permits shall be the same as applications for variances (SECTION 1640.6) to the Planning Ordinance. The Planning Board shall make a recommendation to the Tribal Council on applications after proper advertising of public notices and posting of property.

(Law & Order Code 2006, § 1630.1)

1630.2 REVIEW: As required by SECTION 1620, Site Plan Review, a plan of development shall be submitted for review. Such review and approval of Use Permits shall include, but not be limited to, examination of the following factors, where applicable:

- 1. Consistency with Master Land Use Plan.
- 2. Ingress and egress to property and proposed structures, pedestrian and vehicular circulation with particular reference to fire protection.
- 3. Off-street parking and loading.
- 4. General compatibility of use with adjacent property and property in the district.
- 5. Impact on public services including schools, recreation and utilities.
- 6. Screening and buffering of uses.
- 7. Signage.
- 8. Exterior lighting with reference to adjacent properties.
- 9. Storm water retention and landscaping.

10. Site and building design.

(Law & Order Code 2006, § 1630.2)

1630.3 APPROVAL: Use Permits may be granted by the Tribal Council following a Planning Board hearing upon a finding that the request:

1. Is in conformance with the Master Land Use Plan and its policies.
2. Will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to tribal welfare in general, and that the use will be in full conformity with the conditions, requirements, or standards prescribed by this Code, or higher, as may be deemed necessary by the Tribal Council in any one situation. Minor changes to any approved plan may be approved by the Planning Board. Any major deviations must be approved by the Tribal Council.

(Law & Order Code 2006, § 1630.3)

1630.4 Unless otherwise stipulated, Use Permits shall be valid for a period of one (1) year.

(Law & Order Code 2006, § 1630.4)

Sec. 1640. - Planning board.

1640.1 CREATION AND MEMBERSHIP: There is hereby created a "Planning Board". The Planning Board shall have a minimum of five (5) members to a maximum of eleven (11) members as determined by the Tribal Council. All Planning Board members shall be appointed by the Tribal Council for terms in office as specified by the Tribal Council. Tribal members, and others outside of tribal membership may be appointed by the Tribal Council. The Tribal President shall designate the Chairman of the Planning Board.

(Law & Order Code 2006, § 1640.1)

1640.2 MEETINGS OF THE PLANNING BOARD: All meetings of the Planning Board shall be held at the call of the Chairman. All meetings of the Planning Board shall be open to the public. All members shall be notified by the Chairman at least two (2) days in advance for special meetings.

The Planning Board shall meet, at least, one (1) time per month, on the first Wednesday of each month at 1:00 p.m. at the Tribal Headquarters or at such of there place or time as the Chairman directs.

(Law & Order Code 2006, § 1640.2)

1640.3 RULES, REGULATIONS, AND RECORDS: The Planning Board may make and publish rules and regulations to govern its proceedings. The Chairman shall designate one (1) individual, not necessarily a Board member, to act as Secretary for the taking, typing, filing, and where required the publication, of the Minutes of the Planning Board.

The Secretary shall record the proceedings of the Planning Board and record the vote of each member for the written record. The proceedings of the Planning Board shall be public.

(Law & Order Code 2006, § 1640.3)

1640.4 POWERS AND DUTIES: The powers and duties of the Planning Board are granted by the Tribal Council for the betterment, protection, and enhancement of all members of the Fort McDowell Yavapai Nation.

The Planning Board shall not convene, hear appeals, or conduct any business without a quorum being present.

The Planning Board shall have the power to:

1. Hear appeals.
2. Make recommendations to the Tribal Council.
3. Determine appropriate and inappropriate land uses.
4. Grant variances.
5. Require performance greater than that specified in the Planning Ordinance.
6. Hear requests for amendments to the Master Land Use Plan.

(Law & Order Code 2006, § 1640.4)

1640.5 APPEALS TO ADMINISTRATIVE DECISIONS: Appeals may be taken to the Planning Board by any person aggrieved by any officer, consultant, department head, or employee of the Nation, as a result of a decision made by any officer, consultant, department head or employee of the Nation.

Said appeal shall be filed within thirty (30) days of the date of said action by filing with the Planning Board Chairman all papers, maps, drawings, details, and/or samples constituting the record upon which the appealed action is taken from.

An appeal shall stay all proceedings in the matter appealed from, unless the officer, etc. from whom the appeal is taken certifies to the Board that by reason of the fact stated in the certificate, the stay would in his opinion cause imminent peril to life and/or property. In such case, proceedings or enforcement may not be stayed.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties in interest and the public.

The concurring vote of a majority of the Board shall be necessary to reverse any order or decision of an officer, etc., or to pass or to affect any variations from the terms and conditions of this Ordinance.

Under certain conditions the Planning Board may elect to refer the appeal directly to the Tribal Council for a decision. The Planning Board may also render a decision and refer that decision to the Tribal Council for concurrence.

There are no appeals from Tribal Council decisions and/or actions.

Nothing in this section shall be construed to reduce, prohibit, or interfere with the actions of any law enforcement official on the Nation.

(Law & Order Code 2006, § 1640.5)

1640.6 APPLICATION FOR VARIANCES: A request for a variance of planning regulations shall be made to the Chairman of the Planning Board in written form. Said request shall be filed with the Secretary of the Board, and shall be accompanied by:

1. Plans and description sufficient to indicate the nature of the project involved and the proposed use with site plans and elevations of all proposed buildings; together with estimate of construction cost.
2. Data to indicate why, in the applicant's opinion, there are special circumstances applicable to this property, including its size, shape, topography, location or surroundings that in a strict application of the Planning Code would deprive such property of privileges enjoyed by other property of the same classification in the same planning district.
3. Data to indicate that the requested variance does not constitute a grant of special privileges inconsistent with limitations upon other properties in the vicinity and district in which this property is located.
4. Information to indicate that the special circumstances applicable to the property were or are not self-imposed.
5. Satisfactory evidence of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within six (6) months after issuance of the variance.
6. A filing fee, as established by the Planning Board.
7. From the time of filing the application until the time of such hearing, the application and all maps, plans, and other accompanying data shall be available for public inspection during office hours at the office of the Planning Board.

(Law & Order Code 2006, § 1640.6)

1640.7 NOTICE AND HEARING: Upon receipt in proper form of any request for Board action as listed in SECTION 1640.4 the Chairman shall proceed to hold a public hearing upon said request not more than forty-five (45) days nor less than thirty (30) days after such filing at which time all persons shall be given an opportunity to be heard. The Chairman of the Planning Board shall cause one (1) notice to be published in the local newspaper, said notice is to be published at least fifteen (15) days prior to the hearing. One (1) notice shall be prominently displayed on the subject property, and at least two (2) other notices displayed within three hundred (300) feet of the property giving at least ten (10) days' notice of the hearing, and the time and place where said hearing will be held. Said notice, both published and posted, shall show the nature of the request and state that anyone wishing to speak in favor, or in protest, may appear in person or submit their comments in writing for the record.

(Law & Order Code 2006, § 1640.7)

1640.8 FINDINGS: The Chairman shall review the application and make findings as required by this section. A variance from the provisions of this Planning Ordinance shall not be authorized unless the Chairman, with concurrence of a majority of the Board voting, shall find upon sufficient evidence:

1. That there are special circumstances or conditions applying to the land, building or use referred to in the application which do not apply to other properties in the district; and
2. That such special circumstances were not created by the applicant; and
3. That the authorizing of the variance is necessary for the preservation and use of the property; and
4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the general welfare of the public.

(Law & Order Code 2006, § 1640.8)

1640.9 ACTION: The Planning Board shall prescribe in connection with any variance such conditions as he may deem necessary in order to fully carry out the provisions and intent of this Planning Ordinance. Such conditions may include, among other things, a limitation of the time for which variance shall be valid. Violation of any such condition shall be a violation of this Planning Ordinance and such violation shall render the variance null and void.

(Law & Order Code 2006, § 1640.9)

1640.10 NOTICES AND FINDINGS FOR APPEALS: Appeals from the decisions of the Planning Board may be taken to the Tribal Council pursuant to SECTION 1640.5. In the event an appeal is taken, the requirements of notice, public hearing, and specific findings of SECTION 1640.7 and 1640.8 shall apply to the proceedings of the Tribal Council.

(Law & Order Code 2006, § 1640.10)

Sec. 1650. - Planned area developments.

1650.1 PURPOSE: Planned Area Developments (PAD) are created to allow an applicant maximum flexibility in designing quality residential, commercial, or industrial developments which could not be achieved by strict adherence to the terms of this Ordinance. A PAD shall consist of a minimum net site area of one (1) acre. Requests for modification to the terms of this Ordinance shall be permitted except for modification to densities and uses. The following plans, therefore, shall be required at specified stages in processing of such proposals.

(Law & Order Code 2006, § 1650.1)

1650.2 PRELIMINARY PAD: A preliminary PAD shall show locations of all buildings, typical groups of buildings, garages and/or parking areas, driveways and access ways, all elevations of buildings to be erected on the site, and the proposed use of all land. The preliminary PAD shall also list proposed project and percentages thereof designated for residential use and for other permitted recreational and nonresidential uses. PAD's proposed for residential uses shall show locations and types of dwellings, including typical floor plans. A tabulation of proposed density shall also be shown. Such Preliminary PAD shall be submitted to the Planning Department.

The Preliminary PAD shall be heard by the Planning Board and may be heard by the Tribal Council. A recommendation of approval of a preliminary PAD by the Planning Board shall be void if the PAD has not been approved by the Tribal Council within one (1) year of the Board action. Any modifications to an approved Preliminary PAD shall be approved by the Planning Board and Tribal Council as specified for the initial application.

(Law & Order Code 2006, § 1650.2)

1650.3 FINAL PAD: When development is proposed, a Final Plan of Development shall be prepared in conformance with the approved preliminary PAD and shall show the actual locations and dimensions of buildings, parking areas, loading and refuse areas, access ways, accessory buildings, landscaping, open spaces and all elevations.

Once a preliminary of the Final PAD has been approved, it can be modified only with the approval of the Planning Board. Requests for modifications shall be processed according to the following procedures:

- A. For modifications pertaining to an individual lot or dwelling unit, that are not in conflict with this Ordinance or modifications granted by the Tribal Council or Council imposed condition, the request shall require the written approval of the Planning Board.

- B. A PAD shall be considered final only when a Certificate of Occupancy is issued for either a phase of the project, or the total project.

(Law & Order Code 2006, § 1650.3)

Sec. 1660. - Surveys.

1660.1 PURPOSE: To establish guidelines and requirements for surveys of parcel within the Nation.

(Law & Order Code 2006, § 1660.1)

1660.2 SURVEY REQUIREMENTS:

1. Every approved land use will require a survey of the subject parcel. Each survey shall be drawn on either 24"x36" or 18"x24" material. Said material shall be three (3) mil or five (5) mil double matte mylar using permanent india ink. Only the original survey drawing or photographically reproduced copy of the survey will be accepted. Sepia mylars are not acceptable. The scale of the drawing shall be 1" = 50'.
2. Additionally the survey shall:
 - A. Be performed by a registered land surveyor, licensed to practice in the State of Arizona.
 - B. Be stamped, signed and dated by the surveyor.
 - C. Include the existing topography at two-foot vertical contour intervals.
 - D. Indicate the location of all corners of the subject property.
 - E. Contain a complete and accurate legal description of the subject property.
 - F. Show all existing vegetation.
 - G. Indicate the area in square feet, and acres.
 - H. Show all buildings, roads, streets, utilities, and any other improvements within three hundred (300) feet of the exterior boundary of the parcel.
 - I. Show ties to a section corner and at least one (1) of the following:
 - a.) Another section corner.
 - b.) A quarter corner.
 - c.) Center of the section.
 - J. Show on its face the coordinates for each corner based upon the Arizona State Plane Coordinate System.
 - K. Indicate a True North arrow.
 - L. Show a bearing (in degrees, minutes, and seconds) and a distance (in feet and hundredths of feet) for each line.
 - M. Show for each curve:

a.) Length of tangent	T
b.) Degree of curvature	D

c.) Length of curve	L
d.) Radius	R
e.) Delta	D
f.) External	E

N. Indicate at a scale of 1"=1000' the section(s) breakdown with bearings and distances (down to quarter sections) and indicate the location of the parcel within the section(s).

3. Upon acceptance of the survey the parcel corners shall be monumented by the surveyor using steel rods. The surveyor shall place on top of the steel rod a tight fitting plastic cap with his/her registration number and an indentation indicating the true location of the point.

In the case where the surveyor must either retrace or relocate section corners, quarter-section corners, or center-of-section monuments the surveyor shall:

- A. Provide copies of all notes, field notes, original surveys, etc. used to relocate the corners.
- B. Monument the corners per MAG Standard Detail 120-2, Type E.
- C. Provide a stamped, signed, and dated drawing of suitable scale, with all witness post information relating to each corner re-established.

(Law & Order Code 2006, § 1660.2)

Sec. 1670. - Ground leases.

1670.1 PURPOSE: The purpose of this section is to inform those interested in development on the lands of the Fort McDowell Yavapai Nation the procedures required to obtain leases to specific parcels of Nation property.

(Law & Order Code 2006, § 1670.1)

1670.2 INITIAL REQUIREMENTS: Prior to submitting to the Planning Department for any portion of project review the project proponent shall meet with the Planning Department staff for an initial project review. Following initial review the proponent shall submit a written description of the proposed project as required in SECTION 1600.

The proponent shall submit a written request with the above information to the Tribal Council for a ground lease covering that area which is necessary and/or desired for the proposed project.

No project will be taken under formal review by the Planning Board, until the Tribal Council has notified the Planning Board, and the proponent, that the general nature of the project, its location, ground lease terms, and any other items deemed pertinent by the Tribal Council have been resolved and that the project may proceed at the total risk of the proponent.

(Law & Order Code 2006, § 1670.2)

1670.3 MODIFICATIONS: During discussions between the proponent and the Tribal Council regarding the ground lease the Planning Board and the Planning Department may make recommendations for approval, denial, revisions, and/or modifications to the project.

(Law & Order Code 2006, § 1670.3)

1670.4 SITE PLAN REVIEW: Following any and all modifications to the proponents proposal, and prior to the preparation of the final lease agreement, the project shall be reviewed under SECTIONS 1600 and 1610 of this Ordinance.

(Law & Order Code 2006, § 1670.4)

1670.5 FORM OF LEASE: A blank copy of the standard lease agreement follows this section. Be advised that the example shown is for the simplest type of lease and that, depending upon the project, the lease will be tailored to the applicable circumstances.

(Law & Order Code 2006, § 1670.5)

1670.6 INFORMATION DEVELOPMENT PROCEDURES STANDARD LEASE:

DEVELOPMENT PROPOSAL PROCEDURES:

STAGE I: PRELIMINARY REVIEW BY THE TRIBAL COUNCIL.

1. The Tribal Council shall refer each applicant to the Planning Board who shall work with the applicant to develop a proposal suitable for preliminary review.
2. Prior to presenting the concept/plan proposal to the Tribal Council, the applicant shall be required to complete the appropriate sections of the Request for Preliminary Proposal Review form and pay fees, as follows:

Two hundred fifty dollars (\$250.00) Minimum filing fee (all applicants).

Five hundred dollars (\$500.00) Maximum filing fee (for leases one (1) year owner).

One hundred dollars (\$100.00) Purchase of appropriate ordinances.

Two hundred fifty dollars (\$250.00) Purchase of Master Plan (if Necessary).

Two hundred fifty dollars (\$250.00)—eight hundred fifty dollars (\$850.00). TOTAL FEES.

3. If, upon review by the Planning Board, it is determined that the application is in the best interest of the CNation, it shall be referred to the Tribal Council. If the Tribal Council rejects the proposal, it shall be returned to the applicant, who will then either withdraw it or resubmit with appropriate revisions, at which time it will be treated as a new proposal and begin again at Step #1, above, including the payment of additional filing fees as deemed appropriate.

STAGE II: REVIEW BY THE PLANNING BOARD

4. The Planning Board will review the proposal and will notify the applicant of what additional detail and/or information may be required before the Board can make a determination. (NOTE: The Board may request information several times before it feels it has everything needed to make an informed judgment.)
5. The Planning Board, after reviewing all the applicant's information and any other necessary data about the proposal, shall issue a non-binding recommendation to the Tribal Council.

STAGE III: FINAL SITE PLAN APPROVAL BY TRIBAL COUNCIL

6. If the Tribal Council adopts the Planning Board's recommendation(s) or modifies same in a manner consistent with these recommendations, the Tribal Council shall direct Planning Board to obtain written design/construction recommendations for this proposal. Design Review fee to be paid: as determined the review requirements of each proposal.

(Law & Order Code 2006, § 1670.6)

1670.7 Planning Board recommendations will be reviewed modified and/or approved by the Tribal Council, constituting final site plan approval for the proposal.

(Law & Order Code 2006, § 1670.7)

1670.8 STAGE IV: PREPARATION, INSPECTIONS AND OCCUPANCY: Planning Board shall review all plans and specifications for each project and/or phase thereof and issue an approval of the construction documents prior to the commencement of any work. Plans and specifications review fee shall be determined by Planning Board, based upon scope of each project, with a minimum fee of one thousand five hundred dollars (\$1,500.00).

(Law & Order Code 2006, § 1670.8)

1670.9 Tribal Council to authorize Planning Board to negotiate/prepare, lease agreement, which will include a B.I.A. appraisal. Lease preparation/other legal fees to be determined by Planning Board, based upon time and complexity, with a minimum fee of five hundred dollars (\$500.00).

(Law & Order Code 2006, § 1670.9)

1670.10 Tribal Council, applicant and BIA execute Lease Agreement.

(Law & Order Code 2006, § 1670.10)

1670.11 Planning Board issues a Notice to Proceed on behalf of the CNation.

(Law & Order Code 2006, § 1670.11)

1670.12 Planning Board will be responsible for construction inspection for all stages/phases of development. Construction inspection fees are dependent upon project size, complexity and length of construction time, and will be set by Planning Board on an individual project basis.

(Law & Order Code 2006, § 1670.12)

1670.13 Planning Board issues a certificate of Occupancy on behalf of the CNation to the applicant, at which time proposed use(s) may begin as dictated by the Lease Agreement.

NOTES TO APPLICANTS:

- A. Applicants are cautioned to work all above through Planning Board directly. If you are needed for an appearance at a Tribal Council or Planning Board meeting, it will be scheduled by Planning Board.
- B. All fees are to be remitted to Planning Board directly, but checks must be made payable to: "Fort McDowell Yavapai Nation".

- C. Enclosed is a copy of the CNation's Standard Lease Form and Preliminary Proposal Review Form. Please do not plan to begin a review of your proposal until you have reviewed the Lease, completed the Proposal Review form and attached appropriate payment. The CNation has directed that no proposal be reviewed until these Step #1 procedures have been completed.

REQUEST FOR PRELIMINARY PROPOSAL REVIEW

PROPOSAL NO. _____

Applicant _____ Date _____

Address _____

Phone _____ Signature _____

Name of Proposal _____

Preferred Location _____

Alternate Location _____

Land Area needed (est.) _____ Construction cost (est.) _____

Describe Proposal _____

Is Project to be phased? _____ (Describe Phasing Sequence Above)

DO NOT WRITE BEYOND THIS LINE

Development Proposal Procedures _____ Date _____

Purchase of Master Plan - \$250.00 _____ Date _____

Purchase of Ordinance(s) - \$100.00 _____ Date _____

Filing Fee - \$500.00 _____ Date _____

(Initial)

Planning Comments _____

LEASE

FORT MCDOWELL YAVAPAI NATION Lease No. _____ U.S. INTERIOR DEPARTMENT,
BIA

PHOENIX AREA, SALT RIVER AGENCY OFFICE Contract No. _____

THIS CONTRACT, made and entered into this _____ / _____ / _____ day
of _____ / _____ / _____, A.D. 20 _____, by and between Ft.
McDowell In. Comm. (the Secretary of the Interior acting for and on behalf of the Indians) hereinafter
called the "lessor," and _____ of _____, hereinafter called the "lessee"
in accordance with the provisions of existing law and the regulations (25 CFR 162) which by reference
are made a part hereof.

WITNESSETH, That for and in consideration of the rents, covenants, and agreements hereinafter provided, the lessor hereby lets and leases unto the lessee the land and premises described as follows, to wit:

_____ containing _____ acres, more or less, for the term of _____ years, beginning on the _____ / _____ / _____ day _____ / _____ / _____, 20 _____, to be used only for the following purposes: _____

The lessee, in consideration of the foregoing, covenants and agrees, as rental for the land and premises, to pay:

TO DATE DUE AMOUNT

_____/_____/_____
_____/_____/_____
_____/_____/_____
_____/_____/_____
_____/_____/_____
_____/_____/_____
_____/_____/_____
_____/_____/_____
_____/_____/_____
_____/_____/_____

This lease is subject to the following provisions:

1. "SECRETARY" as used herein means the Secretary of the Interior or his authorized representative.
2. IMPROVEMENTS. Unless otherwise provided herein it is understood and agreed that any buildings or other improvements placed upon the said land by the lessee become the property of the lessor upon termination or expiration of this lease.
3. UNLAWFUL CONDUCT. The lessee agrees that he will not use or cause to be used any part of said premises for any unlawful conduct or purpose.
4. SUBLEASES AND ASSIGNMENTS. Unless otherwise provided herein, a sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of all parties to this lease, including the surety or sureties.
5. INTEREST. It is understood and agreed between the parties hereto that, if any installment of rental is not paid within thirty (30) days after becoming due, interest at the rate of six (6) percent per annum will become due and payable from the date such rental become due and will run until said rental is paid.
6. RELINQUISHMENT OF SUPERVISION BY THE SECRETARY. Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however,

such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified by the Secretary of any such change in the status of the land.

7. RENTAL ADJUSTMENT. The rental provisions in all leases which are granted for a term of more than five (5) years and which are not based primarily on percentages of income produced by the land shall be subject to review and adjustment by the Secretary at not less than five-year intervals in accordance with the regulations in 25 CFR. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by this contract or the contribution value of such improvements.
8. INTEREST OF MEMBER OF CONGRESS. No Member of, or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.
9. VIOLATIONS OF LEASE. It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations in 25 CFR.
10. ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS. No asset, express or implied, to any breach of any of the lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.
11. UPON WHOM BINDING. It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, successors, executors, and administrators of the parties of this lease. While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of its sureties, are to the United States as well as to the owner of the land.
12. APPROVAL. It is further understood and agreed between the parties hereto that this lease shall be valid and binding only after approval by the Secretary.
13. ADDITIONS. Prior to execution of this lease, provision(s) number(s) 1A inclusive, page(s) 3- has (have) been added hereto and by reference is (are) made a part hereof.

Fort McDowell Yavapai Nation

P.O. Box 17779

Fountain Hills, Arizona 85268

SPECIAL PROVISIONS

14. In the event the Lessee violates this Agreement, the Lessee shall be served with written notice detailing said violation(s) and requiring that, within ten (10) days, the Lessee must show cause why this Lease Agreement should not be cancelled. If corrective action may be taken by the Lessee, the Lessee shall be granted a reasonable length of time to implement such measures; otherwise or if the Lessee fails to cure the breach or furnish satisfactory reason(s) why this Lease Agreement should not be cancelled, written notice shall be given to the Lessee by the Lessor that the Lease Agreement is terminated and a demand made for full payment of all obligations and for the Lessor's possession of the property.
15. To resolve any conflicts between the Lessee and Lessor, it is hereby agreed that the Secretary of Interior (or his authorized designee within the Bureau of Indian Affairs) shall mediate such disputes and issue a recommendation for resolution. If either/both parties are not satisfied with the Secretary's recommendation(s), it is hereby agreed by the Lessee and Lessor to submit the dispute within ten (10) days following the formal issuance of the Secretary's recommendation(s) to a binding arbitration panel which shall consist of one (1) member appointed by the Lessor,

one (1) by the Lessee and a third, who shall chair this panel, appointed by the first two (2) members. The Lessor and Lessee shall equally share all costs of the arbitration and agree to accept the decision reached in arbitration as final and binding. Attorneys, professional arbiters or other similar professional reports who have no direct interest in this Lease Agreement shall be the only ones qualified to serve on the arbitration panel and the Secretary of Interior (or his designee) shall make a final and binding decision as to panel member(s) qualifications if asked to do so by either Lessor or Lessee.

16. Indemnification and Hold Harmless: Nothing contained within this Lease Agreement shall be construed against the Lessor's rights to its full exercise of sovereignty and self determination except as expressly waived for specific and limited purposes within this Lease Agreement and/or Special Conditions. The Lessee acknowledges that, by the Lessor granting this Lease Agreement, no fee simple or any other similar interest or right is being conveyed by the Lessor to line Lessee, and any/all prior agreements or understandings between the Lessor and Lessee, written or oral, are hereby superceded and replaced by this Lease Agreement. The Lessee hereby agrees to indemnify and hold the Lessor blameless from any suits, judgments or other actions resulting from the Lessee's actions arising from the Lessee's conduct under this Lease Agreement. The Lessee further agrees to furnish the Lessor with certificate(s) of insurance as may be required in the Special Conditions, to keep said insurance current at all times and to continue to supply insurance renewal certificates to the Lessor on no less than an annual basis. At a minimum, the Lessee shall obtain liability insurance for an amount of at least \$ _____ which names the Lessor as co-insured. All required insurance certificates must be provided prior to the commencement of any/all permitted uses by the Lessee and prior to any renewal of this Lease Agreement.
17. The Lessee hereby agrees to maintain said property and any/all improvements made thereon and to conduct all affairs in a lawful, safe, neat, clean and healthy manner consistent with Tribal, state and federal laws, rules and/or regulations governing similar operations on and off Nation lands. The Lessee further agrees to assume full and complete responsibility for obtaining any requisite governmental permits, approvals, etc. as may be required and to also assume full responsibility for the collection and/or payment of any/all taxes, license, franchise and/or other fees that may be due to Tribal, city, county, state, federal or other entities.
18. In lieu of payment of a Tribal sales tax, the Lessee hereby agrees to make a quarterly payment, no more than fifteen (15) business days following the end of each March, June, September and December of each and every year of this Lease Agreement, equal to three (3) percent of total gross revenues earned by the Lessee for any/all business activities conducted on subject lands. Upon written request by the Lessor, the Lessee shall furnish necessary business and accounting records to the Lessor to corroborate that accurate and appropriate payments are being made in compliance with this provision. Failure on the part of the Lessee to furnish appropriate documentation to the Lessor within a reasonable period of time shall constitute a breach of this Lease Agreement.

Witnesses (two (2) to each signature).

_____	_____
P. O. _____	<i>Lessee.</i>
_____	_____
P. O. _____	<i>Lessee.</i>

_____	FOR FORT MCDOWELL YAVAPAI NATION, BY:
P. O. _____	(PRESIDENT, TRIBAL COUNCIL) <i>Lessor.</i>
_____	ATTEST
P. O. _____	<i>Lessor.</i>
_____	_____
P. O. _____	<i>Lessor.</i>
_____	_____
P. O. _____	<i>Lessor.</i>
_____	_____
P. O. _____	<i>Lessor.</i>
_____	_____
P. O. _____	<i>Lessor.</i>
_____	_____
P. O. _____	<i>Lessor.</i>
_____	_____
P. O. _____	<i>Lessor.</i>
Approved _____ / _____ / _____, 20 _____	_____ <i>Approving Official.</i>

RULES OF PROCEDURE FOR PLANNING ADVISORY BOARD

I. ORGANIZATION.

II. MEMBERS; ATTENDANCE.

III. MEETINGS.

- A. Roll call. Roll is called by the Secretary. A quorum must be present to transact business.
- B. Reading and approval of minutes of previous meeting. The minutes are presented by the Secretary and approved by the Board Members.
- C. Communications from Tribal Council.
- D. Unfinished business.
- E. Hearing of applications.
- F. Reports. These might include reports of Board (and staff) members in regard to planning and zoning studies conducted, subdivision plans, results of hearings of special reports requested by the Council.
- G. Resolutions. These might involve formal expressions of will or intent on any matters which are to be submitted to the Council for consideration.
- H. Communications and miscellaneous business.

IV. OFFICIAL RECORDS.

Definition. The official records shall include these rules and regulations, and the minutes of the Board together with all findings, decisions and other official actions.

Amendment Procedure. Amendments to these rules may be made by the Board, upon the affirmative vote of a majority of members; providing any such amendment is proposed at a preceding meeting, or is submitted in writing at a prior regular meeting of the Board, and is spread on the minutes of such meeting or meetings. Amendments adopted as above shall become effective at the next regular meeting of the Board.

(Law & Order Code 2006, § 1670.13)

Chapter 19 - ANTIQUITIES AND ARCHAEOLOGICAL SITES

Sec. 19-1. - Title.

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

(Law & Order Code 2006, § 19-1)

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 Nation all articles and material discovered, collected or excavated, together with all photographs and records relating to such objects.

(Law & Order Code 2006, § 19-2)

Sec. 19-3. - Policy.

It is the policy of the Fort McDowell Yavapai Nation that sites within the external boundaries of the Nation 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.

(Law & Order Code 2006, § 19-3)

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 Nation, 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.

(Law & Order Code 2006, § 19-4)

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 Nation 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 Nation to be held by the Nation through its appropriate agencies or lent by the Nation to such other appropriate agencies for such period of time as seems reasonable to the archaeological officer of the Fort McDowell Yavapai Nation, and upon such other conditions as the archaeological officer of the Fort McDowell Yavapai Nation 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 (1) year, but permits may be renewed.

(Law & Order Code 2006, § 19-5)

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 Nation.

(Law & Order Code 2006, § 19-6)

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 Tribal 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 Tribal Council, as of a date thirty (30) days after the date of submission to the Tribal Council. The regulations may be amended from time to time by the same process as required for adoption.

(Law & Order Code 2006, § 19-7)

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 Nation or any person or entity as described in section 19-5 who is retained by the Fort McDowell Yavapai Nation.
- B. The permittee shall, prior to the issuance of the permit, post a bond payable to the Fort McDowell Yavapai Nation either in cash or its equivalent, or by a surety acceptable to the Fort McDowell Yavapai Nation, 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 Nation, and to assure performance of all the conditions of the permit, or in such other amount, as may be determined by the archaeological officer.

(Law & Order Code 2006, § 19-8)

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 Nation shall report promptly to the archaeological officer of the Fort McDowell Yavapai Nation 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.

(Law & Order Code 2006, § 19-9)

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.

(Law & Order Code 2006, § 19-10)

Chapter 20 - PROPERTY

[**HISTORICAL NOTE:** Added by Resolution No. 95-25, effective March 27, 1995.]

ARTICLE I. - IN GENERAL

Sec. 20-1. - Purpose and intent.

This Chapter shall be interpreted and construed to fulfill the following purposes:

- A. To simplify the law governing the occupation of premises and to protect the rights of lessors and lessees.
- B. To preserve the peace, harmony, safety, health and general welfare of the people of the Nation and those permitted to enter upon or reside within the territory of the Nation.
- C. To provide for the assignment of lands within the territory of the Nation to members of the Nation in general and in a manner which will facilitate financing for the construction and/or purchase of family residences upon such lands.

- D. To provide eviction procedures and to require lessors to use those procedures when evicting lessees.
- E. To encourage lessors and lessees to maintain and improve premises within the territory of the Nation in order to improve the quality of housing as a resource of the Nation.
- F. To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees of property.
- G. To avail the Nation and its members of financing for the construction and/or purchase of family residences on land within the territory of the Nation by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans.
- H. To establish laws and procedures which are necessary in order to obtain funding for Tribal housing programs or loan guarantees for private or Tribal housing construction, purchase, or renovation.
- I. To establish procedures governing condemnation of property by the Nation or other exercises of the Nation's power of eminent domain.
- J. To establish laws and procedures governing the repossession and removal from the territory of the Nation of personal property.

(Law & Order Code 2006, § 20-1; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-2. - Applicability of chapter.

Except as otherwise expressly provided, this Chapter shall apply to any and all arrangements, formal or informal, written or oral or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all forms of property.

(Law & Order Code 2006, § 20-2; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-3. - Jurisdiction.

- A. This Chapter shall apply to all persons and property, personal and real, subject to the jurisdiction of the Nation as established by the Constitution of the Nation; the inherent sovereignty of the Nation; and other applicable laws, regulations, and ordinances.
- B. The Tribal Court shall have exclusive subject matter jurisdiction over any and all proceedings authorized to be brought in Tribal Court by this Chapter and personal jurisdiction over all persons and property, personal and real, subject of such proceedings.
- C. Nothing in this Chapter shall be construed as a limitation upon the sovereignty or sovereign immunity of the Nation or jurisdiction of the Nation or Tribal Court.

(Law & Order Code 2006, § 20-3; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-4. - Supplementary principles of law applicable.

The common law of the Nation, as defined in the first paragraph of Section 5-1 of Article I of Chapter 5 of this Law and Order Code, shall supplement the provisions of this Chapter.

(Law & Order Code 2006, § 20-4; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-5. - Severability.

If any article, section, or provision of this Chapter or amendment made by this Chapter is held invalid, the remaining articles, sections or provisions of this Chapter and amendments made by this Chapter shall continue in full force and effect.

(Law & Order Code 2006, § 20-5; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-6. - Definitions.

As used in this Chapter:

- A. **Tribal Council** means the Tribal Council of the Fort McDowell Yavapai Nation of the Fort McDowell Indian Reservation as defined in the Constitution of the Fort McDowell Yavapai Nation.
- B. **Laws of the Nation** has the same meaning as that term is explained in the first paragraph of Section 5-1 of Article I of Chapter 5 of this Law and Order Code.
- C. **Territory of the Nation** means the physical territory of the Fort McDowell Yavapai Nation as it is described in its Constitution and shall include the lawful jurisdiction of the Nation provided nothing in this subsection shall be construed to limit the physical territory, jurisdiction, or sovereignty of the Nation.
- D. **Tribal Court** means the Tribal Court as established by the Constitution and/or laws of the Nation or such body as may now or hereafter be authorized by the laws of the Nation.
- E. **Tribe** refers to the Fort McDowell Yavapai Nation of the Fort McDowell Indian Reservation as defined in the Constitution of the Nation and its agencies, departments, divisions, instrumentalities, economic enterprises, and officials thereof.
- F. **Gender; number.** Reference to persons by terms denoting sex shall be taken as referring to either sex. Reference to persons or things by a term denoting the singular shall include the plural.

(Law & Order Code 2006, § 20-6; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-7—20-10. - Reserved.

ARTICLE II. - RECORDING

Sec. 20-11. - Applicability.

Any instrument affecting real property, as that term is defined in this Article, shall be recorded as provided by this Article.

(Law & Order Code 2006, § 20-11; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-12. - Definitions.

As used in this Article:

- A. **Grantee** means any person or entity, such as a mortgagor, lessee, or purchaser, who receives any interest in real property by assignment, deed, mortgage, lease, installment contract, rental agreement, or other agreement by a grantor; such term shall include any person or entity on any instrument affecting real property who is granted an interest in real property by another.
- B. **Grantor** means the Nation or any other person or entity, such as a mortgagee, lessor, or seller, who has an interest in real property and assigns, sells, mortgages, leases, conveys by installment contract, rents, or otherwise transfers all or some of its interest in such real property; such term shall

include any person or entity on any instrument affecting real property who grants an interest in real property to another.

- C. **Instrument affecting real property or "instrument"** means any document or instrument related to or affecting the transfer of an interest in real property or part thereof, including, but not limited to, a land assignment, deed, mortgage, installment contract, lien, lease, rental agreement, sublease or assignment, or any other instruments the Tribal Council may designate by law or resolution to be included under this Article. Notwithstanding the fact that households and homes are classified as personal property in other sections of this code, instruments relating to households or homes must be recorded under this Article.
- D. **Recorder** refers to the Land Use/Lease Department of the Nation or other agency, department, or official properly designated by resolution or law of the Tribal Council to perform the functions required under this Article.

(Law & Order Code 2006, § 20-12; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-13. - Priority.

- A. An instrument affecting real property recorded in accordance with this Article shall be notice to all persons and entities of the existence of the transaction or transfer and any rights, interests, or liabilities created thereby.
- B. Unless otherwise expressly provided by the laws of the Nation, any instrument affecting real property recorded in accordance with this Article shall have priority over any instrument, lien, or claim not recorded at the time of such recording unless there is notice, actual or constructive, of the existence of such unrecorded instrument, lien, or claim.
- C. Instruments affecting real property executed before enactment of this Article shall not be subject to subsection B of this Section. Unless otherwise expressly provided by the laws of the Nation, an instrument affecting real property executed before the enactment of this Article shall have priority over any subsequent instrument, lien, or claim *provided* such prior instrument has been recorded in accordance with this Article or there is notice, actual or constructive, of the existence of such prior instrument.
- D. An unrecorded instrument shall have priority over any subsequent unrecorded instrument, lien, or claim.
- E. Except as provided in Section 20-104(c), a lien or claim of the Nation shall have priority over any and all other instruments, liens, and claims without regard to recordation, notice, or priority in time.

(Sec. 20-13 amended by Resolution No. McD. 2000-114, effective September 26, 2000.)

(Law & Order Code 2006, § 20-13; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2000-114, eff. 9-26-2000)

Sec. 20-14. - Recording.

- A. The recorder shall perform the recording functions under this Article.
- B. The recorder shall maintain, within its own system of records, a system for the recording of instruments affecting real property.
- C. The recorder shall endorse upon any instrument affecting real property received for recording under this Article:
 - 1. The date and time of receipt of the instrument affecting real property;

2. The filing number, to be assigned by the recording agent, which shall be a unique number for each instrument affecting real property; and
 3. The name of the individual recorder receiving the instrument affecting real property. Upon completion of the above endorsements, the recorder shall make a true and correct copy of the instrument affecting real property and shall notarize such copy. The recorder shall maintain such copy of the instrument affecting real property in the records of the recording system and shall return the original of the instrument affecting real property to the person that presented the same for recording.
- D. The recorder shall maintain a log of each recorded instrument affecting real property, in which there shall be entered:
1. The name of the grantor of each instrument, identified as such;
 2. The name of the grantee of each instrument, identified as such;
 3. The date and time of receipt;
 4. The filing number assigned by the recorder;
 5. The name of the individual recorder receiving the instrument affecting real property;
 6. A description of the real property of the instrument; and
 7. A description of the transaction of the instrument.
- E. The certified copies of the instruments and the log maintained by the recorder shall be made available for public inspection and copying.
- F. In lieu of presenting an original instrument affecting real property for recording, any person or entity may present a copy of the same upon which there is an original certification which has been signed and sealed by a notary public or other authorized official.
- G. The Tribal Council may from time to time establish recording fees, copying fees, and fees for the certification of any instrument recorded under the recording system established under this Article.

(Law & Order Code 2006, § 20-14; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-15—20-20. - Reserved.

ARTICLE III. - LAND ASSIGNMENTS

Sec. 20-21. - Generally.

- A. Special boards of Nation members or departments may be selected by the Tribal Council who may be designated by the Tribal Council to perform any duty under this Article.
- B. Land assignments issued (i) pursuant to the Land Ordinance adopted June 13, 1994 and (ii) issued prior to June 13, 1994 if the assignee has been using the land for the assigned purposes during the five (5) years prior to June 13, 1994 shall continue in full force and effect subject to continued compliance with the provisions of this Chapter.

(Law & Order Code 2006, § 20-21; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-22. - Assignment of land.

Tribal lands shall be assigned in conformity with the following rules:

- A. Application for assignment of Tribal land shall be made in writing to the Land Use/lease Department or other authorized designee of the Tribal Council which shall record and file the application. The Tribal Council will then take up and consider the application.
- B. Assignments of land shall be made by the Tribal Council in the form of a written agreement. This agreement shall include a description of the land and shall define the purposes for which the land is being assigned.
- C. The Tribal Council, before taking any action in assigning any particular tract of land, shall post a notice twenty (20) days before the proposed action is to be taken at the Tribal Office and on the land itself so that anyone claiming prior rights in or to the land in question may appear before the Tribal Council and voice his or her protest against the proposed assignment.
- D. Assignments of Tribal land may be made only to enrolled members of the Nation or to tribal enterprises. Every enrolled member of the Nation who has reached the age of twenty-one (21) or is married shall be considered eligible to receive an assignment at the discretion of the Tribal Council.
- E. The amount of land requested which is included in each assignment shall be based upon the ability of the applicant to make beneficial use of the land. In general:
 - 1. The size of farming assignments will be ten (10) acres, but more or less than this amount may be assigned at the discretion of the Tribal Council. A member shall not be permitted to hold more than one (1) farming assignment at any one time; and
 - 2. Land assignments for residential or business use will generally be no more than one (1) acre, but more or less than this amount may be assigned at the discretion of the Tribal Council.
- F. Assignments of land will be made in such a way that they do not conflict with long range or overall Tribal plans for land use. This means that an eligible applicant may be denied an assignment for one (1) piece of land and be encouraged instead to apply for an assignment in a different area.

(Law & Order Code 2006, § 20-22; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-23. - Changes in land assignments.

- A. If a person wishes to temporarily give up an assignment or change the use for which the land was assigned, it will be the responsibility of the assignee to obtain the approval of the Tribal Council for these changes. Such request shall be made in writing and shall follow the same procedures outlined in this Article for the assignment of land.
- B. If a Tribal member who is using his or her assignment wishes to have that assignment enlarged or increased to include additional area, it will be necessary for the member to apply for a new land assignment in accordance with this Article that includes both the original assignment and the additional area.

(Law & Order Code 2006, § 20-23; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-24. - Cancellation of land assignments.

- A. The Tribal Council, before taking any action to cancel an assignment, shall post a notice twenty (20) days before the proposed action is to be taken at the Tribal Office and on the land itself so that interested persons will have an opportunity to appear before the Tribal Council to support or oppose the proposed action. The Tribal Council shall also send, via certified mail, the notice to the last known address of the person holding the assignment.

- B. Except as provided by this Section, the Tribal Council may cancel any assignment of land for one (1) or more of the following reasons:
 - 1. Failure to use the land as assigned for a period of two (2) or more consecutive years; or
 - 2. Use of the land in violation of the agreement of assignment, Mortgage, or Installment Contract; or
 - 3. Violation of any applicable ordinances of the Nation relating to the use of the land; or
 - 4. Use of the land in any manner to the injury of the Nation in general; or
 - 5. Condemnation pursuant to the Nation's power of eminent domain.
- C. Failure to use the land as assigned for a period of four (4) consecutive years will result in the automatic cancellation of the assignment.
- D. No assignment may be canceled for nonuse, during the two (2) years following the assignment, if the assignee has been prevented from using the land as assigned due to natural disasters or the breakdown of the irrigation system.
- E. For land assignments made for farming or pasture, "use as assigned" means clearing, planting, and irrigating farm lands and clearing and irrigating pasture land. Merely building and maintaining fences around the assigned area does not qualify as "use as assigned."
- F. The entering of final judgment by the Tribal Court in any foreclosure or eviction proceeding shall result in the automatic cancellation of the related land assignment and such land assignment shall be disposed of according to Sections 20-111(b) and 20-112 of Article VII of this Chapter.
- G. If an assignee's home is located on a farming assignment and the farming assignment is canceled, the assignee may request and receive a residential assignment for the home site only.

(Law & Order Code 2006, § 20-24; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-25. - Use of land assignment.

- A. Except as otherwise provided by the laws of the Nation, assignments of land under this Article are rights of use and occupancy which shall be held for life or until relinquished by the assignee. Except as otherwise expressly provided by the laws of the Nation, the relinquishment, expiration, cancellation, or other termination of a land assignment shall result in the reversion of the land to the Nation.
- B. All mineral and subsurface rights and the right to take easements on Tribal lands shall be reserved to the Nation.
- C. Unless the Tribal Council consents in a duly authorized Council Resolution or a specific exception of this Code explicitly authorizes otherwise, the following shall not be sold, devised, willed, inherited, or otherwise removed from the land by a retiring assignee as they will be considered part of the realty:
 - 1. Any structures, residences, homes, fences, or other improvements constructed or placed upon the land at Tribal expense (Homes conveyed subject to an Installment Contract may be conveyed pursuant to the terms of the Installment Contract and the applicable policies);
 - 2. Wells, including the curbing and casings;
 - 3. Concrete ditching;
 - 4. Mature trees and vines (not to include nursery stock);
 - 5. All native timber;
 - 6. Land, dirt, and rocks; or
 - 7. Any other property owned by the Nation.

- D. Structures, homes, residences, and other improvements placed upon Tribal assigned land by the assignee or owned by the assignee shall be considered personal property of the person placing the improvements on the land and may be disposed of and removed from the land in the same manner as other personal property so long as the land is returned to a condition substantially similar to its condition at the time of assignment.
- E. Land assignments may not be sold, leased, or rented by assignees without the approval of the Tribal Council or authorized representative of the Tribal Council, but may be mortgaged or otherwise encumbered to secure a loan for the sole purpose of improving the land assigned in conformance with the use as assigned.
- F. A land assignment may not be devised, willed, inherited, or otherwise transferred from one (1) person to another, however:
 - 1. If an assignee dies and the spouse of the deceased assignee is a member of the Nation, the surviving spouse may continue to occupy the assigned homesite.
 - 2. If an assignee dies and the spouse of the deceased assignee is a nonmember of the Nation, the surviving spouse may continue to occupy the assigned homesite with special written permission from the Tribal Council;
 - 3. The Tribal Council may give preference in reassignments to descendants or relatives of the previous assignee;
 - 4. If the land assignment is mortgaged or otherwise encumbered as authorized by subsection E of this Section and the land assignment expires, is relinquished, canceled, or otherwise terminated, the Tribal Council shall (i) aid the mortgagee or other lender in replacing the assignee with a suitable purchaser, including the heirs of a deceased assignee, and assign the land assignment to such new purchaser in accordance with this Article; and/or (ii) execute a lease in favor of the mortgagee or other lender for the period remaining for the repayment of such mortgage or other loan; and
 - 5. If the land assignment (i) contains personal property which may not reasonably be disposed of or removed from the land, such as a house, and (ii) the Tribal Council does not reassign the land assignment to the heir or other descendant of the previous assignee, then the Nation shall pay such heir or other descendant the reasonable market value of the personal property less any amounts remaining on any mortgage, installment contract, or other security interest. If the secured party is someone other than the Nation, the balance owed on the personal property shall be paid to the secured party.
 - 6. Personal property which may not reasonably be disposed of or removed from the land, such as a house, shall not be devised, willed, inherited, or otherwise transferred to a nonmember of the Nation except with express written permission of the Tribal Council.

(Law & Order Code 2006, § 20-25; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-26—20-30. - Reserved.

ARTICLE IV. - LEASING

Sec. 20-31. - Definitions.

As used in this Article:

- A. **Lease** means all tenancies and agreements, written, oral, or implied by law, including valid rules and regulations, embodying the terms and conditions concerning the use and occupancy of land and its buildings, structures, and fixtures thereon, any portion thereof, or any other real property.

- B. **Lessee** means any person or entity, including a sublessee or assignee, who occupies land or other real property under a lease and includes a tenant for residential property.
- C. **Lessor** refers to the Nation or to any other person or entity who has a legal, beneficial, or equitable interest in land or other real property which for a limited time has been leased or rented to another; and the term lessor shall include any person or entity which has or leases land or other real property under an agreement or other arrangement whereby the lessee may, on certain conditions, obtain ownership of the occupied property at the end of occupancy under the agreement.
- D. **Premises** means land, real property, and/or any structures or parts thereof, existing facilities and appurtenances, including, but not limited to, furniture and utilities where applicable, grounds, areas, and existing facilities.
- E. **Rent** means payments to be made to the lessor in full consideration for the lease, rental, or use of the premises.

(Law & Order Code 2006, § 20-31; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-32. - Termination of leases.

- A. A lease from year to year terminates at the end of each year unless written permission is given to remain for a longer period. The permission shall specify the time the lessee may remain, and upon termination of such time the lease expires.
- B. A lease from month to month may be terminated by either the lessor or the lessee by giving at least thirty (30) days written notice thereof.
- C. When a lease is for a certain period, and the time expires, the lessee shall surrender possession. Notice to quit or demand of possession is not then necessary unless otherwise provided by the lease.

(Law & Order Code 2006, § 20-32; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-33. - Effect of lessee holding over.

When a lessee holds over and retains possession of a premises after the expiration of the term of the lease without express contract with the owner or lessor, the holding over shall not operate to renew the lease for the term of the formal lease, but thereafter the lease is month to month.

(Law & Order Code 2006, § 20-33; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-34. - Rules, regulations, and policies.

- A. A lessor, from time to time, may adopt rules, regulations, or policies, however described, concerning the lessee's use and occupancy of the premises. Such rules, regulations, or policies are enforceable against the lessee only if:
 - 1. They are reasonably related to the purpose for which adopted; and
 - 2. They are sufficiently explicit in prohibition, direction, or limitation of the lessee's conduct to fairly inform him of what he must or must not do to comply; and
 - 3. They apply to all lessees in or on the premises in a fair manner; and
 - 4. They are not for the purpose of evading the obligations of the lessor; and
 - 5. The lessee has notice of them at the time he enters into the lease.

- B. A rule, regulation, or policy adopted after the lessee enters into the lease is enforceable against the lessee if reasonable notice is given to the lessee and it does not work a substantial modification of his lease unless the lessee gives his voluntary express written consent to such a modification at the time of adoption of such rule, regulation, or policy.

(Law & Order Code 2006, § 20-34; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-35. - Sublease and assignment.

No sublease or assignment of a lease shall be valid without the express written consent of the lessor and the Nation.

(Law & Order Code 2006, § 20-35; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-36. - Maintenance of premises.

A lessee shall exercise diligence to maintain the premises in as good condition as when he took possession, ordinary wear and tear excepted.

(Law & Order Code 2006, § 20-36; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-37. - Damages to premises.

The lessee shall be liable to the lessor for any removal or intentional and material alteration or damage of any part of the land, a building, the furnishings thereof, or any permanent fixture, by or at the instance of the lessee, other occupants, or persons on the leased property with lessee's consent, without prior permission of the lessor or his agent.

(Law & Order Code 2006, § 20-37; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-38. - Federal law.

All leases of Tribal Trust land must comply with all applicable mandatory provisions of federal law.

(Law & Order Code 2006, § 20-38; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-39, 20-40. - Reserved.

ARTICLE V. - RESIDENTIAL LANDLORD AND TENANT

DIVISION 1. - GENERALLY

Sec. 20-41. - Applicability.

This Article shall apply to all leases and other rental agreements for residential purposes such as houses, apartments, mobile homes and condominiums, but shall not apply to commercial or other leasing and assignments.

(Law & Order Code 2006, § 20-41; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-42. - Definitions.

As used in this Article:

- A. **Building and housing codes** means any law, ordinance, or regulation of the Nation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises.
- B. **Landlord** refers to the Nation or to any other person or entity who has an interest in land or other real property which for a limited time has been leased or rented to another.
- C. **Premises** means any structures or parts of land or real property, existing facilities and appurtenances, including, but not limited to, furniture and utilities where applicable, grounds, areas, and existing facilities, except that such term shall never include the title or ownership interest in tribal, trust, or otherwise restricted land.
- D. **Rent** means payments to be made to the landlord in full consideration for the lease, rental, or use of the premises.
- E. **Rental agreement** means all tenancies and agreements, written, oral, or implied by law, including but not limited to, a lease, embodying the terms and conditions concerning the use and occupancy of a premises but shall not include a mortgage, installment contract, or other lien upon or loan secured by real property as those terms are defined in Section 20-102 of Article VII of this Chapter.
- F. **Security** means money or property given to assure payment or performance under a rental agreement.
- G. **Single family residence** means a structure maintained and used as a residence under a single rental agreement such as a house or trailer home, but not including residential structures commonly referred to as apartments or condominiums or any other such structure designed or used for the occupancy of several families or groups of occupants.
- H. **Tenant** means any person or entity who occupies land or other real property under a rental agreement.
- I. The terms **nuisance** and **waste** shall have the same meanings as those terms are defined in Section 20-81 of Article VI of this Chapter.

(Law & Order Code 2006, § 20-42; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-43. - Prohibited rental agreements and provisions.

- A. Except with the express written approval of the Tribal Council, no rental agreement shall provide for the rental of a premises to any person or entity unless at least one (1) tenant or occupant is an enrolled member of the Nation.
- B. No rental agreement shall provide that the tenant agrees to any of the following:
 - 1. To waive or forego rights or remedies under this Article or under the laws of the Nation;
 - 2. To the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.
- C. A rental agreement violating subsection A of this Section or a provision included in a rental agreement prohibited by subsection B of this Section shall be unenforceable.

(Law & Order Code 2006, § 20-43; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-44—20-50. - Reserved.

DIVISION 2. - LANDLORD OBLIGATIONS

Sec. 20-51. - Security deposits.

- A. A landlord shall not demand or receive security, however denominated, including, but not limited to, prepaid rent, in an amount or value in excess of one and one-half (1½) month's rent. This subsection does not prohibit a tenant from voluntarily paying more than one and one-half (1½) month's rent in advance.
- B. Any deposits or security, if nonrefundable, must be so stated in writing by the landlord.
- C. Upon termination of the rental agreement, property or money held by the landlord as prepaid rent and security may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's failure to maintain the premises as required by Section 20-61 of this Article all as itemized by the landlord in a written notice delivered to the tenant together with the amount due within fourteen (14) days after termination of the rental agreement and return of possession to the landlord by the tenant.
- D. Upon termination of the rental agreement, property or money held by the landlord as prepaid rent and security shall be refunded to the tenant within fourteen (14) days after termination of the rental agreement and return of possession to the landlord by the tenant excepting any of such property or money rightfully withheld for the purposes of subsection C of this Section.
- E. If the landlord fails to comply with subsections B, C, and D of this Section, the tenant may recover the property and money due him plus damages in an amount equal to twice the amount wrongfully withheld. This Section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Article.

(Law & Order Code 2006, § 20-51; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-52. - Disclosure and tender of written rental agreement.

- A. If there is a written rental agreement, the landlord must tender and deliver a signed copy of such rental agreement to the tenant and the tenant must sign and deliver to the landlord one (1) fully executed copy of such rental agreement within a reasonable time after the agreement is executed. A form written rental agreement shall have all blank spaces completed.
- B. Noncompliance with this Section shall be deemed a material noncompliance by the landlord or the tenant, as the case may be, of the rental agreement.

(Law & Order Code 2006, § 20-52; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-53. - Landlord to supply possession of premises.

At the commencement of the term of tenancy the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 20-54 of this Article. The landlord may bring an action for possession against any person wrongfully in possession as provided by this Article.

(Law & Order Code 2006, § 20-53; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-54. - Landlord to maintain fit premises.

- A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety and all other laws of the Nation regarding land and other real property and its uses;
 2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
 3. Keep all common areas, if any, of the premises in a clean and safe condition;
 4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied or required to be supplied by him;
 5. Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the premises and arrange for their removal; and
 6. Supply running water and reasonable amounts of hot water at all times, reasonable heat and reasonable air conditioning or cooling where such units are installed and offered, when required by seasonal weather conditions, except where the premises are so constructed that heat, air conditioning or cooling, or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.
- B. The landlord and tenant of a single family residence may agree in writing supported by adequate consideration, that the tenant perform the landlord's duties specified in subsection A of this Section and also specified repairs, maintenance tasks, alterations and remodeling, but only if:
1. The transaction is entered into in good faith; and
 2. The lessor delivers possession of the premises at the beginning of the term of the rental agreement in a healthy, safe, fit, and habitable condition.

(Law & Order Code 2006, § 20-54; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-55. - Exclusions and exceptions.

- A. Subsection B, paragraph (2) of Section 20-43 of this Article shall not apply, except by express written agreement, to the Nation as landlord.
- B. Section 20-54 of this Article shall not apply to land assignments under Article III of this Chapter.
- C. Nothing in this Article shall be construed as waiving the sovereign immunity of the Nation or granting any right to recover costs, attorney's or advocate's fees, or other damages from the Nation except that when the Nation is landlord, the tenant may bring an action against the Nation:
 1. To recover security wrongfully withheld as provided by subsection (e) of Section 20-51 of this Article *provided* the monetary damages permitted by such subsection (e) of Section 20-51 shall not be available; and
 2. For injunctive or declaratory relief for noncompliance by the Nation as provided by subsection (b) of Section 20-71 of this Article *provided* the damages permitted by such subsection (b) of Section 20-71 shall not be available.

(Law & Order Code 2006, § 20-55; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-56—20-60. - Reserved.

DIVISION 3. - TENANT OBLIGATIONS

Sec. 20-61. - Tenant to maintain premises.

The tenant shall:

- A. Comply with all obligations primarily, imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- B. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
- C. Dispose from the premises all ashes, rubbish, garbage, and other waste in a clean and safe manner;
- D. Keep all plumbing fixtures on the premises or used by the tenant as clean as their condition permits;
- E. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances in the premises;
- F. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or commit waste or knowingly permit any person to do so;
- G. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises nor cause a nuisance;
- H. Exercise diligence to maintain the premises in as good condition as when he took possession, ordinary wear and tear excepted;
- I. Comply with all other laws of the Nation imposing obligations on tenants.

(Law & Order Code 2006, § 20-61; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-62. - Access.

- A. The tenant shall not unreasonably withhold consent to the landlord to enter onto or into the premises in order to inspect the premises; make necessary or agreed repairs, decorations, alterations or improvements; supply necessary or agreed services; or exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
- B. The landlord may enter the premises without consent of the tenant in case of emergency.
- C. The landlord shall not abuse the right to access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two (2) days notice of his intent to enter and enter only at reasonable times.

(Law & Order Code 2006, § 20-62; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-63—20-70. - Reserved.

DIVISION 4. - REMEDIES

Sec. 20-71. - Noncompliance by landlord.

- A. Except as otherwise provided in this Article, if there is a material noncompliance by the landlord with the rental agreement or noncompliance with the landlord's obligations under this Article and not relieved by agreement of the parties pursuant to subsection (b) of Section-26-54 of this Article the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen (14) days after receipt of the notice if the breach is not remedied within ten (10) days. The rental agreement shall terminate and the premises shall be vacated as provided in the notice subject to the following:

1. If the breach is remediable and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate; and
 2. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other occupant of the premises, or other person on the premises with his consent.
- B. Except as provided in this Article and in addition to any right of the tenant arising under subsection (a) of this Section, the tenant may recover damages and obtain injunctive or declaratory relief for any noncompliance by the landlord with the rental agreement or the landlord's obligations under this Article not relieved by agreement of the parties pursuant to subsection (b) of Section 20-54 of this Article.
- C. If the rental agreement is terminated, the landlord shall return any and all security recoverable by the tenant under Section 20-51 of this Article.
- D. The provisions of subsection (b) of this Section providing for the recovery by the tenant of damages shall not apply to the Nation as landlord.

(Law & Order Code 2006, § 20-71; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-72. - Noncompliance by tenant.

Except as otherwise provided in this Article, the landlord's remedies shall be limited to an action for unlawful detainer in accordance with Article VI of this Chapter.

(Law & Order Code 2006, § 20-72; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-73. - Landlord's lien for rent.

- A. In the event a tenant defaults on the payment of rent, the landlord shall have a lien on all property of his tenant not exempt by the laws of the Nation, placed upon or used on the leased or rented premises, until the rent is paid.
- B. The landlord may seize for rent any personal property of his tenant and other lawful occupants found on the premises, but the property of any other person, although found on the premises, shall not be liable therefore. If the tenant fails to allow the landlord to take possession of such property, the landlord may reduce the property to possession by an action to recover possession in Tribal Court, and may hold or sell the property for the payment of the rent.
- C. The landlord shall have a lien for rent upon crops grown or growing upon the premises, whether the rent is payable in money, articles of property, or products of the premises, and the lien shall continue for a period of six (6) months after expiration of the term of the lease.
- D. When the premises are sublet or when the rental agreement is assigned, the landlord shall have the same lien against the sublessee or assignee as he would have against the tenant and may enforce the lien in like manner.

(Law & Order Code 2006, § 20-73; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-74—20-80. - Reserved.

ARTICLE VI. - EVICTION

Sec. 20-81. - Definitions.

- A. **Eviction** and **evict** mean the actual and forceful expulsion of a lessee from rented or leased premises and terminating such lessee's interest in such premises. Such terms shall not include a lessee surrendering the premises to the lessor after the termination of a lease due to the expiration of the term of the lease nor the lawful termination of the lease by the lessee.
- B. **Nuisance** is the maintenance on a premises of a condition which:
 - 1. Unreasonably threatens the health, safety, or welfare of the Nation, its members, the public at large, or neighboring land users; or
 - 2. Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- C. **Unlawful detainer action** means a suit brought before the Tribal Court to terminate a lessee's interest in land or other real property and/or evict any person from occupancy of a premises.
- D. **Waste** means the spoil or destruction by a lessee of land, buildings, gardens, trees, or other improvements or natural occurrences which results in substantial injury to the lessor's interest in the premises or, when it is not the lessor, the Nation's interest in the premises; such term shall include any of the enumerated reasons set forth in subsections (b) and (c) of Section 20-24 of Article III of this Chapter constituting sufficient cause to cancel an assignment of land.
- E. **Writ of restitution** means an order of the Tribal Court:
 - 1. Restoring an owner or lessor to possession of real property; and
 - 2. Evicting a lessee or other occupant therefrom.
- F. The terms "**lease**," "**lessee**," "**lessor**," "**premises**", and "**rent**" shall have the same meanings as those terms are defined in Section 20-31 of Article IV of this Chapter, except that in the case of an eviction regarding a lease or other rental agreement for residential purposes, such terms shall have the same meanings as "rental agreement," "tenant," "landlord," "premises," and "rent," respectively, as those terms are defined in Section 20-42 of Article V of this Chapter.

(Law & Order Code 2006, § 20-81; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-82. - Grounds for eviction.

A lessee or other occupier of land may be evicted by his lessor in accordance with this Article if such person shall remain in possession of the premises under any of the following situations:

- A. Without the requirement of any notice, a lessor may utilize self-help eviction under the following circumstances:
 - 1. If such person has entered onto or remains on the premises of another without the permission of the owner and without having any substantial claim of a lease or other legal interest in the premises; or
 - 2. After the Nation has canceled a person's land assignment pursuant to Section 20-24 of Article III of this Chapter; or
 - 3. Thirty (30) days after such person's interest in the premises has been foreclosed in a foreclosure proceeding in the Tribal Court pursuant to Article VII of this Chapter.
- B. After providing proper notice, a lessor may utilize self-help eviction under the following circumstances:
 - 1. When the lease has expired and the lessor has given notice, as required by the lease and otherwise in accordance with this Article, that the lease shall terminate at a time specified by the notice, but not less than thirty (30) days from the date of such notice; or

- C. When such person fails or continues to fail to keep or perform any material condition or covenant of the lease after he has been given notice and opportunity to remedy in accordance with this Article and the lease;
- D. When such person is in default in the payment of rent for at least ten (10) calendar days after the date such rent is due and has received at least five (5) days notice, in accordance with this Article, and such person has remained in possession after receipt of such notice without either surrendering possession of the premises or paying the rent;
- E. When such person continues to fail to comply with applicable rules, regulations, or policies after he has been given notice and opportunity to remedy in accordance with this Article provided that such rules, regulations, or policies shall comply with Section 20-34 of Article IV;
- F. When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied premises after having been given notice and opportunity to remedy in accordance with this Article;
- G. When such person has been convicted of a criminal offense where the activity of such criminal offense threatens the health, safety, welfare, or right of peaceful enjoyment of other residents of the Nation and no appeal is pending and he has been given notice, in accordance with this Article, that the lease shall terminate at a time specified by the notice, but not less than thirty (30) days from the date of such notice; or
- H. When such person has been convicted of a criminal offense regarding drugs on or near the premises and no appeal is pending and he has been given notice, in accordance with this Article, that the lease shall terminate at a time specified by the notice, but not less than thirty (30) days from the date of such notice.

(Law & Order Code 2006, § 20-82; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-83. - Procedures for service of notice.

- A. Unless specifically mandated otherwise, notices required or authorized by subsections (b) through (i) of Section 20-82 or any other Section of this Article shall be given at least twenty (20) days prior to the lessor taking any authorized action and shall comply with subsection (b) of this Section. Such notices shall be given to the lessee by either:
 - 1. Delivering a copy personally to the lessee or occupier or to any adult member of his family resident on the premises; or
 - 2. Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the lessee or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of one (1) of the above methods of service.

- B. Notices required under this Article shall be in writing substantially in the following form:

"I (or we) hereby give you notice that your are to quit possession or occupancy of the premises now occupied by you at (here insert the address or other reasonable description of the location of the premises), on or before the (here insert the date) for the following reason(s) (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the lessor as well as the date and place of signing.)"

(Law & Order Code 2006, § 20-83; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-84. - Defenses.

One (1) or more of the following shall constitute a sufficient defense, to the extent necessary to ensure justice, to any unlawful detainer action:

- A. Due to the fault of the lessor and no fault of the tenant, that the premises are untenable or uninhabitable such that they constitute a real and serious hazard to human health and safety and not mere inconvenience;
- B. That the lessor has failed or refused to make repairs which are his responsibility after a reasonable demand by the lessee to do so, without good cause, and such repairs are necessary for the reasonable enjoyment of the premises;
- C. That the lessor has failed or continued to fail to keep or perform any material condition or covenant of the lease after reasonable notice and opportunity to remedy;
- D. That the lessor has failed to keep or perform any obligations primarily imposed upon lessors by applicable provisions of building and housing codes materially affecting health and safety after reasonable notice and opportunity to remedy;
- E. That the lessee has remedied any default or otherwise rendered moot any alleged ground for eviction; or
- F. Any other material or relevant fact or legal defense the lessee presents which may demonstrate his eviction would be unjust and unfair.

(Law & Order Code 2006, § 20-84; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-85. - Settlement.

- A. After notice has been served on the lessee and anytime before the entering of a writ of restitution by the Nation Court, a lessor and lessee may settle the matter between the parties without affecting their rights in any manner except as agreed upon. Such settlement may include, but is not limited to:
 - 1. The lessee voluntarily quitting the premises without the lessor filing an unlawful detainer action or the entering of a writ of restitution;
 - 2. The barter for services or goods, or any other means of securing a fair exchange of value for the use of the premises;
 - 3. The stipulation of a judgment to be entered by the Tribal Court; or
 - 4. The dismissal of the matter in exchange for any agreement reached.
- B. The Tribal Court may stay an unlawful detainer action, as necessary and just, where the parties have entered negotiations for settlement.

(Law & Order Code 2006, § 20-85; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-86. - Actual eviction.

- A. A lessor or owner of real property may evict a lessee or other occupant only in accordance with this Article and only for the grounds specified in Section 20-82 of this Article.
- B. Except as otherwise provided by Section 20-82(a) and (b), eviction of a lessee shall require the filing of an action in Tribal Court for unlawful detainer and the issuance of a writ of restitution pursuant to this Article.

(Law & Order Code 2006, § 20-86; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-87. - Action for unlawful detainer.

If the requirements of notice have been met and the lessee remains on the premises, a lessor or owner may commence an unlawful detainer action by filing with the Tribal Court, in compliance with the laws of the Nation, the following:

- A. A complaint, signed and verified by the owner, lessor, authorized agent, or advocate:
 - 1. Naming the lessee and each occupant of the premises;
 - 2. Stating the facts on which he seeks to recover, including the alleged grounds for eviction;
 - 3. Containing a description of the leased or rented premises so that they can be identified with reasonable certainty;
 - 4. Stating any claim for damages or compensation due from the persons to be evicted;
 - 5. Having appended as exhibits true and correct copies of (i) the rental or other agreement between the parties, (ii) any and all notices required or authorized by Section 20-82 of this Article and the lease between the parties, and (iii) all other necessary documents; and
 - 6. Including an allegation that all relevant requirements and conditions prescribed in (i) any and all applicable laws, regulations, and policies, and (ii) the provisions of the lease have been complied with by the lessor.
- B. A summons issued as in other cases requiring the defendants to appear for trial upon the complaint.
- C. When a complaint is filed in the Tribal Court, it shall be immediately presented to a judge of the Tribal Court. This shall be on the date of the filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears in compliance with subsection (a) of this Section and served as set forth in Section 20-83 of this Article, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest such complaint. The date for appearance for answering the complaint shall be no less than five (5) calendar days after the date of the order in matters involving serious nuisance or fifteen (15) calendar days in all other cases.

(Law & Order Code 2006, § 20-87; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-88. - Service of process and procedure.

Unless specifically provided otherwise in this Article, the laws of the Nation governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any unlawful detainer action under this Article.

(Law & Order Code 2006, § 20-88; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-89. - Commencement of proceedings.

- A. If the lessee appears before the Tribal Court in person or in writing to test the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within ten (10) calendar days of any hearing, excluding weekends and holidays.
- B. The Tribal Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation, on the first regular Court day following that date.
- C. A defendant may, for good cause shown, and upon payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing,

obtain an extension of time, beyond the fifteen (15) day period. The Tribal Court may refuse to extend the date of hearing where the complaint is based upon nuisance provided in Section 20-82(f), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

- D. The Tribal Court may, in its discretion, on motion from the lessor order the lessee to pay into the Court rents for the use and occupancy of the premises during the pendency of the action for unlawful detainer.

Law & Order Code 2006, § 20-89; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-90. - Evidence.

Evidence in proceedings under this Article shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for the final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the lessor with respect to the agreement of the parties will be received in evidence upon their presentation to the Tribal Court provided that a lessee may examine the custodian of such records as to their contents. All hearings will be informal and designed to receive evidence in a fair and just manner.

(Law & Order Code 2006, § 20-90; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-91. - Power of the tribal court.

- A. After the commencement of an unlawful detainer action under this Article, provided the parties have not settled, the Tribal Court shall enter a writ of restitution if:
 - 1. Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided by the laws of the Nation, including this Chapter; and
 - 2. The Tribal Court shall find (i) that the lessee has received notices as required by and in accordance with this Article; (ii) that the lessor has complied with all applicable laws, regulations, and policies and the lease; and (iii) that one (1) or more grounds for eviction enumerated in Section 20-82 of this Article actually and truly exists without a valid defense of the lessee.
- B. Upon issuance of a writ of restitution or a finding for the lessor or owner, in whole or in part, the Tribal Court shall have the authority to enter against the defendant a judgment ordering any of the following:
 - 1. The payment of back rent; unpaid utilities; charges due the Nation or land owner under any rental or other occupancy agreement (not including a mortgage, installment contract, or other loan secured by real property, as those terms are defined in Section 20-102 of Article VII of this Chapter); damages caused by the defendants to the premises other than ordinary wear and tear; and damages required by the lease, if any are so provided, or this Chapter;
 - 2. The performance of any obligation required by law; and
 - 3. Any other necessary and just relief.
- C. Upon a finding for the defendant, in whole or in part, the Court shall have the authority to enter against the lessor or owner a judgment ordering any of the following:
 - 1. The payment of damages for injury caused by the lessor or required by the lease, if any are so provided, or this Chapter, except where such damages would be awarded against the Nation without its express and unambiguous consent;
 - 2. Possession of the premises by lessee;

3. The performance of any obligation required by law; and
 4. Any other necessary and just relief.
- D. The Tribal Court shall have the authority to award to the prevailing party his costs and reasonable advocate's fees in bringing suit, except where such costs and advocate's fees would be awarded against the Nation without its express and unambiguous written consent.

(Law & Order Code 2006, § 20-91; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-92. - Stay of execution.

After the entry of a writ of restitution against a lessee, such lessee may apply to the Tribal Court for a stay of execution of such writ if, within five (5) days of the judgment being entered, the lessee establishes:

- A. Good and reasonable grounds affecting the well-being of the party are stated;
- B. There would be not substantial prejudice or injury to the lessor or owner during the period of the stay;
- C. Execution of the writ of restitution could result in extreme hardship for the lessee; or
- D. A bond is posted or monies paid to the Tribal Court to satisfy the judgment or pay for the reasonable use and occupancy of the premises during the period of the stay.

(Law & Order Code 2006, § 20-92; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-93. - Enforcement.

Upon issuance of a valid and final writ of restitution by the Tribal Court, tribal law enforcement officers shall enforce such writ of restitution, as necessary, by evicting the defendants and their property from the premises which are unlawfully occupied unless the lessee has applied for, without rejection, or actually obtained a stay of execution from the Tribal Court.

(Law & Order Code 2006, § 20-93; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-94. - Appeals.

The laws of the Nation governing appeals shall apply to any unlawful detainer action permitted under this Article.

(Law & Order Code 2006, § 20-94; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-95. - Exclusions and exceptions.

This Article shall not apply to land assignments.

(Law & Order Code 2006, § 20-95; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-96—20-100. - Reserved.

ARTICLE VII. - MORTGAGES/INSTALLMENT CONTRACTS AND FORECLOSURE

Sec. 20-101. - Applicability of article.

This Article shall apply to any and all mortgages of real property and households, whether of a leasehold, land assignment, or other interest in real property; any and all installment contracts for the purchase of a household, real property, or any interest therein; any and all liens upon real property or any interest therein; and any and all loans secured, directly, indirectly, or collaterally, by real property or any interest therein. Reference to "mortgage or installment contract" shall include any lien upon real property or any interest therein as well as any loan secured, directly, indirectly, or collaterally, by real property or any interest therein and reference to "mortgagor or purchaser" and "mortgagee or seller" shall include the parties to any such lien or loan. This Article shall not apply to any mortgages of, liens upon, installment contracts for the purchase of, or loans secured by personal property.

For purposes of the remedies provided by this Article, "households" or "homes" shall be considered "real property" even though other sections of this code classify households and homes as personal property. For purposes of federal leasing law, households shall be considered personal property.

(Law & Order Code 2006, § 20-101; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-102. - Definitions.

As used in this Article:

- A. **Foreclosure proceeding** means a proceeding in the Tribal Court to foreclose the interest of the mortgagor or purchaser, and each person or entity claiming through the mortgagor or purchaser, in a mortgage or installment contract and in the real property for which such mortgage or installment contract has been given.
- B. **Guarantor** means a person or entity who secures, insures, or guarantees the unpaid amount and/or interest due on a mortgage or installment contract as to the mortgagee or seller. Unless provided otherwise, such person shall have the same rights and liabilities as the mortgagee or seller to bring a foreclosure action under this Article against a mortgagor or purchaser.
- C. **Installment contract** means an agreement by which a purchaser agrees to make periodic payments toward the purchase of a household or other real property to a seller and such term shall include the sale of homes by the Nation to its members.
- D. **Land assignment** means the assignment of tribal or restricted land pursuant to Article III of this Chapter.
- E. **Lease** means an agreement or other arrangement other than a land assignment or license, whether oral, written, or implied by law, providing for the use and occupancy of tribal or restricted land.
- F. **Lessor** means the Nation or other beneficial or equitable owner of tribal or restricted land under a lease or the heirs, successors, executors, administrators, or assigns of such lessor.
- G. **Mortgage** means the mortgage of an interest in real property or a household, including leasehold interests and land assignment interests, given to secure a loan whether or not guaranteed by a third entity and such term shall include any lien upon real property or any interest therein as well as any loan secured, directly, indirectly, or collaterally, by real property or any interest therein.
- H. **Mortgagee** means the person or entity who takes or receives a mortgage, such as a bank, mortgage company, or other lender, or the successor in interest of any such person or entity and such term shall include any person or entity who holds a lien on real property or grants a loan secured by real property, or the successor in interest of any such person or entity.
- I. **Mortgagor** means the person or entity who is the debtor for a mortgage or other lien on or loan secured by real property.
- J. **Purchaser** means a person or entity who buys, purchases, or otherwise receives a household or real property from another under an installment contract or the heirs, successors, executors, administrators, or assigns of such person or entity.

- K. **Real property** means all improvements and fixtures upon land, including crops grown or growing upon land; that which is incidental or appurtenant to land; all rights, interests, privileges, easements, and encumbrances relating to land, including tenancies and liens of judgment, mortgage, or otherwise; and any portion of these, except that such term shall never include subsurface rights or the title or ownership interest in tribal, trust, or otherwise restricted land.
- L. **Seller** means the person or entity who vends, sells, or otherwise transfers real property or a household to another under an installment contract or the successor in interest of such person or entity.
- M. **Subordinate lienholder** means the holder of any lien, including a subsequent mortgage or installment contract, perfected subsequent to another mortgage or installment contract affecting the same real property provided that such term shall not include the Nation with respect to any lien or claim it may have.

(Law & Order Code 2006, § 20-102; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-103. - Effect of mortgage or installment contract.

- A. A mortgage or installment contract is a lien upon the real property used to secure the loan or debt, but does not create an estate, title, or other such interest in the real property for the mortgagee or seller. Such a lien does not entitle the mortgagee or seller to possession of the real property unless authorized by the express terms of the mortgage or installment contract or other provisions of this Chapter. In the case of the Nation selling a household to a Tribal Member by an Installment Contract, in addition to the lien the Nation shall retain the title to the household until all the conditions of that Agreement are satisfied.
- B. The mortgagee or seller receives as security the interest of the mortgagor or purchaser in the real property for which the mortgage or installment contract is given, including, but not limited to, the mortgagor's or purchaser's interest in the lease, land assignment, or other such instrument used to secure use and occupancy of the land, unless otherwise provided by agreement of the parties or limited by the laws of the Nation. Such security shall not and may never include the title or ownership interest in any tribal, trust, or otherwise restricted land containing the real property used to secure the loan except when the Nation is mortgagee or seller.
- C. A mortgagee or seller shall not receive as security more interest of the mortgagor or purchaser in such real property than is reasonably necessary, at the time of execution of the loan, to protect such loan in case of default. A mortgagee or seller may not foreclose upon any interest in real property not so reasonably necessary.
- D. A mortgage or installment contract shall specify the property or assets subject to the lien. A mortgagee or seller shall not receive a blanket mortgage or otherwise create a lien on all or a substantial portion of the property, real and personal, or assets of the mortgagor or purchaser. Any mortgage or installment contract which purports to create a lien on all or a substantial portion of the property, real and personal, or assets of the mortgagor or purchaser shall be unenforceable.
- E. The provisions of subsections C and D of this Section shall not apply to the Nation as mortgagee or seller.

(Law & Order Code 2006, § 20-103; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-104. - Priority.

- A. Except as otherwise provided by this Section, multiple liens on the same real property shall have priority in relation to one another according to the priority established by Section 20-13 of Article II of this Chapter.

- B. With the exception of any lien of the Nation, any mortgage or installment contract which is secured for repayment by a guarantor shall be the first lien on the real property and all other liens on the real property not secured for repayment by a guarantor shall be subordinate to such mortgage or installment contract. If more than one (1) lien on the real property is secured for repayment by a guarantor, they shall have priority in relation to one another according to the priority established by Section 20-13 of Article 11 of this Chapter.
- C. With the exception of any tribal leasehold taxes against the property assessed after the property is mortgaged, any mortgaged or installment contract which is secured for repayment by a guarantor pursuant to Indian Housing Loan Guarantee Program (Section 184) shall be the first lien on the real property and all other liens on the real property not secured for repayment by a guarantor under the Section 184 program shall be subordinate to such mortgage or installment contract. If more than one (1) lien on the real property is secured for repayment by a Section 184 guarantor, they shall have priority in relation to one another according to the priority established by Section 20-13 of Article II of this Chapter.

(*Sec. 20-104(c) added by Resolution No. McD. 2000-114, effective September 26, 2000.*)

(Law & Order Code 2006, § 20-104; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2000-114, eff. 9-26-2000)

Sec. 20-105. - Action on debt and foreclosure.

- A. A mortgagee or seller may elect between bringing an action on the debt or foreclosure of a mortgage or installment contract. If separate actions are brought on the debt and to foreclose the mortgage given to secure it, the mortgagee, seller, or other plaintiff shall elect which to pursue and the other shall be dismissed.
- B. A valid judgment entered by the Tribal Court in an action on the debt shall bar a subsequent foreclosure involving the same mortgage or installment contract to the extent the original action on the debt would bar a subsequent action on the debt. Likewise, a valid foreclosure of the Tribal Court shall bar a subsequent action on the debt involving the same mortgage or installment contract.
- C. Mortgages and installment contracts shall be foreclosed by action in the Tribal Court.

Such Tribal court judicial foreclosure shall be the only lawful and valid method of foreclosure.

(Law & Order Code 2006, § 20-105; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-106. - Foreclosure proceedings.

Upon the default of the mortgagor or purchaser under a mortgage or installment contract, the mortgagee, seller, or other appropriate person or entity may commence a foreclosure proceeding by filing with the Tribal Court, in accordance with the laws of the Nation, the following:

- A. A complaint, signed and verified by the mortgagee, seller, or other appropriate person or entity or their authorized agent or advocate:
 - 1. Naming the mortgagor or purchaser and each person or entity claiming through the mortgagor or purchaser subsequent to the recording of the mortgage or installment contract, including each subordinate lienholder, as a defendant;
 - 2. Containing a description of the household, land and real property so that it can be identified with reasonable certainty;
 - 3. Stating the facts concerning (i) the execution of the lease or land assignment and the mortgage or installment contract; (ii) the recording of the mortgage or installment contract;

- (iii) the alleged default of the mortgagor or purchaser; and (iv) such other facts as may be necessary to constitute a cause of action;
 - 4. Having appended as exhibits true and correct copies of each promissory note, lease or land assignment, mortgage or installment contract, or assignment thereof relating to the land and property; and
 - 5. Including an allegation that all relevant requirements and conditions prescribed in (i) any and all applicable laws, regulations, and policies, and (ii) the provisions of the mortgage or installment contract have been complied with by the mortgagee or seller.
- B. A summons issued as in other cases requiring the mortgagor or purchaser and each other defendant to appear for a trial upon the complaint.

(Law & Order Code 2006, § 20-106; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-107. - Service of process and procedure.

The laws of the Nation governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any foreclosure proceeding under this Article.

(Law & Order Code 2006, § 20-107; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-108. - Certified mailing to Nation and lessor.

In any foreclosure proceeding where the Nation or the lessor is not named as a defendant, a copy of the summons and complaint shall be mailed to the Nation and to the lessor by certified mail, return receipt requested, within five (5) days after the issuance of the summons, but not less than twenty (20) days prior to the date set for trial.

(Law & Order Code 2006, § 20-108; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-109. - Intervention.

The Nation or any lessor may petition the Tribal Court to intervene in any foreclosure proceeding under this Article. Neither the filing of a petition for intervention by the Nation, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

(Law & Order Code 2006, § 20-109; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-110. - Cure of default by Nation or subordinate lienholder.

Prior to the entry of a judgment of foreclosure, the Nation, any mortgagor, any purchaser, or any subordinate lienholder may cure the default under the mortgage or installment contract. Any subordinate lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lienholder to cure the default plus interest on such amounts at the rate stated in the note, if any are so stated, for the mortgage or installment contract. If the Nation shall cure the default, it shall thereafter have a lien on the real property for the amount of all payments made by the Nation to cure the default plus interest on such amounts at the rate stated in the note, if any are so stated, for the mortgage or installment contract.

(Law & Order Code 2006, § 20-110; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-111. - Power of the tribal court.

After the commencement of a foreclosure proceeding under this Article, if the alleged default has not been cured and if the Tribal Court should find for the mortgagee or seller, the Tribal Court shall enter judgment:

- A. Foreclosing, as the case may be, the interest of the mortgagor or purchaser and each other defendant named in the complaint upon whom proper and timely service has been made, including each such subordinate lienholder, in the mortgage or installment contract subject of the proceeding and in the real property for which such mortgage or installment contract has been given; and
- B. In the case of a land assignment, canceling such land assignment pursuant to subsection F of Section 20-24 of Article III of this Chapter and temporarily transferring such land assignment to the mortgagee, seller, or other appropriate person or entity, including but not limited to, the guarantor, if any, for a specified period of time reasonably necessary for such prevailing party to enter into a new mortgage or installment contract for the real property foreclosed upon, but under no circumstances to exceed one (1) year *provided* that if such mortgagee, seller, or other appropriate person is the Nation, the land assignment shall be canceled and revert back to the Nation. Such transfer of a land assignment shall operate to evict the assignee and all other occupants; and/or
- C. In the case of a lease and all other interests used to secure the mortgage or installment contract, transferring such lease and other interests to the mortgagee, seller, or other appropriate person or entity, including but not limited to, the guarantor, if any. Such transfer of a lease shall operate to evict the lessee and all other occupants.

(Law & Order Code 2006, § 20-111; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-112. - Reassignment.

- A. After a land assignment has been canceled and transferred to the mortgagee, seller, guarantor, or other appropriate person or entity not the Nation in a foreclosure proceeding pursuant to subsection B of Section 20-111 of this Article, the land assignment shall be reassigned as follows:
 - 1. The mortgagee, seller, guarantor, or other transferee holding a land assignment pursuant to a judgment in a foreclosure proceeding may enter into a new mortgage or installment contract or reassign the mortgage or installment contract subject of the foreclosure proceeding with or to a Tribal Member. In such a case, the Nation shall reassign the related land assignment to the new mortgagor or purchaser in accordance with Article III of this Chapter.
 - 2. If the mortgagee, seller, guarantor, or other transferee holding a land assignment pursuant to a judgment in a foreclosure proceeding fails to enter into a new mortgage or installment contract or fails to reassign the mortgage or installment contract subject of the foreclosure proceeding within one (1) year from the final judgment entered by the Tribal Court in the foreclosure proceeding or a lesser time as provided in the judgment entered by the Tribal Court, then the related land assignment shall automatically revert back to the Nation unless such mortgagee, seller, guarantor, or other transferee obtains an extension from the Tribal Council upon good cause shown.
- B. After a lease or other interest has been canceled and transferred to the mortgagee, seller, guarantor, or other appropriate person or entity, except for the Nation, in a foreclosure proceeding pursuant to subsection C of Section 20-111 of this Article, the lease or other interest shall be transferred, sold, or assigned only to the Nation or a member of the Nation.

(Law & Order Code 2006, § 20-112; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-113. - No redemption.

There shall be not right of redemption in any foreclosure proceeding.

(Law & Order Code 2006, § 20-113; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-114. - No deficiency judgment.

No deficiency judgment shall be entered in any foreclosure proceeding.

(Law & Order Code 2006, § 20-114; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-115. - Remedies exclusive.

The remedies provided under this Article are the exclusive remedies for default upon any mortgage, installment contract, or any other lien upon or loan secured by real property.

(Law & Order Code 2006, § 20-115; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-116. - No merger.

There shall be no merger of interests in real property by reason of the execution of a lease, a land assignment, a mortgage, or an installment contract or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the mortgage or installment contract.

(Law & Order Code 2006, § 20-116; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-117. - Appeals.

The laws of the Nation governing appeals shall apply to any foreclosure proceeding under this Article.

(Law & Order Code 2006, § 20-117; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-118—20-130. - Reserved.

ARTICLE VIII. - EMINENT DOMAIN

Sec. 20-131. - Definitions.

As used in this Article:

- A. **Condemnation** means the process and actual taking of property or interest therein, temporarily or permanently, for public or quasi-public use through the power of eminent domain.
- B. **Condemnee** means the owner, assignee, lessee, tenant, authorized occupant, or other holder of property or interest therein taken by condemnation.
- C. **Eminent domain** means the power of the Nation to condemn property for public or quasi-public use.
- D. **Property** means all lands, including improvements and fixtures thereon; lands under water; surface and subsurface rights; every estate, interest, and right, legal or equitable, in lands, water, or the

subsurface; all rights, interests, privileges, easements, and encumbrances relating thereto, including tenancies and liens of judgment, mortgage, or otherwise; and any portion of these.

(Law & Order Code 2006, § 20-131; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-132. - Purposes for which eminent domain may be exercised.

Subject to the provisions of this Article and any other applicable law, the right of eminent domain may be exercised by the Nation for the following uses:

- A. Buildings and grounds for any public or quasi-public use of the Nation including, but not limited to, economic enterprises of the Nation;
- B. Reservoirs, canals, aqueducts, flumes, ditches or pipes, whether public, quasi-public or private, for conducting water for the use of the Nation or the inhabitants of the territory of the Nation or for drainage of any area within the territory of the Nation;
- C. Raising the banks of streams, removing obstructions therefrom, or widening, deepening, or straightening their channels;
- D. Highways, toll roads, byroads leading from highways to residences and farms and other byroads, plank and turnpike roads, streets, alleys, and any other roads or ways for the use or benefit of the Nation or its inhabitants;
- E. Telegraph and telephone lines and conduits for public communication;
- F. Electric light and power transmission lines, pipe lines used for supplying gas or waste disposal, and all transportation, transmission and intercommunication facilities;
- G. Aviation fields; and
- H. All other public and quasi-public uses.

(Law & Order Code 2006, § 20-132; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-133. - Prerequisites to taking property by condemnation.

Before property may be condemned, it shall appear that:

- A. The use to which the property is to be applied is a use authorized by the laws of the Nation;
- B. The taking is necessary to such use, provided the word "necessary" as used in this subsection shall not be interpreted to mean the only possible option or alternative, but shall mean a viable solution to a problem or opportunity; and
- C. If the property is already appropriated to some public or quasi-public use, the public or quasi-public use to which it is to be applied is a more necessary public or quasi-public use.

(Law & Order Code 2006, § 20-133; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-134. - Property subject to condemnation.

Property which may be taken includes:

- A. All property belonging to, assigned to, leased, or occupied by any person or entity;
- B. Property appropriated to public or quasi-public use;
- C. All easements and rights of way;

- D. All rights of use, entry upon, and occupation of property;
- E. The right to remove or take earth, gravel, stone, trees, and timber from property;
- F. A use in the water of a stream, river, or spring; and
- G. All types of and interests, estates, and rights in property, private or otherwise, not enumerated.

(Law & Order Code 2006, § 20-134; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-135. - Right of Nation to enter and survey property.

- A. Where property is required for public or quasi-public use, the Nation, or its authorized agents in charge of such use, may survey and locate property most appropriate for such use.
- B. Upon at least ten (10) days notice, the property may be entered upon to make examinations, surveys, and maps thereof, and the entry constitutes no cause of action in favor of the condemnees of the property.

(Law & Order Code 2006, § 20-135; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-136. - Procedures for condemnation.

- A. All condemnations shall be authorized by resolution of the Tribal Council approved by a majority vote of the council members present provided such present council members constitute a quorum as required by the Constitution of the Nation.
- B. The Tribal Council, before taking any action in condemning any property or interest therein, shall post notice thirty (30) days before the proposed action is to be taken at the Tribal Office and on the property itself so that interested persons will have an opportunity to appear before the Tribal Council to support or oppose the proposed action.
- C. Before condemning any property or interest therein, the Tribal Council shall make specific findings that:
 - 1. The purpose for which the property is to be taken is authorized by this Article;
 - 2. The prerequisites to taking property by condemnation under this Article have been met; and
 - 3. The property is subject to condemnation under this Article.
- D. The final resolution of the Tribal Council condemning the property shall include at least:
 - 1. A description of the property to be condemned;
 - 2. The specifics of the findings required by subsection C of this Section; and
 - 3. If applicable, a specific amount of fair and just compensation to be paid any condemnees of the property.

(Law & Order Code 2006, § 20-136; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-137. - Enforcement.

Upon issuance of a valid resolution condemning property or any interest therein by the Tribal Council, tribal law enforcement officers shall enforce such resolution, as necessary, by removing the condemnees, if any, and their personal property from the condemned property.

(Law & Order Code 2006, § 20-137; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Secs. 20-138—20-140. - Reserved.

ARTICLE IX. - REPOSSESSION OF PERSONAL PROPERTY

Sec. 20-141. - Applicability.

This Article shall apply to the repossession of personal property only and shall not apply in any manner to households, land, or other real property.

(Law & Order Code 2006, § 20-141; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-142. - Definitions.

As used in this Article:

- A. **Credit** means the right granted by a creditor to a purchaser or debtor to defer payment of debt or to incur debt and defer its payment.
- B. **Creditor** means the person or entity who extends to another credit secured by personal property or the successor in interest of any such person or entity.
- C. **Debtor** means the person or entity who owes payment or other performance of an obligation secured by personal property, whether or not the purchaser owns or has rights in the personal property or the heirs, successors, executors, administrators, or assigns of such person or entity.
- D. **Personal property** means all things which are movable at the time credit is given and secured by such things and which in fact serve as security for credit granted or otherwise for the payment or performance of an obligation, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights, and other things in action. Such term shall include the unborn young of animals and growing crops.
- E. **Repossession proceeding** means a proceeding in the Tribal Court:
 - 1. To recover personal property sold on credit; and
 - 2. To receive authorization to remove such personal property from the territory of the Nation.

(Law & Order Code 2006, § 20-142; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-143. - Action on debt or repossession of personal property.

- A. A creditor may elect between bringing an action on the debt or repossession of personal property. If separate actions are brought on the debt and to repossess the personal property, the creditor shall elect between which to pursue and the other shall be dismissed.
- B. A valid judgment entered by the Tribal Court in an action on the debt shall bar a subsequent repossession proceeding involving the same debt on the same personal property to the extent the original action on the debt would bar a subsequent action on the debt. Likewise, a valid judgment entered by the Tribal Court in a repossession proceeding shall bar a subsequent action on the debt involving the same debt on the same personal property.

(Law & Order Code 2006, § 20-143; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-144. - Repossession of personal property.

A creditor shall not remove personal property within the jurisdiction or territory of the Nation except in strict compliance with the following:

- A. When valid written consent to remove the personal property from the territory of the Nation has been secured from the debtor at the time repossession is sought. Any language contained in a purchase agreement or other such agreement used to secure personal property purporting to authorize the removal of the personal property from the jurisdiction or territory of the Nation shall be null and void and unenforceable. Such written consent shall be retained by the creditor and exhibited to the Tribal police or other Tribal official upon proper demand. The Tribal Council may consent to removal in an original agreement on behalf of the Nation, but such authorization to remove must also be specifically stated in the duly authorizing resolution of the Tribal Council to be effective.
- B. When the debtor refuses to sign said written consent to permit removal of the property from the territory of the Nation, the property shall be removed only by a valid repossession order of the Tribal Court obtained in a repossession proceeding and such order shall be exhibited to the Tribal police or other Tribal official upon proper demand.

(Law & Order Code 2006, § 20-144; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-145. - Repossession proceedings.

Upon the default of a debtor, the creditor may commence a repossession proceeding in the Tribal Court by filing:

- A. A complaint, signed and verified by the creditor, authorized agent, or advocate:
 - 1. Naming the debtor and any other necessary persons as a defendant;
 - 2. Containing a description of the personal property so that it can be identified with reasonable certainty;
 - 3. Stating the facts concerning the alleged default of the debtor and such other facts as may be necessary to constitute a cause of action;
 - 4. Stating the desired relief, including the removal of the personal property from the territory of the Nation;
 - 5. Having appended as exhibits true and correct copies of each promissory note or other agreement between the parties relating to the personal property; and
 - 6. Including an allegation that all relevant requirements and conditions prescribed in (i) any and all applicable laws, regulations, and policies, and (ii) the provisions of the promissory note or other agreement have been complied with by the creditor; and
- B. A summons issued as in other cases requiring the debtor and each other defendant to appear for a trial upon the complaint.

(Law & Order Code 2006, § 20-145; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-146. - Service of process and procedure.

The laws of the Nation governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any repossession proceeding under this Article.

(Law & Order Code 2006, § 20-146; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-147. - Cure of default.

Prior to the entry of judgment and issuance of a repossession order, any debtor or other person or entity may cure the default of such debtor. If a person or entity other than the debtor cures the default, such person or entity shall thereafter have a lien on the personal property for the amount of all payments made by such person or entity to cure the default plus interest on such amounts at the rate stated in the note or other agreement between the creditor and debtor, if any are so stated.

(Law & Order Code 2006, § 20-147; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-148. - Power of the tribal court.

After the commencement of a repossession proceeding pursuant to this Article, if the alleged default has not been cured and if the Tribal Court should find for the creditor, the Tribal Court shall enter judgment and issue a repossession order:

- A. Terminating the interest in the personal property of the debtor and each other defendant named in the complaint upon whom proper and timely service has been made;
- B. Conveying such personal property to the creditor; and
- C. Permitting the creditor, if requested, to remove the personal property from the territory of the Nation.

(Law & Order Code 2006, § 20-148; Ft. McD. Res. No. 95-25, eff. 3-27-1995)

Sec. 20-149. - No deficiency judgment.

No deficiency judgment shall be entered in any repossession proceeding.

(Law & Order Code 2006, § 20-149; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2006-59, adopted 6-27-2006)

Sec. 20-150. - Remedies exclusive.

The remedies provided under this Article are the exclusive remedies for the repossession of personal property and its removal from the territory of the Nation.

(Law & Order Code 2006, § 20-150; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2006-59, adopted 6-27-2006)

Sec. 20-151. - Penalty for violation.

- A. Any nonmember of the Nation found to be in willful violation of this Article may be excluded from the territory of the Nation in accordance with the laws of the Nation.
- B. Any business whose employees are found to be in willful violation of this Article may be denied the privilege of doing business within the territory of the Nation and with the Nation itself.

(Law & Order Code 2006, § 20-151; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2006-59, adopted 6-27-2006)

Sec. 20-152. - Civil liability.

- A. Any person who violates any provision of this Article and any business whose employee violates any provision of this Article is deemed to have breached the peace of the Nation and shall be civilly liable to the debtor for any loss caused by the failure to comply with this Article. A debtor shall be entitled to actual damages and the statutory penalty as provided in subsection B of this Section.
- B. Any person who violates any provision of this Article shall be guilty of a civil offense, and a finding that this Article has been violated shall result in a fine or penalty of not less than five hundred dollars (\$500.00) and no more than five thousand dollars (\$5,000.00).

(Law & Order Code 2006, § 20-152; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2006-59, adopted 6-27-2006)

ARTICLE X - DISPOSITION OF PROPERTY HELD IN THE PUBLIC TRUST

Sec. 20-153. - Purpose.

- A. To provide for the efficient and economical disposal of evidence or property in the possession of the Fort McDowell Yavapai Nation Police or Fire Departments where such property is either lost or abandoned, left in the care or custody of the Police Department for safekeeping, or recovered or seized as evidence.
- B. This article does not include forfeitures of property subject to Chapter 6, Section 6-115 of the Fort McDowell Yavapai Nation Law and Order Code.

(Sec. 20-153 added by Resolution No. Ft. McD. 2006-21, effective March 7, 2006)

(Ft. McD. Res. No. 2006-21, § 20-1, effective 3-7-2006; Ft. McD. Res. No. 2006-59, § 20-1, adopted 6-27-2006)

Sec. 20-154. - Definitions.

- A. *Abandoned Property* means that property to which the owner has relinquished all right, title, claim and possession, with intention of not reclaiming it or resuming its ownership, possession or enjoyment.
- B. *Evidence* means any property recovered or seized in conjunction with the prosecution of a criminal offense.
- C. *Found Property* means any item of tangible or intangible property that was lost, abandoned or found within the boundaries of the Fort McDowell Yavapai Nation and delivered to the Fort McDowell Police Department, or its designee, for care, custody and control of such property and is not connected with a known criminal offense nor has evidentiary value.
- D. *Intangible Property* shall be deemed to include such items of value, which are in the possession, custody or control of the Property Manager, such as, but not limited to:
 1. Checks, drafts, deposits, interest, dividends, income, stocks and bonds;
 2. Deposits for any Fort McDowell Yavapai Nation service or program;
 3. Intangible property left in safekeeping at any Fort McDowell Yavapai Nation owned or leased facility;
 4. Uncashed payroll checks.
- E. *Owner* means the person in who is vested the ownership, dominion, care, control, management or title of property.

- F. *Safekeeping* is property that has no evidentiary value and is available for immediate release to the owner.
- G. *Stolen property* means that property to which the owner has been unlawfully deprived of possession of such property and which has been taken into police custody pursuant to a commission of any crime as defined by the laws of the Nation.
- H. *Tangible personal property* means property that has physical form and substance and is not intangible. That which may be felt or touched, and is necessarily corporeal.
- I. *Weapon* means any firearm, spring gun, air gun or gas-operated gun, or any other device, capable of discharging a dangerous or deadly missile or any other device or instrument capable of inflicting bodily injury.

(Sec. 20-154 added by Resolution No. Ft. McD. 2006-21, effective March 7, 2006)

(Ft. McD. Res. No. 2006-21, § 20-2, effective 3-7-2006; Ft. McD. Res. No. 2006-59, § 20-2, adopted 6-27-2006)

Sec. 20-155. - Disposal of lost, confiscated, abandoned or found property in custody of the Fort McDowell Yavapai Nation, the police and/or fire department of the Fort McDowell Yavapai Nation; sale or disposal of abandoned property.

- A. **Property Covered.** All lost, confiscated, abandoned or lost property that has been delivered to the Police or Fire Department, custody and control, not being held as evidence pursuant to Section 20-157 shall be held for a period of ninety (90) days until disposed of pursuant to this section.
- B. **Time Periods.** If any such money or property as described in Section A is not claimed and taken away within the ninety (90) days after the time it has been delivered to the Police or Fire Department, the custodian of the property or his designee may at any time thereafter proceed to dispose of it in the manner provided by this article.
- C. **Transfer to Property Manager.** If the owner fails to claim the property within the ninety (90) day period, and if no other disposal is prescribed by law, those items having an apparent value of less than one hundred dollars (\$100.00) may be utilized by that agency after the time period prescribed in Section A has expired. If the property has an apparent value in excess of one hundred dollars (\$100.00), the property shall be turned over to the Nation's Property Manager, who may in his discretion, after complying with section D of this section, distribute such property to an appropriate department of the Nation if the property is of use to that department or place it up for sale in accordance with this section.
- D. **Notice Requirements.** Before any property described in this Section is sold or disposed of:
 1. The Property Manager shall give notice of the sale or disposal to the owner, if the name and residence of the owner is known, either personally or by mail, or by leaving a notice at his residence or place of business at least eighteen (18) days prior to the date of the sale or disposal.
 2. If the name and residence of the owner are not known, the Property Manager shall post a notice in the Nation's administrative office and publish once in a newspaper of general circulation listing a) the date and time of the sale or date of disposition; b) a list and description of all property to be sold or disposed of; c) a statement that all property has been abandoned for ninety (90) days and remains unclaimed by an owner; and d) that if the property is sold, all proceeds shall be deposited into the general fund of the Nation.
 3. The posting and publication of the notice shall be at least eighteen (18) days prior to the date of the sale.

- E. **Disposal of Proceeds.** After ninety (90) days notice has been given, and the owner or person entitled to the property has not taken it away, the property shall be sold at public auction or disposed as provided in this section. The proceeds shall be paid to the general fund of the Nation, less the payment of reasonable expenses incurred in connection with the sale.
- F. **Dispute of Ownership.** If there is a dispute as to the ownership of money or property coming into the possession of the police department, fire department, or Property Manager, the department shall request an administrative hearing to determine who has the greater right to the possession of the property. All parties claiming an ownership interest in the property shall be given notice of the hearing and an opportunity to be heard. The hearing officer shall establish rules of administration and procedure to ensure the fair and orderly conduct of hearing held pursuant to this section.
- G. **Contraband Excluded.** All contraband which is lost, stolen, confiscated, abandoned or found, including weapons, ammunition, explosives, hazardous materials, controlled dangerous substances or drug paraphernalia not used as evidence pursuant to Section 20-7 of this section, shall be destroyed or disposed of by the police department.
- H. **Disposition of Money.** If money is delivered to the Nation by virtue of the provisions of subsection A, it shall be deposited in the general fund of the Nation. Coins that have a value lesser or greater than face value may be sold to a dealer for fair market value, whichever is greater, the proceeds of such sale shall be deposited in the general fund of the Nation.
- I. **Disposal of Items of No or Little Value.** Items valued at twenty-five dollars (\$25.00) or less and which have been rejected by the Nation's Property Manager may be given to an appropriate charity or destroyed.
- J. **Records to be Maintained.** The Property Manager or his designee shall keep a record of all tangible or intangible property which is turned over by the Police and/or Fire Departments. Such records shall show the date any such property was seized or otherwise came into the possession of the Police and/or Fire Departments, the means by which the property came into possession of the Departments, any claims made by any persons for such property, and the final disposition of any such property.

(Sec. 20-155 added by Resolution No. Ft. McD. 2006-21, effective March 7, 2006)

(Ft. McD. Res. No. 2006-21, § 20-3, effective 3-7-2006; Ft. McD. Res. No. 2006-59, § 20-3, adopted 6-27-2006)

Sec. 20-156. - Rights of the finder.

- A. Notwithstanding any other provision of this Article, whenever any item of tangible or intangible property has been found and delivered to the Fort McDowell Police or Fire Department for care, custody, and control, such property shall be returned to the original finder whenever claim has been made by the finder and the following conditions have been met:
 - a. The Claimant is a person who originally found the lost or abandoned property.
 - b. The Claimant, after surrendering the property to the Fort McDowell Police or Fire Department, has served written notice to the custodian of his intention to make a claim on that item within sixty (60) days of surrender of the item;
 - c. Lost or abandoned property has remained unclaimed by the owner or person having a right to the property ninety (90) days after surrender of the same to the custodian.
 - d. The lost, abandoned or found property is not stolen or confiscated property, nor property held under the exceptions in Section 20-158, nor property held as evidence.

- e. The person who found and turned over the property is not a public officer or employee of the federal, tribal, state or local government who found the property in the course of performing the duties of employment.

(Sec. 20-156 added by Resolution No. Ft. McD. 2006-21, effective March 7, 2006)

(Ft. McD. Res. No. 2006-21, § 20-4, effective 3-7-2006; Ft. McD. Res. No. 2006-59, § 20-4, adopted 6-27-2006)

Sec. 20-157. - Disposition of evidence in the custody of the prosecutor or the police department.

- A. **Discretionary Disposition.** The Prosecutor or law enforcement agency may, at any time, dispose of any item or part or portion thereof, seized or otherwise obtained for use in criminal prosecution in accordance with the procedures established by law and by this rule.
- B. **Time of Disposition.** Unless otherwise prescribed by law, after the case is over for each person against whom the item could be used as evidence, the prosecutor or police department agency may dispose of such items of evidence:
 - a. Within thirty (30) days after a defendant has been acquitted or the charges have been dismissed with prejudice.
 - b. Within ninety (90) days after judgment and sentence have been entered, if there is no notice of appeal nor have a post-trial motion been filed.
 - c. Within one (1) year after exhaustion of all remedies if no petition for habeas corpus is filed or after the exhaustion of all federal remedies if a petition for a writ of habeas corpus has been filed.
- C. **Mandatory Disposition.** Unless otherwise provided by law, the prosecutor or police officer shall dispose of any item within one (1) year after disposition of the case for each person against whom the item could be used as evidence and for which all remedies have been exhausted.
- D. **Disposition of evidence in Unsolved Crimes.** Unless otherwise provided by law, all evidence held in the custody of the Fort McDowell Police Department in connection with an unsolved criminal prosecution should be held until expiration of time periods set forth in Chapter 4, section 4-75.
- E. **Property Seized in Search Warrant.** Unless otherwise provided by law, all property or things taken on a warrant shall be retained in the custody of the seizing officer or agency which he represents, subject to the order of the court in which the warrant was issued, or any other court in which such property or thing is sought to be used as evidence. Disposal of said items shall be directed by court order and disposed of in accordance with the procedures outlined in this section.
- F. **Manner of Disposition.** Where private possession of the item is not illegal or otherwise proscribed by law, it shall be returned to the legal owner unless the owner's whereabouts are unknown, or the owner is unwilling to accept it. When such return is not possible, the item shall be sold or otherwise disposed of in the manner prescribed in Section 20-155.
- G. **Notice to Prosecutor.** Before disposing of any item, the Fort McDowell Police Department will notify the Prosecutor, who may
 - a. Cause it to be photographed, reproduced, or otherwise identified in any manner;
 - b. Transcribe all serial numbers, identification numbers or other markings;
 - c. Prepare, or have prepared by an expert, a report identifying the item.
- H. **Notice of Disposal.** At least ten (10) days prior to disposing of an item under this rule, the Fort McDowell Police department, shall serve a notice of disposal, together with a copy of the record of disposal, to the court, any person, and his or her counsel, against whom the item has been or may be used as evidence. Within ten (10) days thereafter, such person may request a stay of disposal

until after trial or request to examine, test or analyze or otherwise make his or her own record of the item. The prosecutor may impose any reasonable conditions on such examination, testing or analysis, including an appropriate stipulation concerning chain of title.

- I. **Stay of Disposal.** A court having jurisdiction of the case, may, on request of any party or on its own initiative, stay disposal of any item for a reasonable time.
- J. **Use of Record of Disposal.** All record of disposal made under this rule shall be admissible at any later court proceeding for any purpose for which the item itself would be admissible.
- K. **Retroactive Application.** The provisions of this rule shall apply to all records and evidence in possession of the clerk and Fort McDowell Police Department as of the effective date of these rules regardless of the date on which the records were made or the evidence obtained.

(Sec. 20-157 added by Resolution No. Ft. McD. 2006-21, effective March 7, 2006)

(Ft. McD. Res. No. 2006-21, § 20-5, effective 3-7-2006; Ft. McD. Res. No. 2006-59, § 20-5, adopted 6-27-2006)

Sec. 20-158. - Property entrusted to police department for safekeeping.

- A. Property which is being held for safekeeping by the police, or entrusted to the police for safekeeping, shall be disposed of after the department provides notice to the person entrusting the property or the owner. The notice shall be given pursuant to Section 20-155(D), to such person within sixty (60) days after the entrustment, notifying that person to claim the property no later than thirty (30) days following the date of the notice, or else the property will be deemed abandoned and disposed of by the department as provided in Section 20-155.

(Sec. 20-158 added by Resolution No. Ft. McD. 2006-21, effective March 7, 2006)

(Ft. McD. Res. No. 2006-21, § 20-6, effective 3-7-2006; Ft. McD. Res. No. 2006-59, § 20-6, adopted 6-27-2006)

Chapter 21 - TRIBAL GAMING ORDINANCE

CHAPTER 1. FINDINGS AND PURPOSES

Sec. 101. - Legislative findings.

The Tribal Council of the Fort McDowell Yavapai Nation hereby finds:

- (a) That the orderly and honest conduct of gaming activities within the Fort McDowell Yavapai Nation has been and will continue to be of vital importance to the economy of the Nation, and to the general welfare of its members;
- (b) That the continued growth and success of gaming within the Fort McDowell Yavapai Nation are dependent upon public confidence and trust that such activities are conducted honestly and that they are free from criminal and corrupt elements, and that the facilities in which such activities are conducted are designed and maintained to assure the safety and comfort of patrons of the gaming activities;
- (c) That such public confidence and trust can only be maintained by the comprehensive regulation of all people, practices, and activities related to the operation of the Nation's gaming facilities; and

- (d) All of the Nation's establishments where gaming is conducted, and all people holding positions of responsibility with respect to any such activity, must therefore be licensed, and their activities monitored, to assure that the public health, safety, and general welfare of the inhabitants of the Nation and the patrons of its gaming facilities are fully protected, and so as to assure the economic success of gaming activities within the Nation.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 101, adopted 12-12-2006, eff. 12-12-2006)

Sec. 102. - Purposes.

In order to accomplish:

- (a) The maintenance of the highest standards of honesty and integrity in the operation of any and all gaming activities within the Fort McDowell Yavapai Nation;
- (b) The maintenance of public confidence and trust in the honesty and integrity of such gaming activities, and in the people engaged in such activities;
- (c) The maximum reasonable economic return to the Fort McDowell Yavapai Nation as the owner of gaming facilities within the Nation consistent with the fair and reasonable expectations of patrons of such activities and the assurance of their safety and comfort in participating in gaming activities; and
- (d) Compliance with all applicable laws of the Fort McDowell Yavapai Nation and the United States of America pertaining to gaming, including but not limited to the Indian Gaming Regulatory Act of 1988, and the Gaming Compact with the State of Arizona.

The Tribal Council (Nation), empowered by the Nation's Constitution to enact ordinances, hereby enacts this ordinance in order to govern Class II and Class III gaming operations on the Nation's Indian lands.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 102, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 2. DEFINITIONS

Unless a different meaning is clearly indicated in this Ordinance, the terms used herein shall have the same meaning as defined in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, and its regulations, 25 C.F.R. § 500 *et seq.* Specifically, for purposes of this Ordinance:

- (a) "Act" means the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701—721 and 18 U.S.C. §§ 1166—1168, and all regulations promulgated pursuant thereto.
- (b) "Class I Gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

[25 U.S.C. § 2703(6); 25 C.F.R. § 502.2]

- (c) "Class II Gaming" means:

- (1) The game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith):
 - (A) Which is played for prizes, including monetary prizes, with cards bearing numbers or other designations;

- (B) In which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
 - (C) In which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo; and
- (2) Card games that:
- (A) Are explicitly authorized by the laws of the State; or
 - (B) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.
- (3) The term "Class II gaming" does not include:
- (A) Any banking card games, including baccarat, chemin de fer, or blackjack (21); or
 - (B) Electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

[25 U.S.C. § 2703(7); 25 C.F.R. § 502.3]

- (d) "Class III Gaming" means all forms of gaming that are not Class I gaming or Class II gaming.

[25 U.S.C. § 2703(8); 25 C.F.R. § 502.4]

- (e) "Commission" means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.
- (f) "Compact" means the Tribal-State Compact entered into between the Fort McDowell Yavapai Nation and the State of Arizona pursuant to section 11(d) of the Act, 25 U.S.C. § 2710(d).
- (g) "Constitution" means the Constitution of the Nation amended by the Nation and approved by the Secretary of Interior on November 12, 1999.
- (h) "Distributor" means a Person who distributes Gaming Devices and/or component parts of Gaming Devices.
- (i) "Gaming Activities" means any forms of Class II and Class III Gaming conducted within the territorial jurisdiction of the Nation.
- (j) "Gaming Device" or "Electronic Game of Chance" means a mechanical device, an electro-mechanical device or a device controlled by an electronic microprocessor or another manner, whether that device constitutes Class II Gaming or Class III Gaming, that allows a player or players to play games of chance, whether or not the outcome also is affected in some part by skill, and whether the device accepts coins, tokens, bills, coupons, ticket vouchers, pull tabs, smart cards, electronic in-house accounting system credits or other similar forms of consideration and, through the application of chance, allows a player to become entitled to a prize, which may be collected through the dispensing of coins, tokens, bills, coupons, ticket vouchers, smart cards, electronic in-house accounting system credits or other similar forms of value. Gaming Device does not include any of the following:
 1. Those technological aids for bingo games that function only as electronic substitutes for bingo cards.
 2. Devices that issue and validate paper lottery products and that are directly operated only by Arizona State Lottery licensed retailers and their employees.

3. Devices that are operated directly by a lottery player and that dispense paper lottery tickets, if the devices do not identify winning or losing lottery tickets, display lottery winnings or disburse lottery winnings.
 4. Devices that are operated directly by a lottery player and that validate paper lottery tickets for a game that does not have a predetermined number of winning tickets, if:
 - (A) The devices do not allow interactive gaming;
 - (B) The devices do not allow a lottery player to play the lottery for immediate payment or reward;
 - (C) The devices do not disburse lottery winnings; and
 - (D) The devices are not Video Lottery Terminals, as defined in the Compact.
 5. Player Activated Lottery Terminals, as defined in the Compact.
- (k) "Gaming Employee" means any individual employed as a Primary Management Official or Key Employee of a Gaming Operation of the Nation and any individual employed in the operation or management of a Gaming Operation, including, but not limited to, any individual whose employment duties require or authorize access to restricted areas of a Gaming Facility not otherwise open to the public.
- (l) "Gaming Facility" means the buildings or structures in which Gaming Activities are conducted.
- (m) "Gaming Facility Operator" means the Nation, an enterprise owned by the Nation, or such other entity of the Nation having full authority and responsibility for the operation and management of Class II and Class III Gaming Activities.
- (n) "Gaming Operation" means any Gaming Activity conducted within any Gaming Facility.
- (o) "Gaming Services" means the providing of any goods or services, except for legal services, to the Gaming Facility Operator in connection with the operation of Class II or Class III gaming in a Gaming Facility, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services for the Gaming Facility, in an amount in excess of ten thousand dollars (\$10,000.00) in any single month.
- (p) "Indian lands" means:
- (1) All lands within the limits of the Nation's reservation;
 - (2) Any lands title to which is either held in trust by the United States for the benefit of the Nation or individual or held by the Nation or individual subject to restriction by the United States against alienation and over which the Indian Nation exercises governmental power; and
 - (3) For all lands acquired into trust for the benefit of an Indian Nation after October 17, 1988, the lands meet the requirements set forth in 25 U.S.C. § 2719.

[25 U.S.C. § 2703(4); 25 U.S.C. § 2719; 25 C.F.R. § 502.12]

- (q) "Indian Nation" means the Fort McDowell Yavapai Nation.
- (r) "Key Employee" means:
1. Any individual employed by the Gaming Facility Operator who performs one (1) or more of the following functions: (i) Bingo caller; (ii) Counting room supervisor; (iii) Chief of security; (iv) Custodian of gaming supplies or cash; (v) Floor manager; (vi) Pit boss; (vii) Dealer; (viii) Croupier; (ix) Approver of credit; (x) Custodian of Gaming Devices including any individual with access to cash and accounting records within Gaming Devices;
 2. Any individual employed by the Gaming Facility Operator whose total cash compensation from his or her employment by the Gaming Facility Operator exceeds fifty thousand dollars (\$50,000.00) per year; and

3. The four (4) most highly compensated employees of the Gaming Facility Operator.

[25 C.F.R. § 502.14)]

- (s) "Management Contract" means a management contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.
- (t) "Management Contractor" means a Person who has entered into a Management Contract with the Gaming Facility Operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.
- (u) "Manufacturer" means a Person that manufactures Gaming Devices and/or component parts of Gaming Devices.
- (v) "Nation" means the Fort McDowell Yavapai Nation organized under its Constitution.
- (w) "Net Revenues" means the gross gaming revenues of the Gaming Facility Operator less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees. *[25 U.S.C. § 2703(9); 25 C.F.R. § 502.16]*
- (x) "Ordinance" means this Ordinance for the Regulation of Gaming Activities Within the Fort McDowell Yavapai Nation which governs the conduct of Gaming Activities within the Fort McDowell Yavapai Nation, all amendments thereto, and all regulations promulgated thereunder.
- (y) "Person" includes natural persons, as well as corporations, limited liability companies, partnerships, and other unincorporated associations, societies, or firms.
- (z) "Primary Management Official" means: (1) the individual having management responsibility for a Management Contract; (2) any individual who has authority to hire and fire employees or to set up working policy for the Gaming Operation; and (3) the chief financial officer or other individual who has financial management responsibility for a Gaming Operation.

[25 C.F.R. § 502.19]

- (aa) "Principal" means with respect to any entity:
 - 1. Each of its officers and directors;
 - 2. Each of its principal management employees, including its chief executive officer, its chief financial officer, its chief operating officer, and its general manager;
 - 3. Each of its owners or partners, if an unincorporated business;
 - 4. Each of its shareholders who own more than ten (10) percent of the shares of the corporation, if a corporation;
 - 5. Each Person other than a banking institution who has provided financing for the entity constituting more than ten (10) percent of the total financing of the entity; and
 - 6. Each of the beneficiaries and trustees of a trust.
- (bb) "Privacy Act" means the Privacy Act of 1974, as amended (P.L. 93-579, as amended; 5 U.S.C. § 552(a), and the obligations and responsibilities placed on the United States government under the Privacy Act as applied to the Commission pursuant to the Act.
- (cc) "State" means the State of Arizona, and its authorized officials, agents, and representatives.
- (dd) "Transfer Agreement" means a written agreement authorizing the transfer of Gaming Device Operating Rights between the Nation and another Indian Nation, in accordance with the provisions of the Compact.
- (ee) "Tribal Council" means the Tribal Council of the Fort McDowell Yavapai Nation as established and empowered under Articles IV and V of the Constitution of the Fort McDowell Yavapai Nation.

- (ff) "Tribal Gaming Commission" means the governmental entity of the Fort McDowell Yavapai Nation wholly independent from the Nation's Gaming Operation subject only to the pre-eminent legislative authority of the Tribal Council.
- (gg) "Tribal Gaming License" means a license issued pursuant to the Compact and this Ordinance by the Tribal Gaming Office to an employee of the Gaming Facility.
- (hh) "Tribal Gaming Office" means the Fort McDowell Yavapai Nation regulatory department which shall have overall civil regulatory authority over Gaming Activities within the Nation and independent from the Gaming Operation.

(Law & Order Code 2006, § 21-2 ; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 2, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 3. TRIBAL OWNERSHIP, AUTHORIZATION FOR GAMING ACTIVITIES, AND USE OF NET REVENUES.

Sec. 301. - Tribal ownership of gaming activities.

All Gaming Activities within the Nation shall be owned entirely by the Nation and conducted and operated by the Gaming Facility Operator. In compliance with 25 U.S.C. § 2710(b)(2)(A), the Nation shall have the sole proprietary interest in and responsibility for the conduct of any Gaming Activity on its Indian Lands; provided, however, that nothing herein shall (i) preclude the Nation from entering into a Management Contract as authorized under 25 U.S.C. § 2711; or (ii) interfere with the exercise by any secured party of its rights under any collateral lease, leasehold mortgage or other financing agreement with the Nation to enforce its security interests in the premises on which such Gaming Activities may be conducted, or to enforce its rights against revenues of the Nation from its Gaming Activities for the purpose of repayment of the debt obligations of the Nation to such secured party in accordance with the provisions of such agreements.

[25 U.S.C. § 2710(b)(2)(A); 25 C.F.R. § 522.4(b)(1)]

(Law & Order Code 2006, § 21-6; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 301, adopted 12-12-2006, eff. 12-12-2006)

Sec. 302. - Authorization for gaming activities.

- (a) Forms of Class III Gaming Authorized. The Nation may conduct or operate all forms of Class III Gaming authorized under the Compact.
- (b) Authority for Class I and Class II Gaming. In addition to the forms of Class III Gaming authorized pursuant to Section 302(a) hereof, the Nation shall be authorized to conduct all forms of Class I and Class II Gaming.

[25 C.F.R. § 522.6(b)-(c)]

(Law & Order Code 2006, § 21-4; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 302, adopted 12-12-2006, eff. 12-12-2006)

Sec. 303. - Use of net revenues.

The net revenues received by the Nation from all Gaming Activities shall be used exclusively for one (1) or more of the following purposes:

- (a) To fund government operations or programs of the Nation;
- (b) To provide for the general welfare of the Nation and its members;
- (c) To promote the Nation's economic development;
- (d) To benefit charitable organizations providing services benefiting the Nation or its members;
- (e) To help fund operations of local government agencies; and

[25 U.S.C. § 2710(b)(2)(B); 25 C.F.R. § 522.4(b)(2)]

- (f) To make Per Capita Payments.

If the Nation elects to make per capita payments to tribal members, it shall authorize such payments only upon the approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. 2710(b)(3), (4)

[25 C.F.R. § 290.2]

- (1) The Nation shall authorize and issue such payments only in accordance with a revenue allocation plan submitted to and approved by the Secretary of the Interior under 25 U.S.C. § 2710(b)(3).

[25 U.S.C. § 2710(b)(3); 25 C.F.R. § 522.4(b)(2)(ii)]

(Law & Order Code 2006, § 21-7; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 303, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 4. FORT MCDOWELL YAVAPAI NATION TRIBAL GAMING COMMISSION

- (a) Establishment of a Tribal Gaming Commission. There shall be established a Fort McDowell Tribal Gaming Commission consisting of a chairman and at least four (4) other members who shall be appointed by the Tribal Council. Prior to appointing a permanent member, the Nation shall conduct or cause to be conducted a background investigation of the person in accordance with the provision of Section 1010 of this Ordinance. At least three (3) of the members, including the Chairman, shall be enrolled members of the Nation. None of the members shall be employees of the Gaming Operation or Gaming Facility Operator or elected officials of the Nation. Each member shall serve for a term of three (3) years commencing on the date of his or her appointment. The compensation of members of the Tribal Gaming Commission shall be established by the Tribal Council. No member or employee of the Tribal Gaming Commission shall participate as a player in any Class II or Class III Gaming Activity conducted by the Nation.
- (b) Members of the Tribal Gaming Commission may be removed from office by the Tribal Council prior to the expiration of their respective terms only for neglect of duty, misconduct, malfeasance, or other acts that would render the Commissioner unqualified for his/her position. When the Tribal Council believes that a removal is appropriate, it shall so notify the Commissioner(s) and hold a hearing on the matter. The Tribal Council may opt to preliminarily remove the Commissioner pending the hearing. At the hearing the Commissioner may provide evidence rebutting the grounds for his/her removal. A vote of the Tribal Council on the validity of the preliminary removal shall be final and not subject to further appeal. A finding by the Tribal Council that the preliminary removal was wrongful shall entitle the affected Commissioner to compensation for expenses incurred in appealing the wrongful removal, and shall entitle the Commissioner to any pay withheld.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 4, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 5. FORT MCDOWELL YAVAPAI NATION TRIBAL GAMING OFFICE

Sec. 501. - Establishment of the tribal gaming office.

- (a) The Nation hereby establishes a Tribal Gaming Office whose duty it is to regulate tribal gaming operations. The Tribal Gaming Office shall consist of an Executive Director, Investigators, Inspectors, Surveillance and such assistants and other staff as the Executive Director shall determine are required from time to time, subject to funding provided by the Tribal Council. All employees of the Tribal Gaming Office shall act under the authority and supervision of the Executive Director. No employee of the Tribal Gaming Office shall be employed by the Gaming Facility Operator. No employee of the Tribal Gaming Office shall be employed by or hold, directly or indirectly, a financial interest in an organization or entity which (i) has entered into a Management Contract with the Gaming Facility Operator; (ii) is a Manufacturer or Distributor; (iii) provides Gaming Services; or (iv) provides financing to the Nation or the Gaming Facility Operator for purposes of conducting Gaming Operations within the Nation. An Inspector shall be present in each Gaming Facility during all hours of Gaming Operations.
- (b) The purpose of the Tribal Gaming Office is regulatory, not managerial. The Tribal Gaming Office will conduct oversight to ensure compliance with Tribal, Federal, and, if applicable, State laws and regulations. The Tribal Gaming Office will serve as the licensing authority for individuals employed in the gaming operation and will administer background investigations as part of the licensing process. The Commission will also have a role in monitoring compliance with the internal controls for the gaming operation and in tracking revenues. In order to carry out its regulatory duties, the Tribal Gaming Office shall have unrestricted access to all areas of the gaming operation and to all records. The Tribal Gaming Office shall have authority to take enforcement actions, including suspension or revocation of an individual gaming license when appropriate. The Tribal Gaming Office shall be regarded as a law enforcement agency for the purposes of accessing criminal history information and performing other duties as required by this Ordinance.
- (c) The Nation recognizes the importance of an independent Tribal Gaming Office in maintaining a well-regulated gaming operation. The Tribal Gaming Office shall be and act independently and autonomously from the Tribal Council in all matters within its purview. No prior or subsequent review by the Tribal Council of any actions of the Tribal Gaming Office shall be required or permitted except as otherwise explicitly provided in this Ordinance. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Nation hereby finds that, at a minimum:
 - (1) No member of the Tribal Council or Tribal Gaming Office may serve on the Tribal Gaming Commission;
 - (2) No member directly related to or living with any Tribal Council member or Tribal Gaming Commission member may serve on the Tribal Gaming Office; and
 - (3) Members of the Tribal Gaming Office are prohibited from gambling in the facility.

(Law & Order Code 2006, § 21-10; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 501, adopted 12-12-2006, eff. 12-12-2006)

Sec. 502. - Appointment and authority of Executive Director.

- (a) The Executive Director of the Tribal Gaming Office shall be appointed by the Tribal Council of the Nation and shall serve at their pleasure. The job performance of the Executive Director shall be reviewed periodically by the Nation's President who shall submit a written report of each such review to the Tribal Council.
- (b) The Executive Director shall be an individual (i) of the utmost honesty and integrity, (ii) who has not been convicted of any felony or of a misdemeanor involving theft or embezzlement or a crime

involving moral turpitude, and (iii) whose prior activities, reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation of Gaming Activities.

- (c) The Executive Director shall be the Nation's designated agent for service of any official determination, order or notice of the State and/or the Commission, as specified in Chapter 14 of this Ordinance.
- (d) The Executive Director shall oversee Inspectors, Investigators, and Surveillance Officers hired by the Tribal Gaming Office as well as such other staff as the Tribal Gaming Office may from time to time employ. The Executive Director shall be responsible for coordination of the functions of the Tribal Gaming Office with the State Gaming Agency and other federal, state and local agencies as directed by the Tribal Gaming Commission and shall serve as the formal liaison to the person holding a similarly titled position with the State Gaming Agency. The Executive Director may direct Tribal Gaming Office Investigators, Inspectors, and/or Surveillance Officers to conduct an investigation on matters relating to gaming activity, licensing of vendors, employees, and applicants, violations of the State Gaming Compact, violations of NIGC regulations, violations of Gaming Facility Internal Controls, and violations of this Ordinance, the imposition of any penalty, the investigation of any complaint, or any other action within the jurisdiction of the Tribal Gaming Office. The Executive Director may, in the name of the Tribal Gaming Commission, conduct any hearing, investigation or inquiry, compel the production of any information or documents, and otherwise exercise the investigative powers of the Tribal Gaming Office, which the Tribal Gaming Office may exercise under this Ordinance.
- (e) Nominees for positions within the Tribal Gaming Office must satisfy the suitability standards set forth for key employees and primary management officials, found in Section 1012 of this Ordinance. Background investigations shall be performed by the Arizona Department of Gaming (ADOG). The Tribal Gaming Office Executive Director shall have the authority to direct expanded background investigations on personnel hired for positions within the Tribal Gaming Office, which may be in addition to any background investigation conducted by ADOG.

(Law & Order Code 2006, § 21-10; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 502, adopted 12-12-2006, eff. 12-12-2006)

Sec. 503. - Powers and duties of the Tribal Gaming Office.

The Tribal Gaming Office shall:

- (1) Have and exercise full responsibility for the regulation of Gaming Activities within the Nation, as provided in this Ordinance, the Act, and the provisions of the Compact;
- (2) Conduct or cause background investigations to be conducted on, at a minimum, primary management officials and key employees; to perform background investigations on every applicant for a license under this Ordinance, including all applicants for positions of employment with the Gaming Facility Operator;
- (3) Review and approve all investigative work conducted;
- (4) Report results of background investigations to the NIGC;
- (5) Obtain and process fingerprints;
- (6) Make licensing suitability determinations, which shall be signed by the Executive Director of the Chairman of the Tribal Gaming Office or a designated representative; Issue gaming licenses to management officials and employees of the operation, consistent with the suitability determination; to issue licenses and employee identification cards in the form designated by the Tribal Gaming Office, which cards shall include a photograph, the employee's first and last name, a unique identification number, the Nation's seal, and an expiration date;
- (7) To approve or deny applications for licenses or to limit, condition, restrict, revoke, or suspend any license which it has granted;

- (8) Establish standards for licensing Tribal gaming operations;
- (9) Issue facility gaming licenses to Tribal gaming operations;
- (10) Inspect, examine and monitor all gaming activities, and have immediate access to review, inspect, examine, photocopy and audit all records of the gaming establishment; the authority to inspect the Gaming Facility at any time and have immediate and unrestricted access to any and all areas of a Gaming Facility and personnel employed by the Gaming Facility, which it may exercise directly or through such agents or employees as determined by the Executive Director; to enter the Gaming Facility at any time to inspect (1) the Gaming Facility, (2) its employees and operations, (3) its equipment and supplies, and (4) its business records, books of account, and any and all other financial records or documents pertaining to the business operations of the Gaming Facility Operator (regardless of where those records or documents may be located) and to make summaries or copies of any and all such records or documents to ensure compliance with the provisions of this Ordinance, the Compact or the Act; to have an Inspector present in each Gaming Facility during all hours of Gaming Operation;
- (11) Ensure compliance with all Tribal, State, and Federal laws, rules, and regulations regarding Indian gaming;
- (12) To review any proposed Management Contract, Transfer Agreement or proposed lease of land for the site of a Gaming Facility to determine whether the contract, agreement or lease complies with all applicable laws and regulations and to make recommendations regarding the terms of any proposed Management Contract, Transfer Agreement or lease to the Nation's President, legal counsel and Gaming Facility Operator;
- (13) Investigate any suspicion of wrongdoing associated with any gaming activities; to investigate any aspect of Gaming Activities or the Gaming Facility Operator necessary: to protect the public interest in the integrity of Gaming Activities and the integrity of the Gaming Facility Operator;
- (14) To assure that the Gaming Facility Operator is accountable for and able to protect its assets; to prevent improper or unlawful conduct in the course of Gaming Activities, financial accounting or money handling of the Gaming Facility Operator;
- (15) To investigate any reported violation of the provisions of the Compact or this Ordinance and direct that the Gaming Facility Operator correct the violation upon such terms and conditions as the Tribal Gaming Office may deem appropriate. The Tribal Gaming Office may compel any licensee or person employed by or doing business with the Gaming Operation to appear before it and to provide such information, documents or other materials as may be in their possession to assist in any such investigation;
- (16) To receive any complaint from an employee of the Gaming Operation or any member of the public who is or claims to be adversely affected by an act or omission of the Gaming Operation or any employee thereof which is asserted to violate this Ordinance or the Compact and to investigate and resolve patron disputes in accordance with Section 14 of the Compact;
- (17) To require any Person whom the Tribal Gaming Office determines has violated any provisions of this Ordinance to correct the violation upon such terms and conditions as the Tribal Gaming Office determines to be appropriate;
- (18) To summarily seize, remove, or impound any equipment, supplies, documents, or records of the Gaming Facility Operator or found in the Gaming Facility so that it may examine such items;
- (19) Hold hearings on patron complaints, in compliance with procedures established in the gaming ordinance and other Tribal gaming regulations;
- (20) Comply with any and all reporting requirements under the IGRA, Tribal-State compact to which the Nation is a party, and any other applicable law;
- (21) Promulgate and issue regulations necessary to comply with applicable internal control standards; to approve the rules of Gaming Activities prior to implementation by the Gaming

Facility Operator, and, if deemed appropriate, to confiscate or shut down any game of chance or gaming supplies that fail to conform to any required standards;

- (22) To approve the required system of internal controls prior to implementation by the Gaming Facility Operator, and to issue regulations addressing compliance with the approved system of internal controls;
- (23) Promulgate and issue regulations on the levying of fees and/or taxes associated with gaming license applications;
- (24) Promulgate and issue regulations on the levying of fines and/or suspension or revocation of gaming licenses for violations of the gaming ordinance, or any other Tribal, Federal, or State, if applicable, gaming regulations; and to issue a notice of violation to any Person for violating provisions of this Ordinance, the Compact, or the Act and to impose civil penalties for such violations, in accordance with the provisions of this Ordinance;
- (25) Maintain a list of persons provided by the Arizona Department of Gaming who are not allowed to gamble in Tribal gaming facilities in order to maintain the integrity of the gaming; to maintain a list of individuals who, because of their criminal history or their association with career offenders or career offender organizations, pose a threat to the integrity of Gaming Activities, and who shall be barred from all Gaming Facilities within the Nation;
- (26) Establish a list of persons who have voluntarily asked to be excluded from Tribal gaming facility and create regulations for enforcing this exclusion;
- (27) To remove from any Gaming Facility and the surrounding premises controlled by the Gaming Facility Operator any individual barred from the Nation's Gaming Facilities and to establish a list thereof;
- (28) Provide referrals and information to the appropriate law enforcement officials when such information indicates a violation of Tribal, Federal, or State statutes, ordinances, or resolutions;
- (29) Create a list of regulatory authorities that conduct vendor background investigations and licensing which the Commission recognizes as trustworthy;
- (30) Draft regulations exempting vendors from the licensing and/or background investigation requirements if they have received a license from a recognized regulatory authority;
- (31) To issue regulations limiting or restricting the access of Persons who are not Gaming Employees to the non-public areas of a Gaming Facility;
- (32) To require a plan for the protection of public safety and the physical security of patrons in the Gaming Facilities, setting forth the respective responsibilities of the Tribal Gaming Office, the security department of the Gaming Operation, any Tribal Police Department, and if appropriate, any State or local police agency;
- (33) To adopt an annual operating budget which shall be subject to the approval of the Tribal Council and may in accordance with said budget employ such staff from time to time as it deems necessary to fulfill its responsibilities under this Ordinance and the Compact, and may retain consultants and investigative services to assist the Tribal Gaming Office with respect to any of the issues over which the Tribal Gaming Office exercises jurisdiction. The expenses of the Tribal Gaming Office in accordance with such budget shall be assessed against the Gaming Operation and the Gaming Operation shall pay such assessments to the Nation;
- (34) To investigate any report of a failure of any Gaming Operation, the Gaming Facility Operator, or any Person to comply with the provisions of this Ordinance, the Compact or the Act.

(Law & Order Code 2006, § 21-10; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 503, adopted 12-12-2006, eff. 12-12-2006)

Sec. 504. - Investigations.

- (a) The Gaming Facility Operator shall report unusual occurrences and all violations or suspected violations of the Compact, its appendices, or this Ordinance by an employee or agent of the Gaming Facility Operator, or any person on the premises whether or not associated with Gaming Activities, to the Tribal Gaming Office.
- (a) The Tribal Gaming Office shall investigate any reported violation of this Ordinance, the Compact or the Act. The Tribal Gaming Office shall also investigate any reported violation of the Compact's appendices when the Tribal Gaming Office determines that an investigation is reasonably necessary to ensure the integrity of gaming, the protection of persons and property, and compliance with the Compact.
- (b) The Tribal Gaming Office shall make a written record of reported violations in accordance with the requirements of Section 6(e) of the Compact. The Tribal Gaming Office shall make reports of its investigations available to the Arizona Department of Gaming in accordance with the requirements of Section 6(g) of the Compact.
- (c) The Tribal Gaming Office may issue a written warning of its preliminary determination of violation to any licensee alleged to have committed a violation and to the Gaming Facility Operator. The warning shall require the licensee and/or the Gaming Facility Operator, as appropriate, to correct the violation upon such terms and conditions as the Tribal Gaming Office determines are necessary and proper under the provisions of this Ordinance.
- (d) The licensee and/or the Gaming Facility Operator, may file with the Tribal Gaming Office, a written response to the warning within seven (7) days of receiving the warning. Following receipt of the responses, the Tribal Gaming Office shall complete its investigation into the alleged violation. The Executive Director may issue a notice of violation if the Tribal Gaming Office determines that a Person other than a licensee violated or is violating the Ordinance, the Compact, the Act, or Gaming Facility Operator's Internal Controls.

(Law & Order Code 2006, § 21-10; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 504, adopted 12-12-2006, eff. 12-12-2006)

Sec. 505. - Issuance of regulations.

- (a) The Tribal Gaming Office shall from time to time promulgate and issue regulations governing any aspect of its responsibilities under this Ordinance, so long as they are in furtherance of and not in conflict with any provision of this Ordinance. Without limitation, the matters to be addressed by such regulations may include the following:
 1. The time and manner for applying for a Gaming Facility Operator's License under this Ordinance, and the specific information to be provided in connection with such application, including information necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed;
 2. The procedure by which applicants for licenses under this Ordinance shall apply for such licenses, including the information to be provided by the applicant necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed; and
 3. The specific types of accounting, internal controls, security, accessibility to non-public areas, record-keeping and reporting measures required by this Ordinance, the Compact or the Act to be in place and functioning at any Gaming Facility licensed under this Ordinance.

(Law & Order Code 2006, §§ 21-10, 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 505, adopted 12-12-2006, eff. 12-12-2006)

Sec. 506. - Records confidentiality.

The Tribal Gaming Office shall ensure that all records and information obtained as a result of an employee background investigation shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing and employment processes. Information obtained during the course of an employee background investigation shall be disclosed to members of management, human resource personnel or others employed by the tribal gaming operation on a need-to-know basis for actions taken in their official capacities.

This Section does not apply to requests for such information or records from any Tribal, Federal or State law enforcement or regulatory agency, or for the use of such information or records by the Tribal Gaming Office and staff in the performance of their official duties.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 506, adopted 12-12-2006, eff. 12-12-2006)

Sec. 507. - Ineligible persons.

The following persons are not eligible to serve as Tribal Gaming Office members: Tribal Council members, while serving as such; employees of the gaming operation, while serving as such; gaming contractors (including any principal of a management or other contracting company); persons directly related to or sharing a residence with any of the above; persons ineligible to be key employees or primary management officials. Nontribal members previously convicted of a felony, of embezzlement, of theft, or of any other money-related crime or honesty-related crime (such as fraud) cannot serve as Tribal Gaming Office members. The Tribal Council shall require a criminal history check through the Tribal Gaming Office and shall review this criminal history report and make an appropriate suitability determination before appointing an individual to a position in the Tribal Gaming Office.

(Law & Order Code 2006, § 21-10; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 507, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 6. ANNUAL INDEPENDENT AUDIT

- (a) The Nation shall cause an annual outside independent audit of gaming operations to be conducted, and shall submit the resulting audit reports to the National Indian Gaming Commission.

[25 U.S.C. § 2710(b)(2)(C); 25 C.F.R. § 522.4(b)(3)]

- (b) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of twenty-five thousand dollars (\$25,000.00) annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection (a) above.

[25 U.S.C. § 2710(b)(2)(D); 25 C.F.R. § 522.4(b)(4)]

- (c) The Gaming Facility Operator shall prepare financial statements for its operations in accordance with generally accepted accounting principles on a regular basis and shall provide the Tribal Gaming Office with copies of those financial statements.
- (d) Within one hundred twenty (120) days after the end of each fiscal year, the Gaming Facility Operator shall provide the Tribal Gaming Office with an audit of its financial statements for the prior year, along with any reports or management letter(s) the accountant has prepared. The audit shall be conducted by an independent certified public accountant in accordance with generally accepted auditing standards. Either the firm or all independent certified public accountants engaged to do audits pursuant to this Section shall be licensed by the Arizona State Board of Accountancy. The

audit shall be prepared at the Gaming Facility Operator's expense. The auditor shall prepare an audit report expressing an unqualified or qualified opinion on the financial statements or, if appropriate, disclaim an opinion on the financial statements taken as a whole. The examination and audit shall disclose whether the accounts, records, internal controls, and accounting procedures of the Gaming Facility Operator are in compliance with the Act. The audit shall comply with the requirements of Section 12(g) of the Compact; it shall audit and report the Nation's Class III Net Win. It shall also include or be supplemented with an attestation by the auditor that Class III Net Win is accurately reported consistent with the terms of Compact Appendix I.

- (e) To facilitate the completion of such audits, the Gaming Facility Operator shall make and maintain complete, accurate, and legible records of all transactions pertaining to any Gaming Activities and any other revenue producing activities conducted by the Gaming Facility Operator at or in conjunction with any Gaming Facility. The Gaming Facility Operator shall maintain its financial records in accordance with generally accepted accounting principals and shall keep those records in a form suitable for audit under the standards of the American Institute of Certified Public Accountants. The Gaming Facility Operator shall maintain the records, as well as all original entry transaction records, until the later of five (5) years from the date on which they are made or the term of record retention required by the Compact. The records shall be maintained at a Gaming Facility or in other locations approved by the Tribal Gaming Office.
- (f) The Gaming Facility Operator shall maintain:
 - 1. Accurate, complete, legible and permanent records of all transactions pertaining to the Gaming Operation in a manner suitable for audit under the standards of the American Institute of Certified Public Accountants;
 - 2. General accounting records using a double entry system of accounting with transactions recorded on a basis consistent with Generally Accepted Accounting Principles;
 - 3. Detailed supporting and subsidiary records;
 - 4. Detailed records identifying revenues, expenses, assets, liabilities and fund balances or equity for the Gaming Operation;
 - 5. All records required by the internal control system including, but not limited to, those relating to any Gaming Activity authorized by the Compact;
 - 6. Journal entries for the Gaming Operation;
 - 7. Detailed records sufficient to accurately reflect gross income and expenses relating to its operations on a monthly and year-to-date basis;
 - 8. Detailed records of any reviews or audits, whether internal or otherwise, performed in addition to the annual audit required in this Section, including, but not limited to, management advisory letters, agreed upon procedure reviews, notices of non-compliance and reports on the internal control system; and
 - 9. Records of any proposed or adjusting entries made by an independent certified public accountant.
- (g) The Tribal Gaming Office, when it deems necessary, may request additional information regarding the Gaming Facility Operator's financial statements, its audits, or both from the Gaming Facility Operator. The Tribal Gaming Office also may require the Gaming Facility Operator to have its independent accountant provide such information to the Tribal Gaming Office. If the Gaming Facility Operator receives any written communications from its independent accountant regarding internal control matters, the Gaming Facility Operator shall provide copies of those communications to the Tribal Gaming Office within thirty (30) days after receiving the communications.
- (h) The Tribal Gaming Office shall provide copies of the Gaming Facility Operator's annual reports and management letters setting forth the results of the annual audit to the Commission within one hundred twenty (120) days after the end of each fiscal year for the Gaming Facility Operator and to the State in accordance with the requirements of the Compact. The Tribal Gaming Office shall

cooperate with the Commission and the State with respect to any additional information the Commission or the State may request.

(Law & Order Code 2006, § 21-8; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 6, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 7. ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety. The Nation shall adopt standards that assure adequate protection of the environment and the public health and safety.

[25 U.S.C. § 2710(b)(2)(E); 25 C.F.R. § 522.4(b)(7)]

(Law & Order Code 2006, § 21-9; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 7, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 8. PATRON DISPUTE RESOLUTION

- (a) Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron or there is otherwise a dispute with a patron regarding that patron's wins or losses from Gaming Activity, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron:
 - 1. If the dispute involves five hundred dollars (\$500.00) or more, the Gaming Facility Operator shall immediately notify the Tribal Gaming Office and shall inform the patron of his or her right to file a complaint with the Tribal Gaming Office requesting that it investigate.
 - 2. If the dispute involves less than five hundred dollars (\$500.00), the Gaming Facility Operator shall inform the patron of his or her right to file a complaint with the Tribal Gaming Office requesting that it investigate.
- (b) Complaint. If a patron files a complaint with the Tribal Gaming Office alleging that the Gaming Facility Operator has failed to pay winnings owed to the patron, the Tribal Gaming Office shall promptly provide a copy of the complaint to the Gaming Facility Operator. Within fifteen (15) days after notifying the Tribal Gaming Office of a patron dispute or within fifteen (15) days after receiving from the Tribal Gaming Office a copy of a complaint filed by a patron, whichever is later, the Gaming Facility Operator shall file with the Tribal Gaming Office a written report setting forth its position regarding the dispute. The Tribal Gaming Office shall cause a full investigation to be made of the patron's allegations and the Gaming Facility Operator's response, and shall determine whether the patron's complaint is valid, whether the patron is entitled to any relief, and if so, the relief to which the patron is entitled.
- (c) Notice to Patrons The Tribal Gaming Office shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of its decision resolving the dispute within thirty (30) days after the date that the Tribal Gaming Office is notified of a dispute by the Gaming Facility Operator or a request to conduct an investigation from the patron, whichever is later.
- (d) Effective Date of Decision The decision of the Tribal Gaming Office is effective on the date it is received by the aggrieved party as reflected on the return receipt.
- (e) Review of Decision Within thirty (30) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Tribal Gaming Office requesting a review of the decision. The Tribal Gaming Office Executive Director may set a hearing on the matter or may make a decision based on the record previously developed and other documentation provided to it by the patron and the Gaming Facility Operator. The Tribal Gaming Office shall then issue a written

decision within sixty (60) days of the filing of the petition and mail it to the parties by certified mail, return receipt requested. This written decision of the Tribal Gaming Office shall be the final decision of the Tribal Gaming Office, subject to the provision for judicial review.

- (f) Tribal Court Review A patron whose dispute involves at least five hundred dollars (\$500.00) may file a complaint in Tribal Court within sixty (60) days of receipt of the Tribal Gaming Office's written decision. Disposition of the action in Tribal Court will be final and binding upon all parties in accordance with Tribal law.
 - (1) The Tribal Court shall decide all relevant questions of law and regulations presented, interpret constitutional and statutory provisions, and determine the basis for the action of the Tribal Gaming Office. The Tribal Court shall uphold the action of the Tribal Gaming Office unless the court determines that the Tribal Gaming Office's action was:
 - 1. Arbitrary, capricious, an abuse of discretion;
 - 2. Without observance of procedure required by this Ordinance; or
 - 3. Unsupported by substantial evidence.
- (g) Procedures for the Disposition of Tort Claims Brought by Patrons.
 - 1. Jurisdiction. All tort claims arising from alleged injuries to patrons of the Gaming Facilities brought against the Gaming Facility, Gaming Facility Operator, the Tribal Gaming Office, the Nation, or any member, employee, or agent of any of the foregoing may only be brought in the Nation's Tribal Court.
 - 2. Procedures. All tort claims arising from alleged injuries to patrons of the Gaming Facilities brought against the Gaming Facility, Gaming Facility Operator, the Tribal Gaming Office, the Nation, or any member, employee, or agent of any of the foregoing shall be governed by the Nation's Tribal Tort Claims Act.

(Law & Order Code 2006, § 21-17; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 8, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 9. TRIBAL INTERNAL CONTROL STANDARDS

Sec. 901. - Adoption and implementation.

The Nation shall adopt and implement Internal Control Standards (ICS) for the operation of its Tribal gaming operation in accordance with applicable law.

- (a) The Tribal Gaming Office shall by regulation establish minimum standards of internal control applicable to the Gaming Facility Operator and the Gaming Facilities that provide a level of control that equal or exceed the standards required by the Act and the Compact to provide reasonable assurance that the following objectives will be maintained:
 - 1. Assets are safeguarded and accountability over assets is maintained;
 - 2. Liabilities are properly recorded and contingent liabilities are properly disclosed;
 - 3. Financial records including records relating to revenues, expenses, assets, liabilities, and equity/fund balances are accurate and reliable;
 - 4. Transactions are performed in accordance with the general or specific authorization of the Gaming Facility Operator's management;
 - 5. Access to assets is permitted only in accordance with the specific authorization of the Gaming Facility Operator's management;
 - 6. Recorded accountability for assets is compared with actual assets at frequent intervals and appropriate action is taken with respect to any discrepancies; and

7. Functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by qualified personnel.
- (b) The Gaming Facility Operator shall operate each Gaming Facility pursuant to a written internal control system in accordance with the requirements of Section 11 of the Compact. The Gaming Facility Operator shall adopt policies and procedures and a plan of organization to implement the minimum internal control standards established by the Tribal Gaming Office. The policies and procedures shall include a detailed system for counting cash receipts at least daily, and shall be appropriate to the types of Gaming Activities carried on at the Gaming Facility. The plan of organization shall provide appropriate segregation of functional responsibilities and shall require sound practices to be followed in the performance of those duties by competent and qualified personnel. The plan of organization shall be diagrammatic and narrative describing the interrelationship of functions and the division of responsibilities upon which the system of internal control relative to gaming operations is based.
- (c) The Gaming Facility Operator shall provide the Tribal Gaming Office with copies of its policies and procedures and plan of organization and any proposed changes before implementation if the policies and/or procedures and/or plan of organization or any proposed changes (or any part thereof) are inconsistent with the minimum internal control standards. If the policies and procedures and plan of organization or any proposed changes (or any part thereof) are inconsistent with minimum internal control standards, the Tribal Gaming Office shall issue a letter of disapproval, which shall set forth the inconsistencies in detail.
- (d) The minimum internal control standards may be modified by the Tribal Gaming Office in the manner set forth in Sections 505 and 506, or in the manner set forth below.
 1. The Tribal Gaming Office may propose modifications to the minimum internal control standards by providing written notice of the proposed changes to the Gaming Facility Operator and the date the Tribal Gaming Office proposes to have the changes be effective. The Gaming Facility Operator shall submit any comments on the proposed changes to the minimum internal control standards to the Tribal Gaming Office within thirty (30) days after receiving notice of the proposed changes from the Tribal Gaming Office. The Tribal Gaming Office shall not issue a final regulation modifying the minimum internal control standards until it has reviewed and considered the Gaming Facility Operator's comments. The Tribal Gaming Office's decision to modify any minimum internal control standards shall constitute final action of the Tribal Gaming Office.
 2. The Gaming Facility Operator may propose changes to the minimum internal control standards by providing written notice of the proposed changes to the Tribal Gaming Office and the date the Gaming Facility Operator proposes to have the changes be effective. The Tribal Gaming Office shall review the proposed changes within thirty (30) days after receiving them from the Gaming Facility Operator and shall notify the Gaming Facility Operator in writing whether it approves or does not approve of the proposed changes. If the Tribal Gaming Office approves the proposed changes, its notice of approval shall set forth the date on which the proposed changes will become effective. The Tribal Gaming Office's decision to approve or disapprove any proposed changes shall constitute final action of the Tribal Gaming Office.
- (e) The Gaming Facility Operator shall, upon request, provide written notice to the Tribal Gaming Office identifying all bank accounts maintained by the Gaming Facility Operator by bank and account number and identifying by name all individuals with authority to sign on each account. The Gaming Facility Operator shall provide written notice to the Tribal Gaming Office of any changes to this information within seven (7) business days of any changes.

(Law & Order Code 2006, § 21-10; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 901, adopted 12-12-2006, eff. 12-12-2006)

Sec. 902. - Notification.

- (a) The Gaming Facility Operator shall promptly notify the Tribal Gaming Office of any non-compliance with the minimum internal control standards, the Ordinance, the Compact or the Act or any other matters adversely affecting the integrity of Gaming Activities or the integrity of the Gaming Facility Operator.
- (b) The Gaming Facility Operator shall promptly notify the Tribal Gaming Office of any employee termination and the reason for the termination.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 902, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 10. LICENSING

Sec. 1001. - Facility licenses.

- (a) The Tribal Gaming Office shall issue a separate license to each place, facility, or location on Indian lands where Class II and/or Class III gaming is conducted under this ordinance. The license issued shall be permanent with no expiration date.

[25 U.S.C. § 2710(b)(1)(B); 25 C.F.R. § 522.4(b)(6)]

- (b) The Tribal Gaming Office shall specify the form, conditions and content for the application for such licenses, which shall be submitted by the chief management official of the facility, and the application shall include a legal description of the lands whereon the facility is located; a certification that said premises constitute "Indian lands" as specified in the Indian Gaming Regulatory Act; shall identify the environmental, health, and public safety standards with which the facility must comply, and; a certification that the facility is in compliance therewith. The Tribal Gaming Commission shall only issue such licenses if the applications therefore include the required information and certifications and such further conditions as the Tribal Gaming Commission shall have specified.
- (c) No Gaming Activities shall be conducted in any Gaming Facility unless the Tribal Gaming Office first has issued a Gaming Facility License for the Gaming Facility under the provisions of this Chapter.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1001, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1002. - Standards for issuance of license.

The Tribal Gaming Office shall not issue a Gaming Facility license for any facility at which Gaming Activities are to be offered unless the Gaming Facility meets the following requirements:

- (a) The Gaming Activities to be conducted within the Gaming Facility will lawfully be carried on by the Nation under the Compact and the Act, and the facilities are appropriate to the carrying on of such activities;
- (b) The Gaming Facility Operator will adequately staff and equip the Gaming Facility to ensure the safety, health and welfare of the patrons thereof, and the Gaming Facility Operator has taken adequate measures to provide for traffic, emergency service accessibility, food, drink and sanitary needs for patrons and employees, security, law enforcement and other concerns raised by the type of Gaming Activities proposed to be undertaken in compliance with this Ordinance, the Compact and the Act;
- (c) Any new or different Gaming Activities at a licensed location shall be played in compliance with this Ordinance, the Compact and the Act.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1002, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1003. - Licenses for key employees and primary management officials.

The Nation shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any gaming enterprise operated on Indian lands. The Nation will issue licenses and perform background investigations according to requirements at least as stringent as 25 C.F.R. Parts 556 and 558.

[25 U.S.C. § 2710(b)(2)(F); 25 C.F.R. § 558.3; 25 U.S.C. § 522.4(b)(5)]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1003, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1004. - License application forms.

- (a) The following notice shall be placed on the application form for a key employee or a primary management official:

"In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by the Nation and the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when necessary pursuant to a requirement by a Nation or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigation of activities while associated with a Nation or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Nation being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application."

[25 C.F.R. § 556.2(a)]

- (b) The following additional notice shall be placed on the application form for a key employee or a primary official:

"A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, section 1001)."

[25 C.F.R. § 556.3(a)]

- (c) The Tribal Gaming Office shall notify in writing existing key employees and primary management officials who have not completed an application containing the notices set forth above that they shall either:

- (1) Complete a new application form that contains both the Privacy Act and false statement notices;
or

- (2) Sign a statement that contains the Privacy Act and false statement notices and consent to the routine uses described in that notice.

[25 C.F.R. § 556.2(b); 25 C.F.R. § 556.3(b)]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1004, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1005. - License fees.

The Nation may charge a license fee, to be set by the Tribal Gaming Office, to cover its expenses in investigating and licensing Key Employees and Primary Management Officials of the gaming operation.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1005, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1006. - Fees.

The Tribal Gaming Office shall collect fees in connection with the processing of applications and the issuance of licenses in accordance with the schedule of fees as published by the Tribal Gaming Office. The Tribal Gaming Office may modify the schedule of fees or prescribe other fees as it deems appropriate.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1006, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1007. - License terms; renewal.

- (a) Each Gaming Employee's License issued by the Tribal Gaming Office shall have a primary term of one (1) year and may be renewed for subsequent one-year periods upon the timely submission of a completed application on the forms specified by the Tribal Gaming Office. Each license issued by the Tribal Gaming Office for Management Contractors, Financiers, Manufacturers and Distributors of Gaming Devices, and Persons providing Gaming Services, shall be effective for two (2) years from the date of issuance and may be renewed for subsequent two-year periods upon the timely submission of a completed application on the forms specified by the Tribal Gaming Office. No licensee shall have any vested right to renewal of any license issued under this Ordinance.
- (b) The Tribal Gaming Office may issue a temporary license to an applicant within twenty (20) days after receiving a completed application for licensing unless (1) grounds sufficient to disqualify the applicant are apparent on the face of the application, (2) the background investigation undertaken by the Tribal Gaming Office discloses that the applicant may have a criminal history sufficient to disqualify the applicant from holding a license, or (3) the background investigation undertaken by the Tribal Gaming Office discloses other information that may be sufficient to disqualify the applicant from holding a license. A temporary license shall become void and shall be of no effect upon either the issuance of a license or upon the issuance of a notice of denial of the license in accordance with the provisions of this Ordinance.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1007, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1008. - State certification.

Every Person required to be licensed under this Ordinance also shall comply with the state certification requirements of the Compact, if those requirements are applicable to the Person. Within the time requirements established by the Compact, the Tribal Gaming Office shall forward to the Arizona Department of Gaming a report of final disposition of the licensing actions of the Tribal Gaming Office. The Tribal Gaming Office shall afford the Arizona Department of Gaming an opportunity for a hearing before an appropriate forum of the Nation, pursuant to Sections 5(q)(2) and 5(q)(3) of the Compact, to contest a licensing decision of the Tribal Gaming Office or to recommend suspension or revocation of a license issued by the Tribal Gaming Office. The decision of the tribal forum shall be final, except as provided in Section 5(q)(4) of the Compact.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1008, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1009. - Fingerprints.

Each applicant shall be required to have fingerprints taken as part of the license application procedure. Fingerprints shall be taken by the Licensing Section of the Tribal Gaming Office. Fingerprints will then be forwarded to the appropriate agency for processing to determine the applicant's criminal history, if any.

[25 C.F.R. § 522.2(h); 25 C.F.R. § 556.4(a)(14)]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1009, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1010. - Background investigations.

- (a) The Tribal Gaming Office is responsible for conducting background investigations and suitability determinations.
- (b) The Tribal Gaming Commission shall request from each primary management official and from each key employee all of the following information:
 - (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 - (2) Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
 - (3) The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under paragraph (b)(2) of this section;
 - (4) Current business and residence telephone numbers;
 - (5) A description of any existing and previous business relationships with Indian Nations, including ownership interests in those businesses;
 - (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - (7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
 - (8) For each felony for which there was an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

- (9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), the name and address of the court involved and the date and disposition;
- (10) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, and is not otherwise listed pursuant to paragraph (b)(8) or (b)(9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (12) A photograph taken within the last year; and
- (13) Any other information the Nation deems relevant.

[25 C.F.R. § 556.4]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1010, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1011. - Procedures for conducting a background check on applicants.

- (a) As part of its review procedure, the Tribal Gaming Office Investigator shall conduct a background investigation on each applicant sufficient to allow the Tribal Gaming Office to make an eligibility determination under Section 1012. The investigator shall:
 - (1) Verify the applicant's identity through items such as a social security card, drivers license, birth certificate, DD Form 214, or passport;
 - (2) Contact each personal and business reference provided in the License Application, when possible;
 - (3) Obtain a personal credit check;
 - (4) Conduct a civil history check;
 - (5) Conduct a criminal history check via the submission of the applicant's fingerprints to the NIGC, and further obtain information from the appropriate court regarding past felony and/or misdemeanor convictions and criminal charges;
 - (6) Inquire into any previous or existing business relationships with the gaming industry and Indian Nations by contacting the entities or Nations;
 - (7) Verify the applicant's history and status with any licensing agency by contacting the agency; and
 - (8) Take other appropriate steps to verify the accuracy of the information, focusing on problem areas noted.
- (b) The investigator shall create an investigative report noting the steps taken, information gained, potential problem areas, and disqualifying information.
- (c) The Tribal Gaming Office and its investigator shall keep confidential the identity of each person interviewed in the course of the investigation, other than disclosure as required under Federal, Tribal, or State law.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1011, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1012. - Eligibility determination.

The Tribal Gaming Office shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribal Gaming Office determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person.

[25 C.F.R. § 558.2]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1012, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1013. - Procedures for forwarding applications and reports for key employees and primary management officials to the National Indian Gaming Commission.

- (a) When a key employee or primary management official is employed to work at a gaming operation authorized by this ordinance, the Tribal Gaming Office shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in Section 1012.

[25 C.F.R. § 558.3(a)]

- (b) The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after ninety (90) days.

[25 C.F.R. § 558.3(b)]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1013, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1014. - Report to the National Indian Gaming Commission.

- (a) The Tribal Gaming Office shall prepare and forward a report on each background investigation to the National Indian Gaming Commission. An investigative report shall include all of the following:
 - (1) Steps taken in conducting a background investigation;
 - (2) Results obtained;
 - (3) Conclusions reached; and
 - (4) The bases for those conclusions.

[25 C.F.R. § 556.5(a), (b)]

- (b) The Tribal Gaming Office shall forward the completed investigative report to the National Indian Gaming Commission within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

[25 C.F.R. § 558.3(b)]

- (c) The Tribal Gaming Office shall submit, with the investigative report, a copy of the eligibility determination, unless the NIGC shall have advised the Nation that the submission of the eligibility

determination is not necessary. This determination shall include a Statement describing how the information submitted by the applicant was verified; a Statement of results following an inquiry into the applicant's prior activities, criminal record, if any, and reputation, habits and associations; a Statement showing the results of interviews of a sufficient number of knowledgeable people (such as former employers, personal references, and others referred to by the applicant) in order to provide a basis for the Tribal Gaming Office to make a finding concerning the eligibility for licensing required for employment in a gaming operation; and a Statement documenting the disposition of all potential problem areas noted and disqualifying information obtained.

[25 C.F.R. § 556.5(c)]

- (d) If a license is not issued to an applicant, the Tribal Gaming Office:
 - (1) Shall notify the NIGC; and
 - (2) Shall forward copies of its eligibility determination and investigative report (if any) to the NIGC for inclusion in the Indian Gaming Individuals Records System.

[25 C.F.R. § 556.5(d)]

- (e) With respect to all employees, and in particular key employees and primary management officials, the Tribal Gaming Office shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the NIGC or his or her designee for no less than three (3) years from the date of termination of employment.

[25 C.F.R. § 558.1(c)]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1014, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1015. - Granting a gaming license.

- (a) If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Nation that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Nation has provided an application and investigative report to the National Indian Gaming Commission, the Tribal Gaming Office, acting for the Nation, may issue a license to such applicant.

[25 C.F.R. § 558.4(a)]

- (b) Identification Cards. Upon the issuance of a license or work permit to a person described in this Section, the Tribal Gaming Office shall provide such person with an identification card. The Gaming Facility Operator shall require all such persons to wear in plain view such identification card which shall include a photograph of the person, the first and last name of the person, and an identification number unique to the individual license or work permit. The identification card shall also include the seal of signature of the Nation and an expiration date. The actual issuance of a physical badge or identification card is delegated by the Executive Director to the Security Department of the Gaming Facility, which shall notify the Tribal Gaming Office of all cards and badges issued under this authority, including changes and additions or modifications thereto.
- (c) The Tribal Gaming Office shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty-day period under

paragraph (a) of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

[25 C.F.R. § 558.4(b)]

- (d) If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Nation with a Statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribal Gaming Office has provided an application and investigative report to the National Indian Gaming Commission, the Nation shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Nation shall make the final decision whether to issue a license to such applicant.

[25 C.F.R. § 558.4(b)]

1. The Gaming Office shall not issue a Gaming Manager's License under this Chapter to a corporation, partnership, or other entity unless it is satisfied that the entity:
 - (A) Is organized and in good standing under the laws of the jurisdiction where it was established, and is qualified to do business within the nation and the State of Arizona;
 - (B) Is in sound financial condition, as shown by a financial statement certified by a certified public accountant to be a fair presentation in all material respects of the financial position and results of operations and cash flows of the entity in conformity with generally accepted accounting principles;
 - (C) Is not now and has not been in the past five (5) years the subject of any criminal investigation by any federal or state law enforcement authority, as shown by an affidavit of Principals of the entity having personal knowledge thereof;
 - (D) Has established a reputation for financial integrity and sound business practices, or, if the entity was recently formed, that all Persons having any role in its formation, including Persons supplying, financing, are Persons qualified to be licensed individually under the terms of this Chapter; and
 - (E) In all other respects will be reliable and trustworthy, and whose involvement in Gaming Activities within the Nation will be in the best interests of the Nation.
2. The Gaming Office shall not issue a Gaming Manager's License under this Chapter to any corporation, partnership, or other entity unless the entity:
 - (A) Agrees to maintain an office within the Nation as a condition of maintaining its license; and
 - (B) Agrees to give the Gaming Office notice within ten (10) days of any change in its Principals, of any change in the location of its office(s), and of any material change in the information disclosed in its application for its license.
3. Denial of Gaming Operation License The Tribal Gaming Office shall not issue a Gaming Facility Operator's License under this Chapter to a member of the Tribal Gaming Commission or Gaming Employee of the Gaming Operation if the Tribal Gaming Office determines that such individual:
 - (A) Has been convicted of any felony or gaming offense;
 - (B) Has knowingly and willfully provided materially important false statements or information or omitted materially important information on his or her license application; or
 - (C) Is an individual whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices,

methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1015, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1016. - Gaming employee's license.

1. Requirement of License. Every Gaming Employee of the Gaming Facility Operator shall be licensed by the Tribal Gaming Office before commencing employment.
2. Standards of Suitability. The Tribal Gaming Office shall not issue a Gaming Employee's License under this Chapter to an individual if it determines that the individual:
 - (a) Has been convicted of any felony or gaming offense;
 - (b) Has knowingly and willfully provided materially important false statements or information or omitted materially important information on his or her license or employment application; or
 - (c) Is an individual whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1016, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1017. - License suspension.

- (a) If, after the issuance of a gaming license, the Tribal Gaming Office receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment, the Tribal Gaming Office shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

[25 C.F.R. § 558.5(b)]

- (b) The Tribal Gaming Office shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

[25 C.F.R. § 558.5(c)]

- (c) After a revocation hearing, the Tribal Gaming Office shall decide to revoke or to reinstate a gaming license. The Tribal Gaming Office shall notify the NIGC of its decision.

[25 C.F.R. § 558.5(d)]

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1017, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1018. - Licenses for vendors licenses for gaming device manufacturers, distributors, suppliers of gaming services, and financiers.

1. Requirement of License. Each Manufacturer and each Distributor of Gaming Devices and supplier of Gaming Services shall be licensed by the Tribal Gaming Office before selling or leasing any Gaming Devices to the Gaming Facility Operator. In addition, any Person extending or guarantying financing for a Gaming Operation or Gaming Facility shall be licensed by the Tribal Gaming Office, unless the Person is an agency of the United States or a lending institution licensed and regulated by the State or the United States.
2. Standards of Suitability.
 - (a) Individuals. The Tribal Gaming Office shall not issue a license under this Chapter to an individual doing business with the Gaming Operation if it determines that the individual:
 1. Has been convicted of any felony or gaming offense;
 2. Has knowingly and willfully provided materially important false statements or information or omitted materially important information on his or her license application; or
 3. Is an individual whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.
 4. Is or becomes financially insolvent or unsound.
 - (b) Corporations, Partnerships, and Other Entities.
 1. The Tribal Gaming Office shall not issue a license under this Chapter to any corporation, partnership, or other entity unless the Tribal Gaming Office is satisfied that the entity:
 - (A) Is in sound financial condition, as shown (at a minimum) by a financial statement certified by the entity's chief executive officer (or equivalent) to be a fair presentation in all material respects of the financial position and results of operations of the entity;
 - (B) Has established a reputation for financial integrity and sound business practices, or, if the entity was recently formed, that all Persons having a role in its formation, including its Principals, are qualified to be licensed individually under the terms of this Chapter; and
 - (C) Is in all other respects reliable and trustworthy, and whose involvement in Gaming Activities within the Nation will be in the best interests of the Nation as set forth in this Ordinance.
3. The Tribal Gaming Office shall not issue a license under this Chapter to any corporation, partnership, or other entity unless the entity agrees to give the Tribal Gaming Office notice within thirty (30) days of any change in its Principals, of any change in the location of its office(s), and of any material change in the information disclosed in its application for its license.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1018, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1019. - Submission of a vendor license application.

In order to obtain a gaming vendor license, the business must complete a vendor application and submit to background checks of itself and its principals. Principals of a business include its officers, directors, management, owners, partners, non-institutional stockholders that either own ten (10) percent or more of the stock or are the ten (10) largest stockholders, and the on-site supervisor or manager under the agreement with the Nation, if applicable.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1019, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1020. - Contents of the vendor license application.

(A) Applications for gaming vendor licenses must include the following:

- (1) Name of business, business address, business phone, federal tax ID number (or SSN if a sole proprietorship), main office address if different from business address, any other names the applicant has done business under, type of service applicant will provide;
- (2) Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity;
- (3) If the applicant is a corporation, the state of incorporation, and the qualification to do business in the State of Arizona if the gaming operation is in a different State than the State of incorporation;
- (4) Trade name, other names ever used, names of any wholly owned subsidiaries or other businesses owned by the vendor or its principals;
- (5) General description of the business and its activities;
- (6) Whether the applicant will be investing in or loaning money to the gaming operation and, if so, how much;
- (7) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (8) A list of Indian Nations with which the vendor has an existing or previous business relationship, including ownership, financial, or management interests in non-gaming activities;
- (9) Names, addresses, and phone numbers of three (3) business references with whom the company had regularly done business for the last five (5) years;
- (10) The name and address of any licensing or regulatory agency with which the business has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (11) If the business has ever had a license revoked for any reason, the circumstances involved;
- (12) A list of lawsuits to which the business has been a defendant, including the name and address of the court involved, and the date and disposition if any;
- (13) List the business' funding sources and any liabilities of fifty thousand dollars (\$50,000.00) or more;
- (14) A list of the principals of the business, their social security numbers, addresses and telephone numbers, title, and percentage of ownership in the company; and
- (15) Any further information the Nation deems relevant.

(B) The following notice shall be placed on the application form for a vendor and its principals:

Inclusion of false or misleading information in the vendor application may be grounds for denial or revocation of the Nation's vendor license.

(C) A vendor may submit a copy of a recent license application to another jurisdiction if it contains the information listed above. The vendor will be required to submit in writing any changes in the information since the other license application was filed and any information requested by the Nation not contained in the other application.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1020, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1021. - Vendor background investigation.

1. The Tribal Gaming Office shall employ or otherwise engage an Investigator to complete an investigation of the gaming vendor. This investigation shall contain, at a minimum, the following steps:
 - (a) Verify of the business' incorporation status and qualification to do business in the State where the gaming operation is located;
 - (b) Obtain a business credit report, if available, and conduct a Better Business Bureau check on the vendor;
 - (c) Conduct a check of the business' credit history;
 - (d) Call each of the references listed in the vendor application; and
 - (e) Conduct an investigation of the principals of the business, including a criminal history check, a credit report, and interviews with the personal references listed.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1021, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1022. - Vendor license fee.

The Nation may charge a license fee, to be set by the Tribal Gaming Office, to cover its expenses in investigating and licensing vendors of the gaming operation.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1022, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1023. - Vendor background investigation report.

The Investigator shall complete an investigative report covering each of the steps taken in the background investigation of the gaming vendor and its principals and present it to the Tribal Gaming Office.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1023, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1024. - Exemption for vendors licensed by recognized regulatory authorities.

The Tribal Gaming Office may adopt regulations naming specific licensing authorities that it recognizes and may authorize exemptions to the vendor licensing process for vendors which have received a license from one of the named regulatory authorities.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1024, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1025. - Licenses for non-gaming vendors.

For non-gaming vendors, the Tribal Gaming Office is authorized to create a less stringent vendor licensing process, including a due diligence check rather than a full background investigation as laid out in Section 1022. The Tribal Gaming Office may investigate such vendors when appropriate and may conduct audits in addition to monitoring Tribal purchases.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1025, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 11. GAMING OPERATION

Sec. 1101. - Scope of permissible gaming.

The Gaming Facility Operator may conduct only those Gaming Activities which may lawfully be carried on by the Nation under applicable provisions of federal law including, but not limited to, the Act, subject to any limitations which may be imposed by the Compact and this Ordinance.

(Law & Order Code 2006, § 21-4; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1101, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1102. - Employee and player age limit.

Individuals under twenty-one (21) years of age shall not play or place any wager, directly or indirectly, in any Gaming Activities. The Gaming Facility Operator shall take reasonable steps to prevent underage individuals from playing or placing wagers in Gaming Activities. The Gaming Facility Operator shall not employ any individual under eighteen (18) years of age. The Tribal Gaming Office shall not employ any individual under the age of twenty-one (21). The Gaming Facility Operator shall not permit any individual under twenty-one (21) years of age to serve alcoholic beverages at any Gaming Facility, unless otherwise permitted under State law. The Tribal Gaming Office may by regulation establish measures by which the Gaming Facility Operator shall enforce the provisions of this section.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1102, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1103. - Management; security.

- (a) The Gaming Facility Operator shall have the responsibility for the on-site operation, management and security of the Gaming Facility, and shall comply with all requirements of this Ordinance, the Compact and the Act. The Gaming Facility Operator shall adopt reasonable procedures, consistent with this Ordinance, the Compact and the Act, designed to provide for the following: the physical safety of its employees; the physical safety of patrons in each Gaming Facility; the physical safeguarding of, and accountability for, assets transported to and from each Gaming Facility and each cashier's cage department; and the protection of the patrons' and the Gaming Facility Operator's property from illegal activity.
- (b) The Gaming Facility Operator shall adopt reasonable procedures, consistent with Section 3(v)(2) of the Compact, to advise individuals who inquire about the self-exclusion procedures established by the State. The Gaming Facility Operator shall, consistent with Section 3(v)(2) of the Compact: remove all self-excluded persons from all mailing lists and revoke any slot or player's cards; take reasonable steps to ensure that cage personnel check a person's identification against the Arizona Department of Gaming's list of self-excluded persons before allowing the person to cash a check or complete a credit card cash advance transaction; take reasonable steps to identify self-excluded persons who may be in a Gaming Facility and, once identified, promptly escort the self-excluded person from the Gaming Facility; and not pay any hand-paid jackpot to a person who is on the Tribal

or State self-exclusion list. Any jackpot won by a person on the self-exclusion list shall be donated by the Gaming Facility Operator to an Arizona-based non-profit charitable organization.

- (c) The Gaming Facility Operator may temporarily or permanently ban individuals from the Nation's Gaming Facilities and the surrounding premises controlled by the Gaming Facility Operator for such reasons as the Gaming Facility Operator shall determine appropriate. The Gaming Facility Operator may detain individuals briefly for purposes of obtaining identification from the individuals in connection with the issuance of a banning notice and may detain individuals who may be involved in illegal activities, for purposes of notifying and summoning appropriate law enforcement authorities. If the Gaming Facility Operator requests that an individual leave a Gaming Facility or the surrounding premises for any reason and the individual refuses to do so, the Gaming Facility Operator may eject the individual using such force as may be necessary under the circumstances or request the Police Department to remove the individual.
- (d) The Gaming Facility Operator shall designate an agent for service of any official determination, order or notice of the Commission.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1103, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1104. - Play by employees.

No Primary Management Official; the Casino General Manager, Chief Financial Officer, Accounting Manager, Casino Manager, Revenue Supervisor, Slot Manager, Cage Manager, Internal Control Analyst; member of the board of directors of the Gaming Facility Operator or Management Contractor; and no employee of the Tribal Gaming Office or Tribal Gaming Commissioners, shall play or place any wager, directly or indirectly, in any Gaming Activities. The Gaming Facility Operator shall take reasonable steps to prevent such individuals from playing or placing wagers in Gaming Activities.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1104, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1105. - Financial services at gaming facilities.

The Gaming Facility Operator is prohibited from:

- (a) Locating an automatic teller machine ("ATM") adjacent to, or in close proximity to, any Gaming Device;
- (b) Locating in a Gaming Facility an ATM that accepts electronic benefit transfer cards issued pursuant to a state or federal program that is intended to provide for needy families or individuals;
- (c) Accepting checks or other non-cash items issued pursuant to a state or federal program that is intended to provide for needy families or individuals; and
- (d) Extending credit to any patron of a Gaming Facility for Gaming Activities.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1105, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1106. - Advertising guidelines.

In accordance with the requirements of Section 3(x)(3) of the Compact, the Gaming Facility Operator shall adopt and shall comply with guidelines for the advertising and marketing of Gaming Activities that

are no less stringent than those contained in the American Gaming Association's general advertising guidelines.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1106, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 12. PROHIBITED ACTS; VIOLATIONS AND REMEDIES

Sec. 1201. - Violations.

It shall be a violation of this Ordinance for any Person to:

- (a) Conduct or operate any Gaming Activities within the Nation except as provided in this Ordinance;
- (b) Receive, distribute, apply or direct any property, funds, proceeds or other asset of any Gaming Activities to the benefit of any individual or other Person except as authorized by this Ordinance or by any duly enacted Resolution of the Tribal Council;
- (c) Tamper with any equipment used in the conduct of Gaming Activities with the intent to cause any Person to win or lose any wager other than in accordance with the publicly announced rules of such Gaming Activities;
- (d) Do any other act in connection with the conduct of any Gaming Activities with the intent to affect the outcome of any wager other than in accordance with the publicly announced rules of such Gaming Activities;
- (e) Alter or misrepresent the outcome or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
- (f) Place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome;
- (g) Claim, collect or take, or attempt to claim, collect, or take, money or anything of value in or from a Gaming Device, with intent to defraud, without having made a wager thereon, or to claim, collect, or take an amount greater than the amount won;
- (h) Place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including pinching and capping bets;
- (i) Reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet including pinching bets;
- (j) Manipulate, with the intent to cheat, any component of an Electronic Game of Chance or Gaming Device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to manipulating a Gaming Device, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game;
- (k) Knowingly to use other than coins or tokens approved by the Tribal Gaming Office or other lawful coin, legal tender of the United States of America, or to use a coin not of the same denomination as the coin intended to be used in the Gaming Device;
- (l) Possess, with the intent to use, any device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game;
- (m) Use any device or means to cheat, or to possess any such device while at the Gaming Facility;

- (n) Knowingly to entice or induce another to go to any place where gaming is being conducted or operated in violation of the provisions of the Compact or this Ordinance, with the intent that the other person play or participate in that gaming;
- (o) Steal, embezzle, misappropriate, filch, pilfer, or take property or assets in any form belonging to the Gaming Facility, its employees, patrons, or the Nation, by any means of robbery, theft, fraud, cheating, or collusion;
- (p) To conduct Gaming Activities within the Nation without complying with the terms and conditions of the Ordinance, the Compact, or the Act;
- (q) To intentionally misrepresent a material fact to the Tribal Gaming Office or intentionally falsify any business records of the Gaming Facility Operator or report required by this Ordinance, the Compact or the Act; and
- (r) To fail to comply with any other provision of this Ordinance.

(Law & Order Code 2006, § 21-13; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1201, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1202. - Notice of violation.

- (a) The Tribal Gaming Office shall deliver the notice of violation to the Person the Tribal Gaming Office is charging with a violation of this Ordinance, the Compact or the Act.

The Tribal Gaming Office shall also deliver a copy of each notice of violation relating to a Gaming Facility (including any violation alleged to have been committed by an employee, vendor, or patron) to the Gaming Facility Operator, with any redactions necessary to avoid disclosure of any information which the Tribal Gaming Office is obligated to keep confidential under any applicable privacy laws, including Section 1001(e) of this Ordinance.

- (b) A notice of violation shall contain:

1. A citation to the Ordinance, regulation, Compact and/or Appendices provision, minimum internal control standard, or federal law that has been or is being violated;
2. A description of the circumstances surrounding the violation, set forth in common and concise language;
3. Notice of any action that the Tribal Gaming Office proposes must be taken to correct the violation, if the Tribal Gaming Office determines that the violation is capable of being corrected;
4. Notice of the time frame within which any action to correct the violation must be taken, unless the Tribal Gaming Office determines that the violation is incapable of being corrected;
5. Notice of any license suspension, revocation, or civil fine or other enforcement action that the Tribal Gaming Office proposes to impose as a result of the violation;
6. Notice that a written response to the notice of violation must be submitted to, and received by, the Tribal Gaming Office within ten (10) days of the receipt of the notice of violation; and
7. Notice that, if no written response to the notice of violation is submitted to the Tribal Gaming Office within the time prescribed in Section 1202(b)(6), the Tribal Gaming Office may issue its final decision regarding the violation alleged in the notice, and revoke, suspend one's license, and/or impose a civil fine or take the enforcement action set forth in the notice without hearing from the Person to whom the notice was issued or from the Gaming Facility Operator.

- (c) The Person(s) to whom a notice of violation is issued and the Gaming Facility Operator each may submit a written response to the Tribal Gaming Office together with any additional written information the Tribal Gaming Office should consider. A Person desiring to submit a written response and any supporting documentation must do so within ten (10) days after receiving notice of the alleged

violation. The Tribal Gaming Office shall issue a written decision within ten (10) days after receiving all written responses or, if no party submits a written response in a timely manner, within ten (10) days after the deadline for the submission of written responses. The written decision shall constitute final action of the Tribal Gaming Office with respect to any notice of violation. Except as provided in Section 1202(d), the Tribal Gaming Office shall take no action to enforce a notice of violation until it issues its written decision.

- (d) If the Tribal Gaming Office determines that the Ordinance, the Compact, or the Act have been violated and the continued licensing of, or conduct by, a Person constitutes an immediate and substantial threat to: the public health, safety or welfare; the integrity of Gaming Activities; the integrity of the Gaming Facility Operator; the Gaming Facility Operator's ability to account for and protect its assets; or to the security of gaming proceeds, the Tribal Gaming Office may:
 - 1. Summarily suspend any license issued under this Ordinance;
 - 2. Summarily eject any Person who has violated this Ordinance, the Compact, or the Act from a Gaming Facility or the surrounding premises controlled by the Gaming Facility Operator, using such force as may be reasonably necessary under the circumstances;
 - 3. Summarily seize the proceeds of any Gaming Activities not conducted by the Gaming Facility Operator;
 - 4. Summarily seize, remove, or impound any equipment, supplies, business records, books of account, or any and all other financial records or documents pertaining to the business operations of a Gaming Facility (regardless of where those records or documents may be located). If the Tribal Gaming Office seizes, removes, or impounds any business records, books of account, or other financial records or documents of the Gaming Facility Operator, it shall provide the Gaming Facility Operator with a copy of any such items upon receiving a written request for copies from the Gaming Facility Operator; or
 - 5. Upon consultation with the Nation's General Counsel, initiate in a civil action or criminal complaint in the Nation's Tribal Court to enforce this Ordinance, the Compact, or the Act, which action may include a request for an order permitting the Tribal Gaming Office to seize a Gaming Facility or to seize the proceeds from Gaming Activities.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1202, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1203. - Tribal Gaming Commission review.

- (a) Any Person who has been issued a notice of violation by the Executive Director of the Tribal Gaming Office and who has submitted a written response to the Tribal Gaming Office in compliance with the provisions of Section 1202(c) of this Chapter may apply to the Nation's Tribal Gaming Commission for review of the Tribal Gaming Office's written decision regarding the alleged violation. If the Gaming Facility Operator submits a written response to the Tribal Gaming Office in compliance with the provisions of Section 1202(c), it also may apply to the Nation's Tribal Gaming Commission for review of the Tribal Gaming Office's written decision regarding the alleged violation.
- (b) Any applicant for a license under this Ordinance, any Person licensed pursuant to this Ordinance, and any patron of a Gaming Operation aggrieved by a final action of the Tribal Gaming Office may apply to Nation's Tribal Gaming Commission for review of the final action of the Tribal Gaming Office.
- (c) Any Person desiring to appeal a final decision of the Tribal Gaming Office must file an application for Tribal Gaming Commission review within fifteen (15) days after receiving notice from the Tribal Gaming Office of its final decision.
- (d) The Tribal Gaming Commission shall decide all relevant questions of law and regulations presented, and determine the basis for the action of the Tribal Gaming Office. The Tribal Gaming Commission

shall uphold the action of the Tribal Gaming Office unless they determine that the Tribal Gaming Office's action was:

1. Arbitrary, capricious, an abuse of discretion;
2. Without observance of procedure required by this Ordinance; or
3. Unsupported by substantial evidence.

(Law & Order Code 2006, § 21-11; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, §1203, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1204. - Civil penalties.

Any Person who violates any provision of this Ordinance, the Compact, or the Act is subject to civil penalties, including exclusion from any Gaming Facility, exclusion from the Nation if the Person is a not an enrolled member of the Nation, according to the Nation's Exclusion Ordinance or a civil fine of not more than ten thousand dollars (\$10,000.00) for each such violation.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1204, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1205. - Civil remedies.

The Tribal Gaming Office may in the name of the Nation bring any civil action in the courts of the Nation to enforce the provisions of this Ordinance, the Compact, or the Act or to enjoin or otherwise prevent any violation of this Ordinance, the Compact, or the Act occurring within the territorial jurisdiction of the Nation.

(Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1205, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 13. TRANSITION PROVISIONS

Sec. 1301. - Existing games lawful.

Subject to the provisions of the Compact and notwithstanding any other provision of this Ordinance, any Gaming Facilities otherwise legally situated within the Nation, and Gaming Activities carried on at such facilities as of the date on which this Ordinance becomes effective shall be lawful.

(Law & Order Code 2006, § 21-4; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1301, adopted 12-12-2006, eff. 12-12-2006)

Sec. 1302. - Adoption of Compact.

The Compact is hereby incorporated within and enacted as an integral part of this Ordinance with respect to all forms of Class III Gaming, and the Compact, including the Appendices thereto, is incorporated and made a part of this Ordinance as if set forth in full herein; provided, however, that nothing in the adoption of the Compact herein shall be deemed to affect the operation by the Nation of any Class II Gaming, whether conducted within or without the Gaming Facilities, or to confer upon the State any jurisdiction over such Class II Gaming conducted by the Nation on its Indian Lands.

(Law & Order Code 2006, § 21-3; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, § 1302, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 14. AGENT FOR SERVICE OF PROCESS

The Nation hereby designates the following persons as agents for service of process, who may be contacted at:

- a. President
Fort McDowell Yavapai Nation Tribal Council

17661 E. Yavapai Road

Fort McDowell, AZ 85264
- b. Executive Director
Fort McDowell Tribal Gaming Office

10424 N. Fort McDowell Road

Fort McDowell, AZ 85264
- c. General Counsel
Fort McDowell Yavapai Nation

17721 E. Yavapai Road

Fort McDowell, AZ 85264

[25 C.F.R. § 519.1]

(Law & Order Code 2006, § 21-18; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 14, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 15. COMPLIANCE WITH FEDERAL LAW

The Nation will comply with all applicable federal law, including the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*

(Law & Order Code 2006, § 21-5; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch 15, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 16. REPEAL OF PRIOR ORDINANCES AND RESOLUTIONS

Upon enactment of this Ordinance, any other Ordinances or Resolutions of the Nation which are inconsistent with this Ordinance, are hereby repealed.

(Law & Order Code 2006, § 21-20; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 16, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 17. SOVEREIGN IMMUNITY

No provision of this Ordinance or of the Compact shall be deemed to waive the sovereign immunity of the Nation, the Tribal Council or its members, the Tribal Gaming Commission or its members, the Tribal Gaming Office or its members, or any entity owned or operated by the Nation in connection with its Gaming Activities.

(Law & Order Code 2006, § 21-16; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 17, adopted 12-12-2006, eff. 12-12-2006)

CHAPTER 18. AMENDMENTS

The terms of this Ordinance shall remain in effect until amended, modified, or repealed. Any amendments to this Ordinance shall be in writing and subject to the approval of the Tribal Council. The Ordinance may be amended by any duly enacted Resolution of the Tribal Council. The Tribal Council shall consult with the Tribal Gaming Office prior to amending this Ordinance.

(Law & Order Code 2006, § 21-19; Ft. McD. Res. No. 2006-41, adopted 4-25-2006, eff. 4-25-2006; Ft. McD. Res. No. 2006-97, ch. 18, adopted 12-12-2006, eff. 12-12-2006)

Chapter 22 - GENERAL LAW OF TORTS AND TRIBAL TORTS CLAIMS ACT

[**HISTORICAL NOTE:** Chapter Twenty-two is derived from Resolution No. Ft. McD. 98-28, effective April 27, 1998]

ARTICLE I. - IN GENERAL

Sec. 22-1. - Title.

This Chapter shall be known and cited as the General Law of Torts and Tribal Torts Claims Act.

(Law & Order Code 2006, § 22-1; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-2. - Effective date.

The effective date of this ordinance shall be 4-27-98. This Ordinance shall affect all lawsuits filed after the effective date. In addition, this Ordinance, except 22.5, 22.6 and 22.8, shall affect any lawsuits pending before the Tribal Court which have not proceeded to trial on or before the effective date of this ordinance.

(Law & Order Code 2006, § 22-2; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-3. - Purpose of chapter.

The Fort McDowell Yavapai Nation hereby adopts rules of law applicable to tort claims against all persons and sets forth specific rules of law applicable to tort claims against the Fort McDowell Yavapai Nation and Tribal Employees. This Chapter codifies existing Tribal law and custom as it applies to civil tort claims.

(Law & Order Code 2006, § 22-3; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-4. - Definitions.

As used in this Chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

- A. **Act** means acts and omissions.
- B. **Assumption of the Risk** means knowingly accepting the risks and dangers associated with any act.
- C. **Contributory Negligence** means the negligence of a plaintiff which is a contributing cause which cooperates with the negligence of the defendant in causing the plaintiff's injury.
- D. **Comparative Negligence** means negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is sought.
- E. **Contribution** means a right that exists in favor of a tortfeasor against whom a judgment is rendered who has paid more than his pro rata share of the common liability from other tortfeasors whose negligence contributed to the injury, but his total recovery is limited to the amount paid by him in excess of his pro rata share.
- F. **Defendant** means the person against whom a claim is made in a lawsuit and includes counter defendants and cross defendants.
- G. **Duty exists** when a person is legally required to conduct himself in a particular manner at the risk that if he does not do so he may be liable to another to whom the duty is owed for injury suffered by such other person.
- H. **Exemplar Damages** means damages awarded to a plaintiff over and above what will barely compensate him for his property loss, where wrong done him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of defendant.
- I. **Fault** means the failure to fulfill a legal duty. It includes, but is not limited to, acts proximately causing or substantively contributing to injury or damages sustained by a person, and includes intentional acts, negligence in all of its degrees, comparative negligence, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty of product, products liability, and misuse, modification or abuse of a product.
- J. **Gross Negligence** means conduct which involves negligence plus knowledge of facts which would lead a reasonable person to realize: (1) that the conduct creates an unreasonable risk of physical harm to another or to the actor, and (2) that such risk of physical harm is substantially greater than that which is necessary to make the actor's conduct negligent. Gross negligence of an actor requires a reckless disregard for the safety of the actor or others.
- K. **Injury** means the invasion of any legally protected interest of a person or a loss of any kind to a person. Injury includes death, personal injury or other injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable.
- L. **Intentional Tort** means torts where the actor desires to cause the consequences of his act, or where the actor knows or should know that the consequences are substantially certain to result from the act.
- M. **Invitee** means either a public invitee or a business visitor. A public invitee is a person who is invited to enter and remain on land as a member of the public for a purpose for which the land is held open to the public. A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.
- N. **Joint Liability** means liability that is owed to a third party by two (2) or more other parties together. The joint obligator has the right to insist that the co-obligator(s) be joined as a co-defendant with him (i.e. that they be sued together).
- O. **Joint and Several Liability** means defendants who are responsible together and individually. Joint and Several liability allows the person who has been harmed to sue and recover from both

wrongdoers or from either one (1) of the wrongdoers. The plaintiff cannot receive double compensation.

- P. **Licensee** means a person who comes on to the premises for his own purposes but with the possessor's consent.
- Q. **Negligence** means conduct which falls below the standard established bylaw or custom for the protection of others against unreasonable risk of injury or harm. The standard of conduct to which a person must conform to avoid being negligent is that of a reasonable person under similar circumstances. Negligence includes both acts and omissions.
- R. **Negligence Per Se** is an act or omission resulting in damage to another which is strictly declared and treated as negligence, because the act or omission is a violation of a particular statute or ordinance.
- S. **Non-Member** means a person who is not an enrolled member of the Fort McDowell Yavapai Nation.
- T. **Occurrence** means an event, including continuous or repeated exposure to conditions, which results in personal injury, bodily injury, wrongful death or property damage.
- U. **Person** means any individual, partnership, corporation, association, government or private organization of any kind other than the Fort McDowell Yavapai Nation.
- V. **Plaintiff** means a person who makes a claim against another in a lawsuit and includes counter-plaintiffs and cross-plaintiffs.
- W. **Possessor of Land** means a person who occupies land or who last occupied land with the intent to control it; or a person who is entitled to immediate occupation of the land, so long as no other person is occupying the land. A Possessor of Land includes, among other persons, renters, lessees, or squatters. Possessor of Land shall not include a Lessor or the Nation as the Assignor of a land assignment to a tribal member. In the case of a land assignment, the tribal member assignee is considered the Possessor of Land, not the Nation.
- X. **Products Liability** means the liability of a manufacturer, distributor or seller of a product for damages for bodily injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any product; the failure to warn or protect against a danger or hazard in the use or misuse of the product; or failure to provide proper instructions for the use or consumption of any product.
- Y. **Punitive Damages** are damages in a tort action having the character of a punishment or a penalty; damages inflicting a punishment or penalty.
- Z. **Self-Insurance Program** means that underlying layer of financial responsibility established by written form instead of insuring against such loss through insurance. In most cases, the party will self-insure up to a certain amount and then cover any loss in excess of the set amount with insurance. Any form of Self-Insurance program for the Nation must be approved and adopted pursuant to an authorizing resolution of the Tribal Council.
- AA. **Severel Liability** means liability separate and distinct from the liability of another to the extent that an independent action may be brought without joinder of others.
- BB. **Strict Liability** means liability without fault arising from an abnormally dangerous condition or activity, and also includes products liability.
- CC. **Torts** includes, but is not limited to, intentional torts, negligent torts, and torts arising in strict liability.
- DD. **Trespasser** means a person who enters or remains upon the land of another without permission or right to do so created by the possessor's consent or otherwise.

- EE. **Tribal Employee** means a person who is an employee, officer, director, servant, or agent of the Nation. Tribal Employee also includes elected and appointed officials of the Nation, its boards or commissions, and Tribal volunteers.
- FF. **Trier of Fact** means a judge in a jury waived trial or jury which, in either case, has the exclusive obligation to make findings of fact in contrast to rulings of law which must be made by the judge.
- GG. **Tortfeasor** means a wrong-doer; one who commits or is guilty of a tort.
- HH. **Fort McDowell Yavapai Nation or Nation** means that federally recognized Indian Nation organized pursuant to § 16 of the Indian Reorganization Act of 1934, (48 Stat. 984) 25 U.S.C. § 476 et seq. and includes the Nation, its departments, its employees, servants, agents and attorneys, its enterprises, political subdivisions, departments and its funded programs unless such programs would be subject to the Federal Tort Claims Act.

(Law & Order Code 2006, § 22-4; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-5. - Limitation of actions.

The limitations of Actions for torts shall be governed by Chapter 4, Article V of this Code.

(Law & Order Code 2006, § 22-5; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-6. - Service of summons.

Service of the summons and complaint shall be made pursuant to Chapter 5 of this Code.

(Law & Order Code 2006, § 22-6; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-7. - Costs.

- A. In the discretion of the Court, costs may be awarded to the successful party in any tort action except as otherwise provided in this section.
- B. Costs may include the reasonable amounts of money actually expended or owed by a party including:
1. Costs of filing and service of process.
 2. Costs of preserving testimony including depositions and video depositions.
 3. Actual reasonable costs of travel and lodging for necessary witnesses who actually appear and testify at trial.
 4. Expert witness fees.
 5. Reasonable attorney's fees.
 6. Any other actual costs reasonable and necessarily incurred by a party.
- C. Costs shall not include attorneys' fees in any action where the prevailing party is a party to a contingency fee agreement.
- D. When exercising its discretion in awarding costs under this Section, the Court may consider any or all of the following when awarding costs to a successful party:
1. The reasonableness and necessity of the cost.
 2. The relative abilities of the parties to pay costs.

3. The relative merits of each party's position.
 4. The good faith or bad faith efforts of each party in pursuing the action, including the cooperation or non-cooperation of a party in the pre-litigation, discovery and trial phases of the action.
 5. Any other facts the court deems relevant in assessing costs.
- E. No person shall be jailed because he is unable to pay costs awarded against him.
- F. Unless allowed and recoverable under the Nation's Liability Insurance or Self-Insurance Plan, costs and attorney's fees shall not be awarded against the Nation.

(Law & Order Code 2006, § 22-7; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-8. - Severability.

In the event that any section of this Chapter shall be ruled by a court of competent jurisdiction to be invalid or unconstitutional, the remainder of this Chapter shall continue in full force and effect.

(Law & Order Code 2006, § 22-8; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Secs. 22-9—22-99. - Reserved.

ARTICLE II. - GENERAL LAW OF TORTS

MISCELLANEOUS PROVISIONS

Sec. 22-100. - Negligence per se; violation of ordinance.

A person who violates any Tribal ordinance, regulation or other law governing the conduct of a person is negligent per se whether or not such person has actual knowledge of such Tribal ordinance or law. A person's ignorance of such Tribal ordinance or law shall not be a defense.

(Law & Order Code 2006, § 22-100; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-101. - Negligent entrustment of a motor vehicle or other property.

A person who supplies directly or through a third person a motor vehicle or other property for the use of another whom the person knows or has reason to know would be likely, because of said person's youth, inexperience, incompetence, impairment, or otherwise, to use it in a manner involving unreasonable risk of physical harm to said person or others, is subject to liability for the injury or harm resulting.

(Law & Order Code 2006, § 22-101; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

COMPARATIVE NEGLIGENCE

Sec. 22-102. - Comparative negligence.

- A. Contributory negligence shall not bar a recovery in any tort action by any person or his legal representative to recover damages for negligence resulting in injury or harm to a person or property, provided that the contributory negligence of said person is not more than fifty (50) percent of the total fault. Any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person recovering.

- B. Assumption of the risk shall not bar a recovery in any tort action by any person or his legal representative to recover damages for negligence resulting in injury or harm to a person or property, provided that the assumption of the risk of said person is not more than fifty (50) percent of the total fault. Any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person recovering.
- C. If a person's contributory negligence or assumption of risk is more than fifty (50) percent of the total fault, then that person shall not recover.
- D. The court shall, and when requested by any party shall:
 - 1. If a jury trial:
 - A. Direct the jury to find separate special verdicts determining the total amount of damages and the percentage of fault attributable to each actor whether or not a party; and
 - B. Inform the jury of the consequences of its determination of the percentages of fault; and
 - C. Inform the jury that in the event that it finds that a plaintiff's contributory negligence or assumption of the risk is more than fifty (50) percent of the total fault then that person shall not recover and its verdict must be for the defense.
 - 2. If a trial to the court without a jury: make special findings of fact, determining the total amount of damages and the percentages of fault attributable to each actor whether or not a party. In the event the court finds that a plaintiff's contributory negligence or assumption of the risk is more than fifty (50) percent of the total fault then that person shall not recover and its finding must be for the defense.

(Law & Order Code 2006, § 22-102; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-103. - Pro rata shares.

In determining the pro rata share of each party in the entire liability:

- 1. Their relative degrees of fault shall be the basis for allocations.
- 2. If equity requires, the collective liability of some as a group may constitute a single share.

(Law & Order Code 2006, § 22-103; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-104. - Joint and several liability abolished; exceptions; apportionment of degrees of fault; definitions.

- A. In any action for personal injury, property damage or wrongful death, the liability of each defendant for damages is several only and is not joint, except as provided in Section 22-104(D). This means that each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault. Separate judgment shall be entered in a judgment against the defendant for that amount. To determine the amount of damages to be entered against each defendant, the trier of fact shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount is the maximum recoverable against that defendant.
- B. In assessing percentages of fault, the trier of fact (Court or jury) shall consider the fault of all persons who contributed to the alleged injury, death or damage to property, regardless of whether the person was or could have been named as a party to the suit. Negligence or fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice before trial that a nonparty was wholly or partially at fault. Assessments of percentages of fault for nonparties shall be used only as a means for accurately determining the total

fault. Assessment of fault against nonparties does not subject any nonparty to liability in this or any other action, and it may not be introduced as evidence of liability in any action against the nonparty.

- C. The relative degrees of fault of the claimant, and the relative degrees of fault of all defendants and nonparties, shall be determined and apportioned as a whole at one time by the trier of fact. If two (2) or more claimants have independent claims, then a separate determination and apportionment of the relative degrees of fault of the respective parties, and any nonparties at fault, shall be made with respect to each of the independent claims.
- D. Joint and several liability only applies if more than one (1) person was acting in concert or if a person was acting as an agent, employee, or servant of another.

(Law & Order Code 2006, § 22-104; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-105. - Right of contribution.

- A. A right of contribution shall only be available:
 - 1. Where more than one (1) person was acting in concert; or
 - 2. Toxic waste tort cases.
- B. If two (2) or more persons become jointly and severally liable in tort for the same injury to a person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.
- C. No tortfeasor shall be compelled to make contribution beyond his own pro rata share of the entire liability.
- D. There shall be no right of contribution against the Nation or a Tribal Employee acting within the course and scope of his employment.
- E. There shall be no right of contribution in favor of any tortfeasor who the trier of fact finds was grossly negligent or who had intentionally, willfully or wantonly caused or contributed to the injury.
- F. A tortfeasor who enters into a settlement agreement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury is not extinguished by the settlement whether or not the amount paid in the settlement is in excess of what was his pro rata share or what is reasonable. Conversely, a tortfeasor who fails to enter into a settlement with a claimant shall not be entitled to a credit for settlement sums paid or promised to a claimant by a settling tortfeasor whether or not the total amounts paid to the claimant in such circumstances exceeds the total verdict or what is reasonable.
- G. Nothing in this section shall be construed to impair any right of indemnity or subrogation under existing law. If one (1) tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from any obligee for any portion of his indemnity obligation.
- H. This section shall not create a right of contribution against any employer or other person who has paid or who is liable for workmen's compensation in connection with an injury or death, unless the employer or other person is subject to direct suit.

(Law & Order Code 2006, § 22-105; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-106. - Contribution; enforcement.

- A. Whether or not judgment has been entered in an action against two (2) or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

- B. If a judgment has been entered in an action against two (2) or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one (1) defendant against other judgment defendants by motion on notice to all parties to the action.
- C. If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within six (6) months after the judgment has become final by lapse of time for appeal or after final appellate review.
- D. If there is judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless:
 - 1. The tortfeasor has paid the judgment and has commenced an action for contribution within six (6) months after payment, or
 - 2. The tortfeasor agreed while the action is pending against him to discharge the common liability (i.e. joint and several liability) and has within six (6) months after the agreement paid the liability and commenced an action for contribution.
- E. The recovery of a judgment for an injury or wrongful death against one (1) tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair a right of contribution.
- F. The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right of contribution. If the claimant's case is tried, the trier of fact shall apportion and determine the respective degrees of fault of the defendants to the action.

(Law & Order Code 2006, § 22-106; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-107. - Settlement, release or covenant not to sue.

If a settlement, release, or a covenant not to sue or not to enforce judgment is given in good faith to one (1) of two (2) or more persons liable in tort for the same injury or the same wrongful death all of the following apply:

- 1. It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; and
- 2. It discharges the tortfeasors to whom it is given from all liability for contribution to any other tortfeasors; and
- 3. A tortfeasor who fails to enter into a settlement with a claimant is not entitled to a credit for settlement sums paid or promised to a claimant by a settling tortfeasor.

(Law & Order Code 2006, § 22-107; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-108. - Scope of contribution and comparative negligence.

- A. Among two (2) or more persons strictly liable in tort, the relative degree of fault of each is the degree to which each contributed to the defect causing injury to the claimant.
- B. In the event that a claimant acts intentionally or is grossly negligent, that claimant shall be presumed to be one hundred (100) percent at fault for the injury or harm and shall not recover, except as provided in Section 22-108(C.).
- C. In the event that a claimant and one (1) or more defendants acted intentionally or were grossly negligent, the relative degree of fault is the degree to which those persons who acted intentionally or were grossly negligent contributed to the injury or harm.

(Law & Order Code 2006, § 22-108; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Secs. 22-109—22-200. - Reserved.

PREMISES LIABILITY

Sec. 22-201. - Liability for condition and use of land.

The purpose of this section is to outline the duties owed by a possessor of land to trespassers, licensees and invitees. There shall be no other classification or subclassification of a person who enters or remains on land.

(Law & Order Code 2006, § 22-201; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-202. - Duty to trespassers.

A possessor of land shall not be liable to any trespasser for any injury or harm to that trespasser except where the possessor intentionally injures such trespasser.

(Law & Order Code 2006, § 22-202; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-203. - Duty to licensee.

- A. A possessor of land is subject to liability to licensees for injury to harm caused to them by the possessor's failure to carry on his activities with reasonable care for their safety "if," but only if:
 - 1. The danger is not open and obvious; or
 - 2. The possessor should reasonably expect that the licensee will not discover or realize the danger, and the licensee does not know or have reason to know of the possessor's activities and of the risks involved.
- B. A possessor of land is subject to liability for injury or harm caused to a licensee by a condition on the land if, but only if:
 - 1. The provisions of Section 22-205 do not apply; and
 - 2. The possessor actually knows of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should reasonably expect that they will not discover or realize the danger; and
 - 3. The possessor fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition or of the risk involved; and
 - 4. The condition is not open or obvious and the licensee does not know or have reason to know of the condition or the risk involved.

(Sec. 22-203 amended by Resolution No. Ft. McD. 98-28, effective April 27th, 1998.)

(Law & Order Code 2006, § 22-203; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-204. - Duty to invitees.

- A. A possessor of land is subject to liability to his invitees for injury or harm caused to them by his failure to carry on his activities with reasonable care for their safety if, but only if:

1. The danger is not open and obvious, or
 2. The possessor should reasonably expect that the invitee will not discover or realize the danger, and the invitee does not know or have reason to know of the possessor's activities and of the risks involved.
- B. A possessor of land is subject to liability for injury or harm caused to an invitee by a condition on the land if, but only if:
1. The provisions of Section 22-205 do not apply; and
 2. The possessor fails to exercise reasonable care to protect invitees against the danger if, but only if: (a) he knows or by the exercise of reasonable care would discover the condition, and should reasonably realize that it involves an unreasonable risk of harm to invitees, and (b) the possessor should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it. Where a warning would be insufficient to make the dangerous condition reasonably safe, the possessor must take further precautions.
- C. A possessor of land is not subject to liability for injury or harm to his invitees if the activities or the condition on the land is open and obvious.

(*Sec. 22-204 amended by Resolution No. Ft. McD. 98-28, effective April 27th, 1998.*)

(Law & Order Code 2006, § 22-204; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-205. - Duty of owner, lessee or occupant of premises to recreational users; liability; definitions.

- A. Notwithstanding any other section of this Chapter, an owner, lessee or other occupant of premises does not:
1. Owe any duty to a recreational user to keep the premises safe for such use.
 2. Extend any assurance to a recreational user through the act of giving permission to enter the premises that the premises are safe for such entry or use.
 3. Incur liability for any injury to persons or property caused by any act of a recreational user.
- B. As used in this section:
1. **Owner, Lessee or Other Occupant** includes the Nation.
 2. **Premises** means water courses, lakes, rivers, agricultural, range, mining, forest land, natural land, and any other similar land which the Nation or any other person makes available to recreational users, with or without a permit, along with any buildings or other structures on such lands.
 3. **Recreational user** means a person to whom permission has been granted or implied with or without the payment of an admission fee or other consideration to enter upon premises to hunt, fish, trap, camp, hike, ride, swim, or engage in other similar recreational pursuits.

(*Sec. 22-205 amended by Resolution No. Ft. McD. 98-28, effective April 27, 1998.*)

(Law & Order Code 2006, § 22-205; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Secs. 22-206—22-300. - Reserved.

WRONGFUL DEATH

Sec. 22-301. - Wrongful death; liability.

When the death of a person is caused by the fault of another, which fault would allow person to bring an action for damages if death had not occurred, then an action for damages may be brought by the appropriate person as set forth in Section 22-302.

(*Sec. 22-301 amended by Resolution No. Ft. McD. 98-28, effective April 27, 1998.*)

(Law & Order Code 2006, § 22-301; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-302. - Parties plaintiff; recovery; distribution.

- A. An action for wrongful death shall be brought by and in the name of the surviving husband, wife, children or parents or the personal representative of the deceased person for and on behalf of the surviving husband or wife, children or parents, or if none of these survive, on behalf of the decedent's estate.
- B. Either parent may maintain the action for death of a child, and a guardian for death of his ward.
- C. The amount recovered in an action for wrongful death shall be distributed to the parties provided for in subsection A in proportion to their damages, and if recovery is on behalf of the decedent's estate the amount shall be an asset of the estate.
- D. The term "personal representative" means any person lawfully appointed by the Fort McDowell Yavapai Nation Tribal Court to bring any action for wrongful death.

(*Sec. 22-302 added (B-D) by Resolution No. Ft. McD. 98-28, effective April 27, 1998.*)

(Law & Order Code 2006, § 22-302; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-303. - Measure of damages; nonliability for debts of decedent.

In an action for wrongful death, the trier of fact (Court or jury) shall give such damages as it deems fair and just for injury to the surviving parties resulting from the death, and taking into consideration any mitigating or aggravating circumstances. The amount recovered in such action shall not be subject to debts or liabilities of the deceased, unless the action is brought on behalf of the decedent's estate. In no event shall an award in a wrongful death action exceed two hundred fifty thousand dollars (\$250,000.00).

(*Sec. 22-303 added by Resolution No. Ft. McD. 98-28, effective April 27, 1998.*)

(Law & Order Code 2006, § 22-303; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Secs. 22-304—22-400. - Reserved.

ARTICLE III. - TRIBAL TORTS CLAIM ACT

Sec. 22-401. - Authorization for suit.

The Nation may be sued in the Fort McDowell Yavapai Nation Tribal Court only when explicitly authorized by either (1) ordinance or resolution of the Tribal Council, or (2) applicable federal law. The Nation hereby reaffirms its power of sovereign immunity. The Nation, its political subdivisions, Boards, Officers and all of its employees acting within the scope of their employment, whether performing

governmental or proprietary functions, shall be immune from liability for torts. The Nation, only to the extent and in the manner provided in this Act, will not raise its governmental immunity against tort actions.

(Law & Order Code 2006, § 22-401; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-402. - Limitation on the Nation and its insurance carriers raising the defense of sovereign immunity in Tribal Court.

- A. The Nation and its insurance carriers will not raise the defense of sovereign immunity up to the amount that the Nation is covered by contracts for insurance or up to amounts set by a Self Insurance Program approved by the Tribal Council. For this exception to sovereign immunity to apply, the action must be in the Fort McDowell Yavapai Nation Tribal Court. This exception to Tribal Sovereign Immunity authorized by this section shall not apply in any other court other than the Fort McDowell Yavapai Nation Tribal Court. The Nation expressly reserves the right to raise the defense of Sovereign Immunity for claims 1) in excess of the amounts of Insurance or a Self Insurance Plan, 2) in all courts other than the Fort McDowell Yavapai Nation Tribal Court and 3) for all claims not covered under the Nation's insurance or self insurance plan.
- B. Except for contracts of insurance issued to the Nation, as the named insured, any exception to Tribal sovereign immunity and assumption of liability by the Nation pursuant to this Ordinance does not apply in circumstances where such liability is assumed by any third party, including other governmental bodies or agencies, whether by indemnification agreement or otherwise.
- C. The liability assumed by the Nation pursuant to this Ordinance shall not extend to any party as a third party beneficiary or otherwise, other than the party(ies) to whom such liability is expressly assumed, and then only to the extent expressly specified.
- D. This section 22-402 is not a waiver of sovereign immunity and does not conflict with Chapter 4, Article VI of this Code. This section merely states that the Nation shall not raise the defense of sovereign immunity under certain limited circumstances.

(Law & Order Code 2006, § 22-402; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-403. - Limitations on forum, damages and claims for relief.

The Nation may be sued only in the Fort McDowell Yavapai Nation Tribal Court and only with respect to claimed damages which are within the express coverage, and not excluded from coverage, by either commercial liability insurance contracts carried by the Nation or an established Tribal self-insurance program, approved and adopted pursuant to the laws of the Nation. All claims are further subject to the following provisions and limitations, provided that tort claims arising from personal injury or property damage alleged to have been suffered by patrons or invitees of the Fort McDowell Casino shall be governed by subsection C.

- A. No judgment, order or award pertaining to any permitted claim under this Chapter shall be for more than the lesser of:
 - 1. The sum of five hundred thousand dollars (\$500,000.00) for each individual claimant, but not exceeding the sum of two million dollars (\$2,000,000.00) for each accident or occurrence, or five hundred thousand dollars (\$500,000.00) for wrongful death; or
 - 2. The limits of valid and collectable liability insurance policies carried by the Nation covering such claim or occurrence including such deductible amounts to the extent appropriated by the Tribal Council, nor for more than the amount of coverage provided for each claim or occurrence under established claim reserves as appropriated by the Tribal Council or otherwise established pursuant to any self insured claims program of the Tribal Government, approved and adopted pursuant to the laws of the Nation or the limitation stated in paragraph A of this section 22-403.

- B. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance or established self-insurance program of the Nation which is in effect at the time of the claim or occurrence. The Nation expressly reserves the right to raise Sovereign Immunity for claims or judgments that cannot be satisfied by the Liability Insurance or the Self-Insurance program.
- C. During the term of a validly enforceable Gaming Compact with the State of Arizona, the Fort McDowell Yavapai Nation shall maintain a policy of commercial general liability insurance with a combined single limit for personal injury and property damage of at least Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate. The Fort McDowell Yavapai Nation hereby expressly and unequivocally waives its sovereign immunity, and will instruct its insurance carrier not to invoke the defense of sovereign immunity, up to the maximum allowable claim and recovery amount of the preceding policy limits. Provided that neither the Nation nor its insurance carrier are precluded from exercising or asserting any other statutory or common law defenses or remedies; or any other procedural, administrative, or contractual defenses or remedies available at law, at equity, under its insurance policy, or this Chapter. Provided further that any award or judgment rendered in favor of the patron or invitee shall be satisfied solely from insurance proceeds within the limits herein stated; claims and recovery beyond Two Million Dollars (\$2,000,000.00) shall require the Fort McDowell Yavapai Nation's further consent to waive immunity. All claims shall be subject to the exclusive jurisdiction of the Nation's Tribal Court.

(*Sec. 22-403 added by Resolution No. Ft. McD. 2004-105, effective August 31, 2004.*)

(Law & Order Code 2006, § 22-403; Ft. McD. Res. No. 98-28, eff. 4-27-1998; Ft. McD. Res. No. 2004-105, eff. 8-31-2004)

Sec. 22-404. - Tort claims procedures; 180-day notice requirement.

- A. Printed notices of the Tort Claims Procedures as set forth herein shall be maintained by the Nation's subordinate enterprise Fort McDowell Casino. Such notices(s) shall contain: (1) contact information for the Tribal President, Tribal Attorney and Civil Clerk of the Tribal Court including names, mailing addresses, and telephone numbers; (2) time limits for filing claims; and (3) a statement that all claims and recovery are subject to this Chapter and Article. Upon request of a Casino patron or invitee or their designated representative, the Fort McDowell Casino shall provide the requestor a copy of said notice.
- B. Any person who has a claim against the Nation as authorized by this Chapter or otherwise shall file notice of such claim with the Tribal President and the Tribal Attorney within one hundred eighty (180) days after the cause of action accrues. This notice requirement is jurisdictional and any claim which is not filed within one hundred eighty (180) days after the cause of action accrued is barred and no action may be maintained thereon.
- C. Such notices shall state the name of each prospective plaintiff, the identity of each prospective defendant, the nature of all claims, a specific description of the claimed injury and the related money damages accruing from such injury, the relief which will be sought, and the correct name, address and telephone number of each prospective plaintiff's attorney or spokesman, if any.
- D. A notice of claim against the Nation or a Tribal Employee filed pursuant to this Section is deemed denied, sixty (60) days after the filing of the notice unless the claimant is advised of the denial in writing before the expiration of the sixty (60) day period.
- E. No cause of action shall be accepted for filing against the Nation or any Tribal Employee unless the plaintiff(s) has filed proof of compliance with this Section.
- F. Any person filing a Complaint against the Nation or a Tribal Employee shall deliver a copy of the Summons and Complaint to the Tribal President and the Tribal Attorney in addition to any other

named defendants served pursuant to applicable rules of the Fort McDowell Yavapai Nation Rules of Civil Procedure.

- G. In action in which any claim is asserted against the Nation or a Tribal Employee, upon written demand of the Tribal Attorney made at or before the time of answering, and sent to the opposing party and filed with the Court where the action is pending, the place of trial of any such action shall be changed to the Fort McDowell Yavapai Nation Tribal Court.
- H. Notwithstanding subsection A, a person under eighteen (18) years of age, or of unsound mind or a person who has been judged by a court to be an incompetent person shall file a claim within two hundred seventy (270) days after the disability ceases.

(Sec. 22-404 added by Resolution No. Ft. McD. 2004-81, effective June 29,2004.)

(Law & Order Code 2006, § 22-404; Ft. McD. Res. No. 98-28, eff. 4-27-1998; Ft. McD. Res. No. 2004-81, eff. 6-29-2004)

Sec. 22-405. - Tribal government liability in Tribal Court.

- A. Absolute Immunity. The Nation and its Tribal Employees shall not be liable for acts and omissions of its employees constituting:
 - 1. Policy decisions or the exercise of discretion vested in the Nation or a Tribal Employee;
 - 2. Executive, judicial, legislative or administrative action or inaction including but not limited to:
 - a. The adoption or failure to adopt a law or policy, or enforcement or the failure to enforce a law;
 - b. Refusal, termination or reduction of benefits under any Tribal assistance program if the Nation or Tribal Employee is authorized to determine whether or not such benefits should be issued, denied, terminated or reduced;
 - c. Discretionary determinations of whether to seek or provide the resources necessary to purchase equipment, to construct or maintain facilities, roads or the like, to hire personnel, or to provide governmental services or any kind;
 - d. Plans or designs for construction, maintenance or improvements of Tribally, federally or state owned, controlled or maintained rights-of-way, easements, highways, roads, streets and bridges.
- B. Qualified Immunity. Unless a Tribal Employee acting within the scope of his employment intended to cause injury or was grossly negligent, there shall be no exception to the sovereign immunity of the Nation or Tribal Employees and neither the Nation nor Tribal Employees shall be liable for damages alleged to have been caused by the Tribal Employee for actions or omissions normally protected by qualified or conditional immunity, including but not limited to the following events:
 - 1. 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 for which absolute immunity does not apply;
 - 2. Failure to make an arrest or failure to retain an arrested person in custody;
 - 3. Any escaping or escaped person or prisoner, a person resisting arrest, or injury by a prisoner to himself or herself, or to any other prisoner;
 - 4. Probation, parole, furlough or release from confinement of a prisoner or from the terms and conditions of his probation, parole, furlough or release from confinement, or from the revocation of his probation, parole, furlough or release from confinement for which absolute immunity does not apply;

5. Failure to discover violations of any provisions of law requiring inspections of property;
6. Failure to respond to a fire or to provide fire fighting services or protection;
7. Failure to respond to medical emergencies or to provide emergency medical services;
8. Injuries caused by a contractor's employee or a contractor of the Nation acting within the scope of the contract. The Qualified immunity provided in this section shall not apply to the contractor or the contractor's employees.

Nothing in this Section shall be interpreted to grant immunity to a Tribal Employee for individual liability for the full measure of recovery applicable to a person if it is established that the Tribal Employee's conduct was outside of his scope of authority or employment;

Tribal volunteers acting within the course and scope of their authority or employment shall have the same degree of responsibility for their acts and enjoy the same immunities and defenses as Tribal Employees.

C. Other Immunities. The Nation is not liable and there shall be no exception to the Sovereign Immunity of the Nation or Tribal Employees for the following events:

1. Under any theory of Products Liability;
2. For an injury to the driver of a motor vehicle who is found to be driving while intoxicated or was driving recklessly;
3. Any claim by a Tribal Employee covered by Worker's Compensation;
4. Acts of Tribal Employees who a Court determines to be guilty of a criminal offense, unless the Nation knew of the Tribal employees propensity for that action. This subsection does not apply to acts or omissions arising out of the operation or use of a motor vehicle;
5. For vicarious liability for injuries or damages resulting from any act of a Tribal Employee unless the Tribal Employee is personally liable. Notwithstanding the foregoing, the Nation shall not be vicariously liable for the acts of Tribal Employees who act without Tribal authorization or whose acts are otherwise outside or beyond the course and scope of the Tribal Employee's authority or employment;

D. The Nation specifically reserves, states and declares:

1. In addition to the immunity and other defense provided by this Code, the Nation shall be entitled to any defense which would be available to the Nation if it was a private entity or to a Tribal member if he/she were a non-member;
2. The enumeration of the above immunities shall not be construed to waive any other immunities, nor assume any liability except as explicitly provided in this Chapter. Sections 22-402, 22-404 and any other section in this Chapter that limits the Nation's right to raise Sovereign Immunity shall only apply in the Fort McDowell Yavapai Nation Tribal Court and shall not be construed to limit the use Nation's Sovereign Immunity in any other Court(s).

(Law & Order Code 2006, § 22-405; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Sec. 22-406. - Punitive and exemplary damages; bad faith damages.

Neither the Nation, nor a Tribal Employee acting within the scope of his employment, shall be liable for punitive or exemplary damages, or for damages arising from the tort of bad faith.

(Law & Order Code 2006, § 22-406; Ft. McD. Res. No. 98-28, eff. 4-27-1998)

Secs. 22-407—22-499. - Reserved.

Chapter 23 - ENVIRONMENTAL CODE

[**HISTORICAL NOTE:** Chapter 23 is derived from Resolution No. 2000-147, Enacted December 13, 2000.]

ARTICLE I. - WASTE ORDINANCE

Sec. 23-1. - Purpose and policy.

This Ordinance (Chapter 23, Article I) is intended to provide for the administration and enforcement of this ordinance and to provide penalties for its violation. This Article defines unlawful disposal of waste, how responsibility of waste is determined and sets penalties for unlawful disposal.

The purposes of this ordinance are to:

1. Promote the health and safety of Tribal members and all other persons within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation;
2. Promote the cultural, social and economic stability of residential, agricultural, commercial, industrial, forest, riparian, and environmentally sensitive lands within the Nation and other lands within the jurisdiction of the Nation;
3. Contribute to the protect the historical and cultural values and traditions of the Nation, the Nation as a permanent Tribal homeland, and the aboriginal character of the Nation;
4. Minimize air, water and land from solid and hazardous waste pollution, including contamination of the Nation's aquifers, groundwater, surface waters, drinking water supplies, and all other natural resources;
5. Enhance standard of living, quality of life, welfare and well-being of all persons within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation;
6. Provide and promote Tribal environmental protection and services within the Nation, and to regulate environmental activities under principles of Tribal sovereignty; and
7. Implement, regulate, and enforce environmental standards and criteria, orders and permit conditions, and laws and regulations under the Ordinance, for the sanitary storage, collection, transportation and disposal of all solid waste within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation.

(Law & Order Code 2006, § 23-1; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-2. - Jurisdiction under the waste ordinance.

The Nation asserts inherent sovereignty to exercise civil authority and jurisdiction over the conduct of Tribal members and all other person on all lands within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation. This Ordinance is designed to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Nation. Because violations of this Ordinance or any rules or regulations adopted thereunder will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation, this Ordinance, and any rules and regulations adopted thereunder, shall apply to:

1. All persons within the exterior boundaries of the Nation, without exception, including but not limited to, all Tribal members, and all other person on the Nation, including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under the Ordinance; and

2. All places and lands located anywhere within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation, including all trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, and any real property interest of any kind, held by any person as defined under the Ordinance.

(Law & Order Code 2006, § 23-2; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-3. - Consensual relations among non-Indians, the Nation, and Tribal members.

Any person who uses land anywhere within the exterior boundaries of the Nation and any person who enters into agreements or understandings with the Nation or its members and residents by commercial dealings, contracts, leases, licenses, permits, intergovernmental agreements, or other arrangements, commercial or otherwise, shall be deemed to have entered into a consensual relationship with the Nation or its members.

(Law & Order Code 2006, § 23-3; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-4. - Applicability.

Any person who is anywhere within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation, whether on trust or non-trust lands, agrees to comply with, and is subject to this Ordinance, and any rules or regulations promulgated thereunder, all Tribal laws, and all orders of the Tribal Council, Environmental Department and Tribal Court. All such persons shall have consented to the civil jurisdiction of the Fort McDowell Tribal Court, and shall be subject to civil prosecution, civil penalties, civil damages, or any other civil remedies imposed or awarded by the regulations promulgated thereunder.

Traditional activities associated with cultural or ceremonial practices shall be excluded for the purposes of this Article.

(Law & Order Code 2006, § 23-4; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-5. - Definitions.

In this Article, unless the context otherwise requires, the following terms shall have the meanings herein ascribed to them:

- A. **Approved site** means a solid waste landfill established and operated in compliance with 40 CFR Part 257 and 258.
- B. **Disposal** means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water, so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
- C. **Household hazardous waste** means materials that could be classified as hazardous waste under 40 CFR Parts 261.20 - § 261.35 but are exempt from treatment as hazardous waste under 40 CFR Parts 261.4(b)(1) because households generate them. This category includes non-empty household containers of paint, paint products, household cleaners, automotive fluids, pesticides, pool chemicals, household batteries, and similar materials.
- D. **Nation** means the Fort McDowell Yavapai Nation.
- E. **Open burning** means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney.

Open burning includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of Article II of this Chapter.

- F. **Open dumps** means any facility or site where solid waste or hazardous waste is disposed of which is not a sanitary landfill and which does not meet the criteria issued under 40 CFR Parts 257 and 258 and which is not a facility authorized for disposal of hazardous waste.
- G. **Operator** means the person(s) responsible for the overall operation of a facility or part of a facility.
- H. **Owner** means the person(s) who owns a facility or part of a facility.
- I. **Permitted contractor** is a person who has a valid permit from the Fort McDowell Environmental Department to recover and transport solid waste.
- J. **Person** means an individual, trust, firm, Joint Stock Company, corporation (including a government corporation) partnership, association, Nation, State, municipality, commission, political subdivision of a State, or any interstate body.
- K. **Run-off** means any rainwater, leachate, or other liquid that drains over land from any part of a facility.
- L. **Run-on** means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.
- M. **Sludge** means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, waste supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.
- N. **Solid Waste** means all solid and semi-solid wastes including any garbage, trash, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, such as ashes, dead animals, abandoned vehicles, appliances, infectious wastes, hazardous wastes, street and parking lot cleaning, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point source subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923.) The subcategories for solid waste are as follows:
 - 1. **Appliances, Vehicles, and Equipment:** Shall be considered solid waste if they are not in use, are in a state of disrepair, and are not properly stored, thereby causing an unsightly or hazardous condition to exist.
 - 2. **Brush:** All large trimmings from trees and shrubbery that cannot be readily place in containers.
 - 3. **Bulky Refuse:** Lawn and shrubbery clippings, leaves, weeds, paper, cardboard boxes, rugs, and other materials of lightweight nature.
 - 4. **Hazardous Waste:** Any solid waste, as defined in 40 CFR Part 261.3.
 - 5. **Garbage:** All waste that is capable of decay or decomposition, excepting sewage and body wastes, and the wrappings and containers resulting from the storage preparation, serving, and otherwise using of foods in or upon all premises.
 - 6. **Manufacturing By-products:** Any solid waste resulting from commercial or industrial processes, including but not confined to, produce packaging and shipping.
 - 7. **Recyclable Materials:** Any solid waste consisting of postconsumer materials which may be collected, separated, cleansed, treated, or reconstituted and returned to the economic stream in the form of raw materials or products.
 - 8. **Residual Construction Debris:** Any solid waste resulting from a construction project which would include lumber, scraps, shingles, plaster, brick, dirt, rock, gravel or concrete. This list is not all-inclusive but provides examples of typical construction debris.

(Law & Order Code 2006, § 23-5; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-6. - Responsibility for storage and disposal of solid waste.

- A. Any person generating, producing, storing, or any person who has received any solid waste shall be responsible for the proper storage, removal, transport and disposal of solid waste. Solid waste, while being transported, shall be covered, tied or otherwise secured so waste will not be blown or dropped from the transport vehicle until it is legally deposited in an approved site or collected by a permitted contractor.
- B. In addition to other persons who may be responsible as set forth in this section and for the purpose of this chapter, a person generating solid waste is responsible for the lawful storage, removal, transport and disposal of that solid waste until it is legally deposited in an approved site or collected by a permitted contractor.
- C. When solid waste is dumped or deposited in violation of this Article and a particular person is identified three (3) or more times on, in or within the material constituting the solid waste, there shall be a rebuttable presumption that the person is responsible for the unlawful dumping of solid waste.
- D. Any person who by contract, agreement or otherwise arranges for the recovery, transport, disposal or dumping of solid waste is responsible for complying with the provisions of this Article regarding solid waste.

(Law & Order Code 2006, § 23-6; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-7. - Collection agency.

- A. Solid waste shall only be collected by the Fort McDowell Facilities Maintenance and Utilities Management Department or by commercial haulers that have obtained a permit from the Fort McDowell Yavapai Nation's Environmental Department authorizing private collection. Solid waste deposited for collection shall become the property of the Nation, or the authorized permitted commercial haulers upon collection. No other person shall remove any or all such solid waste so collected.

(Law & Order Code 2006, § 23-7; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-8. - Preparation of solid waste.

All solid waste shall be prepared for collection or disposed of as follows:

- A. **Solid Waste.** FMYN or the permitted commercial hauler shall provide residential containers approved by the Facilities Maintenance and Utilities Management Department, except when the Nation or the permitted hauler may furnish large dumpsters or containers to commercial or residential customers for the accumulation, storage, and collection of all solid waste. The Facilities Maintenance and Utilities Management Department shall keep the containers in good repair and sanitary condition. Containers found to be no longer serviceable through disrepair or maintained in an unsanitary condition may be condemned by the Facilities Maintenance and Utilities Management Department from further use. All refuse must be suitably contained or properly prepared to be acceptable for collection. Legal notice of condemnation shall consist of a label or tag affixed to the container or notification in person or by mail to the owner or responsible party.
- B. **Garbage.** Garbage shall be drained and wrapped and placed suitably in a container so as not to attract flies or other organisms that transmits pathogens.

- C. **Bulky Refuse.** Bulky refuse and furniture shall be placed in containers or beside them or tied in bundles by the Nation member and set out for collection. The weight of a loaded container or bundle shall not exceed sixty (60) pounds. Discarded boxes should be flat when placed into a commercial dumpster. The Facilities Maintenance and Utilities Management Department Director or designee may provide bulk item service to any residential or commercial customer, which may be subject to the appropriate solid waste fees.
- D. **Brush.** The Nation member shall neatly stack brush cut for disposal. Brush may be placed in regular refuse containers but must readily fall out when emptied and shall not extend twelve (12) inches over the top edge of the container or be compacted or wedged in a manner which would impede collection. Upon notification by the Environmental Department, residents have ten (10) days to remove brush that does not conform to the requirements of this subsection. The contractors must remove brush trimmed by contractors. Should the resident or contractor fail to comply, the Facilities Maintenance and Utilities Management Department will remove the brush and may charge a fee for the service.
- E. **Appliances and Vehicles.** The Facilities Maintenance and Utilities Management Department will collect discarded appliances from dwelling premises, which may be subject to the appropriate solid waste fees, that two (2) persons can readily lift into a truck. The Nation member shall remove or cause to be removed all other appliances, vehicles, or equipment classified as solid waste from their premises. Doors shall be removed from all appliances or secured in such a way that no one can enter.
- F. **Building Materials.** All owners, contractors, and builders of structures shall contain all residual construction material, debris, and solid waste in metal containers or within a fenced enclosure that prohibits the scattering or windblown movement of the material. Upon completion of any structure, the contained debris and/or solid waste shall be hauled at the expense of the contractor, builder, or owner as appropriate. To minimize fire hazard to adjacent structures, the containers or fences enclosures will be located a minimum of fifty (50) feet from any existing structure or structures under construction. Failure to comply with proper containment of construction debris and/or solid waste will result in a written notification by the Environmental Department directing the responsible party to take corrective action within two (2) to ten (10) days depending on the nature of the problem, or the Facilities Maintenance and Utilities Management Department will remove the debris and may bill the responsible party.
- G. **By-Products.** Any commercial or manufacturing establishment which by the nature of its operation creates an unusual amount of by-product refuse shall be required to dispose of its own waste as opposed to the having the Facilities Maintenance and Utilities Management Department provide the service.
- H. **Dangerous and Hazardous Waste.** Dangerous wastes shall be placed in a proper container plainly marked "DANGER." The Facilities Maintenance and Utilities Management Department reserves the right to deny service for certain dangerous or hazardous wastes and require that the customer properly dispose of it by other means. Oil should be placed in a separate container, not inside refuse containers.
- I. **Cactus.** All cacti shall be placed in separate sealed cardboard boxes apart from other refuse. A cardboard box-containing cactus shall be sealed and in condition to sustain the weight of the cactus when lifted. Failure to properly contain cactus will result in denial of service for collection.
- J. **Soil and Concrete.** Waste soil, manure, concrete, masonry blocks, sod, and rocks shall be disposed by the Nation member, or the Facilities Maintenance and Utilities Management Department will remove the debris and may bill the responsible party.
- K. **Ownership of Solid Waste.** Solid waste will remain the property and responsibility of the homeowner or Nation member until collected by the Facilities Maintenance and Utilities Management Department, tribal enterprise or private permitted haulers, wherein it becomes the property of the Fort McDowell Yavapai Nation, tribal enterprise or the private permitted haulers, respectively.

- L. **Abatement of Health Hazard.** In addition to the other remedies provided for in this Section, if the Facilities Maintenance and Utilities Management Department Director, Environmental Department Director or their designee determines that a Nation member's solid waste is creating a health hazard, the Facilities Maintenance and Utilities Management Department may collect the customer's solid waste. Solid waste may be collected as often as necessary in an attempt to abate the health hazard. All collection may be subject to appropriate solid waste fees.

(Law & Order Code 2006, § 23-8; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-9. - Unlawful storage, disposal or burning of solid or hazardous waste on the Nation.

A. Solid Waste:

1. Any landfill site on the Nation that has not been authorized to accept waste under 40 CFR Part 258 is considered to be an open dumpsite.
2. It is expressly prohibited and shall be unlawful, for any person to dispose of, or dump, scatter, or place, or cause to be dumped, scattered or placed, any solid waste as defined under this Article, at or near an open dump site within the exterior boundaries of the Nation, or on any other land within the exterior boundaries of the Nation, except as disposal may be permitted under the Article at a duly authorized and designated MSWLF as defined in 40 CFR Part 258.
3. It is unlawful to store or accumulate solid waste in a manner that is a hazard to the public health and safety, as determined by the Environmental Department and that solid waste continues to be the stored or accumulated in such a manner for more than fifteen (15) days after receipt of written notice from the Environmental Department of the hazardous condition.

B. Prohibition of Hazardous Waste:

1. The receiving, accepting, handling, treatment, storage, processing, dumping, or disposal of regulated hazardous waste, as defined under 40 CFR Part 261.3, anywhere within the exterior boundaries of the Nation is expressly prohibited and unlawful. Transportation of any regulated hazardous waste within the exterior boundaries of the Nation must be in full compliance with Federal law, or is otherwise unlawful.
2. The collection, storage, transfer, transportation, and disposal off the Nation of conditionally exempt small quantity generator hazardous waste generated on the Nation, is subject to such rules and regulations as the Tribal Council may issue in compliance with Federal law. Any violation of such rules or regulations is expressly prohibited and unlawful.
3. These prohibitions do not apply to household hazardous waste which is not regulated hazardous waste, and which may lawfully be disposed of at a MSWLF.

C. Prohibition of Burning of Solid Waste or Hazardous Waste:

1. It is expressly prohibited, and shall be unlawful, for any person to openly burn except as authorized by Chapter 23 Article 11, Open Burning Ordinance.

D. Required Permits for the Collection and Transportation of Solid Waste and Municipal Solid Waste Landfills:

1. All tribal departments and subordinate economic enterprises, private enterprises, or any other persons or entities are required to obtain a permit from the Environmental Department to either collect or transport solid waste.
2. Any permittee shall be required to comply with this Article, any rule or regulation promulgated pursuant to this Article, all Tribal environmental standards and criteria, all relevant guidance documents, all permit conditions, all orders issued by the Environmental Department under authority of this Article, and all applicable Federal or Tribal laws, environmental in nature or otherwise.

3. No permittee may collect or transport solid waste without first having obtained a solid waste collection and transportation permit from the Environmental Department.
4. As a condition for the issuance of a solid waste collection and transportation permit, the Environmental Department shall require every vehicle operated by the transporter to carry a copy of the solid waste permit issued by the Environmental Department. Every vehicle and driver must be licensed and must comply with all applicable safety and insurance requirements.
5. As a condition for the issuance of a solid waste collection and transportation permit, the transporter agrees to make an annual report by December 1 of each year indicating the number and type of installations emptied or cleaned, the volume and nature of the solid waste disposed of, the place and manner in which such solid waste was finally disposed, and such other information as the Environmental Department may require. A renewal may be denied by the Environmental Department for failure of the permittee to properly and timely file such annual report.
6. Any tribal department, tribal subordinate economic enterprise, private enterprise, person or entity may file an application with the Environmental Department for a permit to collect and transport solid waste.
7. The permit application to transport and collect solid waste must contain the following minimum information:
 - a. Name, address, and phone number of all persons owning or holding an interest in the applicant of five (5) percent or more;
 - b. Name, address, and phone number of all officers, directors, or partners;
 - c. A statement that no officer, director, partner or holder or an interest of five (5) percent or more, has ever been convicted of a felony, and that no felony charges are currently pending;
 - d. A statement which discloses in detail any charge, complaint, fine, order, decree, statement, or finding of "no contest" for violation of any Tribal, Federal, State, county or municipal environmental or health law, regulation, permit or condition against an officer, director, partner or holder of an interest of five (5) or more within the past five (5) years, including the jurisdiction, disposition, and name, address and phone number of the person who filed the original charge or complaint, and the name of the Environmental Department, Board, Administrative Body, Judge, Justice of the Peace, Magistrate or Arbitrator who levied or entered any fine, order, penalty, decree, statement, or finding;
 - e. A current financial statement of the applicant's net worth, including a description of major assets and liabilities, and any other financial information requested by the Environmental Department;
 - f. A description of any judgments rendered against any officer, director, partner or holder of an interest of five (5) percent or more in the applicant, for five (5) years proceeding the date of application;
 - g. A description of any bankruptcy or insolvency proceedings instituted by any officer, director, partner, or holder of an interest of five (5) percent or more in the applicant, for five (5) years preceding the date of the application;
 - h. Evidence of a bond, letter of credit, or other evidence of security for the adequate protection of the Nation;
 - i. Any other information reasonably requested by the Environmental Department.

(Law & Order Code 2006, § 23-9; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-10. - Scavenging.

- A. No person, unless authorized by the owner of the solid waste, may remove, collect, or disturb solid waste in a container that is set out for the collection and recycling or disposal by the Fort McDowell Yavapai Nation, its agents, or a permittee.
- B. No person, unless authorized by the Fort McDowell Yavapai Nation, may remove, collect, or disturb recyclable materials deposited for collection at any of the Nation's designated recycling drop-off and collection centers.

(Law & Order Code 2006, § 23-10; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-11. - Recovery of disposal costs.

- A. If a person violates any provision of this article and as a result, the Fort McDowell Yavapai Nation arranges for or executes the lawful disposal of the solid waste or hazardous waste, that person shall be responsible to the Fort McDowell Yavapai Nation for all reasonable costs and expenses associated with the transportation and proper disposal of the solid waste.
- B. If the Fort McDowell Yavapai Nation or a property owner files suit to collect their reasonable costs and expenses for disposal of the waste as provided in Subsection A of this section, the court may award a reasonable amount as attorney's fees to the prevailing party.

(Law & Order Code 2006, § 23-11; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-12. - Civil penalties and criminal penalties.

- A. Any person who violates any provision of this Article that is specifically criminalized pursuant to Chapter 6 Section 113 of the Criminal Code shall be guilty of a criminal offense. Any person who violates any provision of this Article shall be subject to civil penalty based upon the severity of the offense and be based on the factors set forth in Subsection B of this Section. The Tribal Court may impose a civil penalty either: 1.) Not less than fifty dollars (\$50.00) but not more than ten thousand dollars (\$10,000.00) for each violation, or 2.) The actual damage caused plus up to three (3) times the actual damages sustained by the Nation, the owner, or possessor of the property.
- B. In determining the amount of a civil penalty under this section, the following factors shall be considered:
 - 1. The seriousness of the violation.
 - 2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
 - 3. Any history of that violation.
 - 4. Any good faith efforts to comply with this chapter.
 - 5. The economic impact of the penalty on the violator.
 - 6. The duration of the violation.
 - 7. Previous violations of the alleged violator.
 - 8. Other factors deemed relevant.

(Law & Order Code 2006, § 23-12; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-13. - Reserved.

Sec. 23-14. - Forfeiture.

Any property used or which could reasonably have been used to commit any violation of this Article, or used in aid of or in conjunction with the commission of an act in violation of this Article, or any thing which was the object of or was intended to be the end result obtained from an act of violation of this Article, upon any land with the Fort McDowell Yavapai Nation shall be subjected to forfeiture. The authorization requirements, and procedures set out in Chapter 7.5, Sections 7.5-9, Seizure and Forfeiture of Property and 7.5-10, Forfeiture Proceedings shall apply to all forfeiture actions under this Article, any reference to civil trespass in Chapter 7.5 shall mean a violation of this Article.

(Law & Order Code 2006, § 23-14; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-15. - Enforcement process.

The enforcement process of this ordinance shall be accomplished in the following manner:

- A. Any person or entity having knowledge of a violation or potential violation of this ordinance should report the information to either the Tribal Police Department or the Tribal Environmental Department.
- B. The Environmental Department in consultation with the Tribal Police Department shall determine whether there is reasonable cause to believe that the alleged violation constitutes a serious violation (major offense) of this ordinance. A major offense includes an immediate threat to public health or the environment.
- C. If it is determined that there is reasonable cause to believe that an immediate threat to public health or the environment exists, then the following process shall apply:
 1. The Environmental Department shall notify that Tribal Prosecutor's Office. The Tribal Prosecutor is authorized to file an action on behalf of the Nation for a temporary restraining order, a preliminary injunction, a permanent injunction, criminal penalties, civil penalties or any other relief provided by law. Other legal possessors of land on the Nation such as Tribal Member Assignees or lessees who have sustained damages as a result of the alleged violation may either (i) join in the action filed by the Tribal Prosecutor or (ii) file an action to recover their damages in the event the Nation elects not to file an action. If a possessor(s) of land joins an action by the Nation, the Court shall apportion the receipt of any monetary penalties in an equitable manner based upon the loss suffered by each party.
 2. A temporary restraining order may be granted without written or oral notice to the alleged violator or that alleged violator's attorney if (i) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and/or irreparable injury, loss, or damage will result to the Nation or third party, and (ii) the Nation or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting the claim that notice should not be required.
 3. The Environmental Department, in cooperation with the Tribal Police Department, shall investigate the allegations and issue a report of its findings to the Court.
 4. The Tribal Court shall schedule the appropriate hearing(s) and/or trial and decide the allegations of the complaint or motion.
- D. If it is determined that the alleged violation constitutes a minor offense, the following process shall apply:
 1. The Environmental Department shall issue a notice by certified mail to the alleged violator, with a copy to the Tribal Police Department, advising the alleged violator that they have ten (10) days to correct the alleged violation.
 2. Upon the expiration of the ten (10) days, the Environmental Department shall notify the Tribal Police Department if the alleged violation has not been corrected and shall prove a recommendation regarding the assessment of an appropriate fine. The Tribal Police

Department shall then issue a civil summons and ticket to the alleged violator. The summons shall state the date and time to appear before the Tribal Court. The ticket shall indicate the alleged violation(s), the alleged date(s) of said violation(s), and the amount of the assessed fine. The alleged violator may either (i) appear and contest the allegations, or (ii) pay the fine and be relieved of the obligation to appear at the Court. The payment of the fine in this subsection shall not relieve the alleged violator of his duty to comply with this ordinance.

3. If the alleged violator elects to contest the allegations, the Tribal Court shall hear the matter. The Tribal Court may, in its discretion based upon the individual facts of the case, either (i) issue a warning for the first offense of a minor nature, (ii) decrease the assessed fine, or (iii) uphold the assessed fine.

- E. If the Environmental Department or the Police Department believes that a violation of Federal laws exists, a meeting shall be scheduled which shall include representatives from the Environmental Department, the Police Department, the Prosecutor's Office and the Tribal Attorney's Office. After this meeting, the Tribal Attorney shall notify the Tribal Council of the matter and shall assume responsibility for making a recommendation in the manner of proceeding.

(Law & Order Code 2006, § 23-15; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-16. - Repeal of previous laws, ordinance and policies and effective date.

Except for Chapter 6, Section 6-113, this article shall supersede any and all prior solid waste laws, ordinances, or policies of the Nation including but not limited to Solid Waste Collection and Treatment/Disposal Policy dated December 2, 1993. This Article shall be effective on the date approved by Tribal Council.

(Law & Order Code 2006, § 23-16; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-17. - Severability.

If any provision of this article is deemed unenforceable, the remainder of this article shall continue in full force and affect.

(Law & Order Code 2006, § 23-17; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-18. - Changes to federal law.

Any references to federal statutes, regulations, or other laws in this Waste Ordinance shall refer to that section as it may be amended, modified or renumbered from time to time.

(Law & Order Code 2006, § 23-18; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Secs. 23-19—23-50. - Reserved.

ARTICLE II. - OPEN BURNING ORDINANCE

Sec. 23-51. - Definitions.

In this Article, unless the context otherwise requires, the following terms shall have the meanings herein ascribed to them:

- A. **Agricultural waste** means any matter generated by crop, horticultural, or livestock production practices, and includes such items as bags, cartons, structural materials, and landscape wastes that are generated in agricultural activities, but does not include land clearing waste; buildings; garbage; dead animals; motor vehicles and parts thereof; nor pesticides and containers thereof, unless the manufacturer has identified open burning as a safe disposal procedure.
- B. **Garbage** means all waste that is capable of decay or decomposition, excepting sewage and body wastes, and the wrappings and containers resulting from the storage preparation, serving, and otherwise using of foods in or upon all premises.
- C. **Landscape waste** means any plant matter, except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings, and crop residues.
- D. **Land clearing waste** means plant matter which is removed from land, including plant matter removed from stream banks during projects involved more than one (1) property owner, for the purpose of rendering the land useful for residential, commercial, or industrial development.
- E. **Environmental Department** means the designated Environmental Department of the Fort McDowell Yavapai Nation. The person(s) authorized to act on behalf of the Environmental Department is the Fort McDowell Yavapai Nation's Environmental Department Director or his/her authorized representative.
- F. **Open burning** means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney.
- G. **Residential waste** means any matter, including landscape wastes, generated on a one-, two- or three-family residence as a result of residential activities, but not including garbage.

(Law & Order Code 2006, § 23-51; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-52. - Relations to other prohibitions.

- A. Notwithstanding any provisions in this Article of the Tribal Code, no open burning shall be conducted in an area where a governmental entity having jurisdiction regarding air quality on the Nation issues an air alert, warning, or emergency.
- B. No provisions of this Article of the Tribal Code, permitting open burning, and no permission to open burn granted by the Environmental Department, shall exempt any person from compliance with any section of the Tribal Code.

(Law & Order Code 2006, § 23-52; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-53. - Open burning.

- A. No person or property owner shall cause or allow open burning within the exterior boundaries of the Fort McDowell Yavapai Nation except as provided in paragraphs (B) and (C) of this Article. In the event of extreme fire danger then open burning shall only be allowed as set forth in subsection C.
- B. Open burning shall be allowed for the following purposes without notification to or permission from the Environmental Department:
 - 1. Cooking for human consumption;
 - 2. Branding, heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers, smudge pots and similar occupational needs.
 - 3. Ceremonial fires.

Fires allowed by paragraphs (B)(1) and (B)(2) of this rule shall not be used for waste disposal purposes and shall be of minimum size sufficient for their intended purpose; the fuel shall be chosen to minimize the generation and emission of air contaminants.

C. Open burning shall be allowed for the following purposes upon receipt of a permit from the Environmental Department provided that the following conditions specified in the permission are followed:

1. Disposal of ignitable or explosive materials where the Environmental Department determines that there is no practical alternate method of disposal;
2. Instruction in methods of fire fighting or for research in the control of fires;
3. In emergency or other extraordinary circumstances for any purposes determined to be necessary by the Environmental Department;
4. Recognized horticultural, silvicultural, range, or wildlife management practices;
5. Disposal of land clearing waste, landscape waste and agricultural waste only if the following conditions are observed:
 - A. The fire is set only when atmospheric conditions will readily dissipate contaminants;
 - B. The fire does not create a visibility hazard on roadways;
 - C. The fire is located at a point on the premises not less than one thousand (1,000) feet from any inhabited building not located on said premises; and
 - D. The wastes are stacked and dried to provide the best practicable condition for efficient burning; and
 - E. No materials are burned that contain rubber, grease, asphalt or liquid petroleum products.

(Law & Order Code 2006, § 23-53; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-54. - Permits and notification to the environmental department.

A. The following permit process shall apply:

1. An application for a permit to open burn shall be submitted in writing at least ten (10) days before the fire is to be set. The application shall be in such form and contain such information as required by the Environmental Department.
2. Such applications shall contain, as a minimum, information regarding:
 - a. The purpose of the proposed burning;
 - b. The nature of quantities of material to be burned;
 - c. The date or dates when such burning will take place;
 - d. The location of the burning site, including a map showing distances to residences, populated areas, roadways, and other pertinent landmarks; and
 - e. The methods or actions that will be taken to reduce the emissions of air contaminants.
3. A permit to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the Environmental Department and Fire Department that open burning is necessary to the public interest; will be conducted in a time, place, and manner as to minimize the emission of air contaminants; and will have no serious detrimental effect upon adjacent properties or the occupants thereof. The Environmental Department and the Fire Department may impose such conditions as may be necessary to accomplish the purpose of this Article of the Tribal Code.

4. A permit to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while a permit is sought, the fire may be set with oral permission of the Environmental Department and the Fire Department.
5. Any open burning shall be constantly attended until the fire is extinguished. Fire extinguishing equipment shall be available for immediate use. Open burning shall be extinguished at dark.
6. Violations of any of the conditions set forth by the Environmental Department in granting a permit to open burn shall be grounds for revocation of such permit and refusal to grant future permits, as well as for the imposition of other sanctions provided by law.

(Law & Order Code 2006, § 23-54; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-55. - Civil penalties and criminal penalties.

- A. Any person who violates any provision of this Article that is specifically criminalized pursuant to Chapter 6 Section 113 of the Criminal Code shall be guilty of a criminal offense. Any person who violates any provision of this Article shall be subject to civil penalty based upon the severity of the offense and be based on the factors set forth in Subsection B of this Section. The Tribal Court may impose a civil penalty either: 1.) Not less than fifty dollars (\$50.00) but not more than ten thousand dollars (\$10,000.00) for each violation, or 2.) The actual damage caused plus up to three (3) times the actual damages sustained by the Nation, the owner, or possessor of the property.
- B. In determining the amount of a civil penalty under this section, the following factors shall be considered:
 1. The seriousness of the violation.
 2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
 3. Any history of that violation.
 4. Any good faith efforts to comply with this chapter.
 5. The economic impact of the penalty on the violator.
 6. The duration of the violation.
 7. Previous violations of the alleged violator.
 8. Other factors deemed relevant.

Any person or persons who shall set or start or fuel an open fire without permit, as required by this article, or who fails to comply with any request to cease burning, shall pay to the Nation a service charge including all costs and charges incurred by the Nation by reason of calling the Nation's Fire Department or any other fire department. The Nation may sue in any court of competent jurisdiction for its service charges as civil damages, and may recover such costs and expenses incurred by the Nation and the Nation's Fire Department from any person who sets such an open fire.

(Law & Order Code 2006, § 23-55; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-56. - Forfeiture.

Any property used or which could reasonably have been used to commit any violation of this Article, or used in aid of or in conjunction with the commission of an act in violation of this Article, or any thing which was the object of or was intended to be the end result obtained from an act of violation of this Article, upon any land with the Fort McDowell Yavapai Nation shall be subjected to forfeiture. The authorization requirements, and procedures set out in Chapter 7.5, Sections 7.5-9, Seizure and Forfeiture

of Property and 7.5-10, Forfeiture Proceedings shall apply to all forfeiture actions under this Article, any reference to civil trespass in Chapter 7.5 shall mean a violation of this Article.

(Law & Order Code 2006, § 23-56; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-57. - Enforcement process.

The Tribal Prosecutor is authorized to file an action on behalf of the Nation for a temporary restraining order, a preliminary injunction, a permanent injunction, criminal penalties, civil penalties or any other relief provided by law.

(Law & Order Code 2006, § 23-57; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-58. - Repeal of previous laws, ordinance and policies and effective date.

This article shall not supersede the following sections of the Tribal Code: Section 6-118. Negligent Handling of Campfire and/or Negligent Starting of a Fire; Section 6-108.01. Reckless Burning; Section 6-108.02. Negligent Burning; Section 6-108.03. Arson; Section 6-108.04. Causing a Brush Fire; and Section 6-113 Unlawful Dumping or Burning. This Article shall be effective on the date approved by Tribal Council.

(Law & Order Code 2006, § 23-58; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Sec. 23-59. - Severability.

If any provision of this article is deemed unenforceable, the remainder of this article shall continue in full force and affect.

(Law & Order Code 2006, § 23-59; Ft. McD. Res. No. 2000-147, eff. 12-13-2000)

Secs. 23-60—23-100. - Reserved.

ARTICLE III. - NATIVE PLANTS ORDINANCE

[**HISTORICAL NOTE:** Chapter 23, Article III is derived from Resolution No. 2002-63 enacted August 6, 2002.]

Sec. 23-101. - Legislative findings.

The Fort McDowell Yavapai Nation Tribal Council hereby finds that:

1. Native plants are a valuable resource of the Nation;
2. Native Plants are a natural resource of aesthetic, ecological, educational, historical, medicinal, nutritional, scientific, recreational, cultural and religious value to the Nation;
3. Destruction and removal of native plants from their growing sites may negatively impact the natural habitat of wildlife and contribute to soil erosion and floods and alter the natural beauty of the land; and
4. Conservation of native plants is necessary to preserve and protect Yavapai culture, religion, and traditions.

(Law & Order Code 2006, § 23-101; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-102. - Purpose and policy.

This Ordinance (Chapter 23, Article III) is intended to provide for the administration and enforcement of this Article and provide penalties for its violation. This Ordinance defines native plants, the permitting process to obtain permits for the removal or collection of native plants, and the penalties for unlawful damage to, removal or collection of native plants.

The purposes of this Ordinance are to:

1. Protect, preserve and conserve native plants within the Nation;
2. Regulate the taking and removal of native plants through the issuance of permits; and
3. Impose penalties for the unlawful taking or removal of native plants from their growing sites.

(Law & Order Code 2006, § 23-102; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-103. - Jurisdiction under the native plants ordinance.

The Nation asserts pursuant to its inherent sovereignty and Article II of its Constitution to exercise civil authority and jurisdiction over the conduct of Tribal members and all other persons on lands within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation. This Ordinance is designed to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Nation. Because violations of this Ordinance or rules or regulations adopted thereunder will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Nation, this Ordinance, and any rules and regulations thereunder, shall apply to: (1) all persons within the exterior boundaries of the Nation, without exception, including but not limited to, all Tribal members, and all other persons on the Nation, including any Indians who are members of other Indian tribes, all non-Indians, and any other person as defined under the Ordinance; and (2) all places and lands located anywhere within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation, including all trust lands, and notwithstanding the issuance of patent, fee, allotment, right-of-way, lease, and any real property interest of any kind, held by any person as defined under the Ordinance.

(Law & Order Code 2006, § 23-103; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-104. - Applicability.

1. Any person who is anywhere within the exterior boundaries of the Nation and other lands within the jurisdiction of the Nation, whether on trust or non-trust lands, agrees to comply with, and is subject to this Ordinance, and any rules or regulations promulgated thereunder, all Tribal laws, and all orders of the Tribal Council, Environmental Department and Tribal Court. All such persons shall have consented to the civil jurisdiction of the Fort McDowell Tribal Court, and shall be subject to civil prosecution, civil penalties, civil damages, or any other civil remedies imposed or awarded by the regulations promulgated thereunder.
2. This Ordinance (Chapter 23, Article III) shall not apply to Tribal land that has been assigned to individual members by the Nation for purposes of residential use and shall not apply to Tribal land leased to a person or persons. This Ordinance also shall not apply to safety and maintenance programs or projects of the Nation as well as emergency actions of the Nation. Notwithstanding this

Subsection B, the provisions of Section 23-111 shall apply to all persons as defined by this Ordinance.

(Law & Order Code 2006, § 23-104; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-105. - Definitions.

In this Article, unless the context otherwise requires, the following terms shall have the meanings herein ascribed to them:

1. **Department** means the Fort McDowell Environmental Department.
2. **Endangered Species Act** means the federal Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544.
3. **Member** means an enrolled member of the Fort McDowell Yavapai Nation.
4. **Nation** means the Fort McDowell Yavapai Nation.
5. **Native Plant** means any plant listed in Section 21-107 or part of such plant including, tree limbs, cacti ribs, and cactus skeletons.
6. **Person** means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Nation, State, municipality, commission, political subdivision of a State, or any interstate body.
7. **Riparian** means the area where plant roots are in contact with groundwater.
8. **Tribal Council** means the Fort McDowell Yavapai Nation Tribal Council.

(Law & Order Code 2006, § 23-105; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-106. - Protected native plants.

The categories of plants listed below are protected under this ordinance.

1. Specific Plants:

Common Name	Scientific Name
a. Barrel cactus	<i>Ferocactus wislizeni</i>
b. Crucifixion thorn	<i>Holacantha emoryi</i>
c. Devil's claw	<i>Proboscidea arenaria</i>
d. Ironwood	<i>Olneya tesota</i>
e. Mesquite	<i>Prosopis juliflora</i>

f. Ocotillo	<i>Fouquieria splendens</i>
g. Prickly pears/cholla	<i>Opuntia spp</i>
h. Palo verdeBlue	<i>Cercidium floridum</i>
i. Foothill	<i>Cercidium microphyllum</i>
j. Saguaro	<i>Carnegiea gigantea</i>
k. Yucca Soaptree	<i>Yucca elata</i>
l. Banana	<i>Yucca baccata</i>

2. All plant species on the threatened and endangered list set forth in the Endangered Species Act. Tribal permits shall not be issued for plants on that list unless the taking or removal of such plant is authorized pursuant to the Endangered Species Act.
3. The following plants, whether or not their individual component species are in the protected group:
 1. Cottonwood (*Populus fremontii*) and willow stands (*Salix gooddingii*) that provide habitat for rare, threatened and/or endangered wildlife species, as identified by the Department; and
 2. Mesquite bosques, a woodland composed almost exclusively of mesquite (*Prosopis spp*) and considered sensitive habitat necessary to the survival of a number of wildlife species, as identified by the Department.

(Law & Order Code 2006, § 23-106; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-107. - Modification of protected species' list.

Plant species may be added to or deleted from protected status by formal action of the Tribal Council.

(Law & Order Code 2006, § 23-107; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-108. - Permits.

1. It is unlawful for a person to damage, destroy, dig up, mutilate, collect, cut, harvest, haul, transport or to have within the person's possession a native plant or part of such plant taken from its original growing site within the Fort McDowell Yavapai Nation without a valid permit issued by the Department. A valid Tribal Business License must be presented to the Department before a permit

may be issued to a business or other organization unless not required pursuant to the Business Code, Chapter 2 of the Law and Order Code. The Department shall issue permits only in accordance with the provisions of this ordinance.

2. The Department shall create a permit application form and a permit form document for the actions described in Subparagraph (A) above. These documents shall specify the permittee's name and address, the reason for the permit, the type and quantity of plants to be affected, the location of the plants to be affected, a description of the permittee's motor vehicle and license plate number that will be used to transport native plants, and the term for which the permit is valid.
3. The Department shall annually determine the applicable fee schedule for permits authorized in this ordinance. Permit fees shall be deposited in the Tribal Verde River Restoration Fund.
4. The Department shall determine whether to issue a permit within ten (10) days after a permit application form has been filed with the Department.
 - a. During the time period in which the permittee is using a permit for the activity authorized in the permit including the transportation of native plants, the permittee must attach the permit in plain view on the rear window of the motor vehicle described in the permit.
 - b. A permit is non-transferable, except that a permittee may allow an agent to use a permit for the activity described in the permit. A permittee is primarily responsible for the actions of his or her agent. An agent acting under authority of a permit must comply with all the provisions of this Ordinance and the conditions set forth in the permit. Where the permittee and his or her agent act in concert toward the violation of any provision of this ordinance or any condition set forth in the permit, each party shall be responsible for such conduct.
 - 1) An agent acting under authority of a permit must have within his or her possession written permission from the permittee allowing the agent to use the permit. The written permission must contain the permittee's printed name and signature.
 - 2) In the event that an agent uses a different vehicle than the one identified on the permit, the agent must inform the Department of this change prior to acting under the permit.
 - c. Removing or collecting native plants pursuant to a permit may occur only from 8:00 a.m. to 5:00 p.m. daily.
- E. The Department may deny a permit application or revoke an issued permit for the following reasons:
 1. Destruction or removal of the designated native plant(s) may adversely impact a natural habitat for wildlife and/or contribute to soil erosion;
 2. Unusual or severe weather or environmental conditions including but not limited to droughts, floods, fires and plagues resulting in a fragile ecosystem whereupon the destruction or removal of native plants may lead to the further erosion of an ecosystem;
 3. Removal of any designated plant(s) that may exceed the authorized annual quota set for such plant(s) by the Department;
 4. Taking or removing more native plant(s) than is authorized by an issued permit;
 5. Abuse or misuse of an issued permit including reasonable suspicion that native plants will be used for purposes other for the purpose stated by the permittee in his or her permit application;
 6. Other violations of this Ordinance; and
 7. Other grounds reasonably necessary to protect the environment.
- F. For purposes of contesting the denial or revocation of a permit by the Department, the person applying for a permit or a permit holder may appeal this decision to the Trial Division of the Fort McDowell Tribal Court. The Trial Division of the Tribal Court shall defer

to the decision of the Department unless the decision is arbitrary and capricious or an abuse of discretion. Further appeal to the Fort McDowell Supreme Court is subject to the discretion of the Supreme Court.

(Law & Order Code 2006, § 23-108; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-109. - Expiration of permit.

A permit issued pursuant to this ordinance shall expire when the number and quantity of plants set forth in the issued permit have been removed from their original growing sites or when the permit has expired, whichever occurs first.

(Law & Order Code 2006, § 23-109; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-110. - Waiver of permit fees.

A waiver of fees described in this Ordinance may be given for ceremonial or religious use of native plants and use of native plants for scientific or educational purposes.

(Law & Order Code 2006, § 23-110; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-111. - Construction projects; procedures for salvage, relocation and disposal of native plants.

1. All construction projects involving damage, destruction, taking or removal of native plants require a permit issued by the Department. During the design phase of a construction project a native plant salvage and relocation plan must be submitted by the Owner of the Project to the Department for its review.
2. Construction projects should make every effort to avoid displacement of native plants. In unavoidable circumstances, native plants may be moved from their natural growing sites out of construction areas. Native plants that must be moved for construction purposes shall be salvaged to the extent reasonably feasible and relocated to other growing sites within the Nation or salvaged and used to re-vegetate disturbed areas after construction is completed.
3. If salvage and relocation is not reasonably feasible, the Department may authorize the disposal of protected plants through the issuance of permits for the following purposes:
 - a. Allowing a Tribal enterprise or an authorized nursery to remove and sell native plants;
 - b. Allowing members or community groups to remove the native plants from proposed construction under supervision for aesthetic use in their homes or on their land assignments; and/or
 - c. Allowing non-profit organizations to remove native plants that can be used for educational or scientific purposes, provided the plant(s) will not be offered for sale.
4. In the event that the age or natural condition of a native plant makes it unlikely to survive salvage and/or relocation, the plant may be removed and/or destroyed without salvage or relocation.
5. An approved salvage and relocation plan by the Department shall satisfy the requirements for obtaining a permit pursuant to this Ordinance subject to the payment of the applicable permit fee set forth by the Department in its permit fee schedule. The Department shall issue necessary permits to the persons responsible for removing and transporting native plants pursuant to an approved salvage and relocation plan.

6. In instances where the Nation is the owner of a construction project and it determines that the benefits of a salvage and relocation plan do not outweigh the costs of implementing such a plan, the Tribal Council by resolution may waive the requirement of a salvage and relocation plan for the project. Where the Tribal Council waives this requirement, the Department shall issue necessary permits to the persons responsible for removing and transporting native plants from area of the construction projects.

(Law & Order Code 2006, § 23-111; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-112. - Critical and sensitive habitats.

Protection of plants in areas of critical or sensitive habitat is essential to maintain the Verde River ecosystem. The Department shall designate areas of critical or sensitive habitats. All plants, whether or not a particular plant is listed in Section 23-106, shall not be removed from these sites.

(Law & Order Code 2006, § 23-112; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-113. - Mesquite harvesting.

1. Uncontrolled cutting and removal of mesquite trees affects the Verde River ecosystem. The Nation intends to protect its resources by providing a sustainable yield of mesquite trees while preserving the culture and heritage of the Nation.
2. In addition to the permit requirements contained in Section 23-108, the following rules apply to the harvesting of mesquite trees:
 - a. Mesquite harvesting shall be limited to the period between October 1st through March 31st of the following year. If the Department determines that harvesting of mesquite trees for a particular period will have a significant detrimental effect on the Verde River ecosystem, then the Department may order a more limited harvesting period;
 - b. The Department shall establish designated areas for the harvesting of mesquite trees each year;
 - c. Permittees shall use harvesting techniques approved by the Department. Use of unapproved harvesting techniques shall result in the revocation of an issued permit;
 - d. Only members are eligible to receive a permit for the harvesting of mesquite trees; and
 - e. A permit for the harvesting of mesquite trees is valid for only one (1) harvest period and the number or quantity of mesquite trees designated in the permit.

(Law & Order Code 2006, § 23-113; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-114. - Miscellaneous.

1. No person, except as provided in this ordinance, shall take, remove, transport or have in his possession any native plant covered under this Ordinance unless the person has a valid permit on his person at the time of taking, removing, transporting, or possessing the native plant.
2. Tribal law enforcement officers have authority to prohibit the removal of native plants in the absence of a valid permit and prohibit the removal of native plants not listed on a permit or in excess of the quantity allowed by a permit.

3. Upon probable cause of a native plants removed or collected in violation of this Ordinance and/or Section 6-106 of the Criminal Code, Tribal law enforcement officers are authorized to seize and hold said plants for use as evidence in the prosecution of civil and/or criminal penalties.
4. It is unlawful for any person to misuse a permit in any manner, or to falsify any paper or document issued to any person to take native plants, or to take more native plants than is authorized by a permit. Misuse of a permit or falsification of documents will result in forfeiture of the privilege to remove or collect native plants within the Nation in addition to any other penalty authorized by this Ordinance and the Fort McDowell Law & Order Code.

(Law & Order Code 2006, § 23-114; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-115. - Civil penalties and criminal penalties.

1. Offenses.
 - a. Any person who violates any provision of this Ordinance that is specifically criminalized pursuant to Chapter 6, Section 106 of the Criminal Code shall be guilty of a criminal offense.
 - b. Any person who violates any provision of this Ordinance shall be guilty of a civil penalty based upon the severity of the offense and the factors set forth in Subsection B of this Section. The Tribal Court may impose a civil penalty either: 1.) Not less than fifty dollars (\$50.00) but not more than ten thousand dollars (\$10,000.00) for each violation of this Ordinance, or 2.) The actual damage caused plus up to three (3) times the actual damages sustained by the Nation, the owner, or possessor of property for willful or intentional conduct.
2. In determining the amount of civil penalty under this Section, the following factors shall be considered:
 - a. The seriousness of the violation;
 - b. As an aggravating factor only, the economic benefit, if any, resulting from the violation;
 - c. Any history of that violation;
 - d. Any good faith efforts to comply with this Ordinance;
 - e. The economic impact of the penalty on the violator;
 - f. The duration of the violation or number of plants destroyed, damaged, removed, or otherwise collected;
 - g. Previous violations of the alleged violator; and
 - h. Other factors deemed relevant.

(Law & Order Code 2006, § 23-115; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-116. - Forfeiture.

Any property used or which could reasonably have been used to commit any violation of this Ordinance, or used in aid of or in conjunction with the commission of an act in violation of this Ordinance, or any thing which was the object of or was intended to be the end result obtained from an act of violation of this Ordinance, upon any land within the Fort McDowell Yavapai Nation shall be subjected to forfeiture. The authorization requirements, and procedures set out in Chapter 7.5-9, Seizure and Forfeiture of Property and 7.5-10, Forfeiture Proceedings shall apply to all forfeiture actions under this Ordinance. Any reference to civil trespass in Chapter 7.5 shall mean a violation of this Ordinance.

(Law & Order Code 2006, § 23-116; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-117. - Enforcement process.

The Tribal Prosecutor or other person designated by the Tribal Council may file an action on behalf of the Nation for a temporary order, preliminary injunction, a permanent injunction, criminal penalties, civil penalties or any other relief provided by law.

(Law & Order Code 2006, § 23-117; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-118. - Disposition of funds.

All fees collected by the Environmental Department and all civil fines collected by the Tribal Court shall be deposited in the Tribal Verde River Restoration Fund.

(Law & Order Code 2006, § 23-118; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-119. - Repeal of previous laws, ordinance and policies and effective date.

Except for Chapter 6, Section 106, this Ordinance supersede and repeal any prior legislation of the Nation which is inconsistent with this Ordinance. This Ordinance shall become effective on the date approved by the Tribal Council.

(Law & Order Code 2006, § 23-119; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-120. - Changes to federal law.

Any references to federal statutes, regulations, or other laws in this Native Plants Ordinance shall refer to that section as it may be amended, modified or renumbered from time to time.

(Law & Order Code 2006, § 23-120; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Sec. 23-121. - Severability.

If any provision of this article is deemed unenforceable, the remainder of this Article shall continue in full force and affect.

(Law & Order Code 2006, § 23-121; Ft. McD. Res. No. 2000-147, eff. 12-13-2000; Ft. McD. Res. No. 2002-63, eff. 8-6-2002)

Chapter 24 - SALES TAX

[**HISTORICAL NOTE:** Chapter 24 is derived from Resolution No. Ft. McD. 2002-26, effective March 25, 2002]

ARTICLE I. - SALES TAXES FOR TRIBAL AND PRIVATE BUSINESS

Sec. 24-1. - Purpose.

The Fort McDowell Yavapai Nation (Nation) recognizes that historically there has been inadequate funding of education, health, and the Nation's physical infrastructure, including water, sewage and electric. The Nation further recognizes that future improvement in these areas will generally be the Nation's responsibility. Therefore, the Nation imposes a Sales Tax as an excise tax for the sole benefit and funding of essential Tribal government programs in the following areas: capital improvements, to include physical infrastructure, education and health programs.

(Sec. 24-1 amended and added by Resolution No. McD. 2002-21, effective March 19, 2002.)

(Law & Order Code 2006, § 24-1; Ft. McD. Res. No. 2002-21, eff. 3-19-2002; Ft. McD. Res. No. 2002-26, eff. 3-25-2002)

Sec. 24-2. - Definitions.

In this chapter unless the context otherwise requires:

1. **Business** includes all retail and commercial sales, rental and commercial lease activities involving tangible personal property, engaged in with the object of gain; benefit or advantage and that operate, sell, or otherwise exist on or within the boundaries of the Fort McDowell Yavapai Nation.
2. **Consumption on Premises** means food and alcoholic beverages normally sold for consumption at the place of sales such as restaurants and at/or on the golf course. This does not include sales of food items at convenient stores or vendor stands.
3. **Credit(s)** means the amount to be deducted from the total tax levy for each transaction that is required to be and remitted to state and county governments by the seller.
4. **Engaging or engaged in** when used in reference to engaging or continuing in business, means; a person or persons, partnerships, companies, corporations and Tribal enterprises engaging in a business within the borders of the Fort McDowell Yavapai Nation.
5. **Exempt Sales** means that sales, leases or rental of the exempt items shall be exempt from the Nation's transaction tax imposed by this Section, although other taxes imposed by the Nation may apply.
6. **Exempt Items** means cigarettes, newspapers, all hay sales, prescription medications, gasoline, kerosene, butane and diesel fuel, sales of property intended by the purchasers for resale, to include, farm products, cattle, concrete, gravel and other items. The following are also exempted sales:
 - a. Participant fees charged by rodeos and powwows and other entertainment or sports events occurring on the Fort McDowell Yavapai Nation.
 - b. **"One Time Sales"** by individuals who are not regularly engaged in the sale of tangible personal property.
 - c. Special Events hosted by or sponsored by the Nation or its enterprises are exempt from the imposition of taxes.
 - d. Purchases, leases and rentals of tangible personal property by the Tribal Government or Tribal enterprises are exempt from the tax.

- e. Transactions between Tribal Enterprises are exempt. Transactions between Tribal enterprises and contractors who are under contract to Tribal Government or another Tribal enterprise are exempt.
 - f. Casino sales of bingo cards, poker chips, and other gaming items when sold directly to a player. This does not exempt gift shop sales to players.
 - g. Sales to federal, state, county, and municipal governments and sales to tax exempt organizations are exempt from this tax. Tax-exempt organizations 3/19/2002 shall provide proof of that exemption.
7. **Fort McDowell Yavapai Nation or Nation** means the Tribal trust land of the Fort McDowell Yavapai Nation.
 8. **Gross proceeds of sales** means the value of the property sold, rented, or leased without any deductions for taxes, cost or expenses; the amount subject to this tax.
 9. **Person** means a human being; a labor organization, an individual or corporation, companies, partnerships or any other legal entity recognized under the state law of Arizona.
 10. **Sale** means any transfer of title or possessions or both of any tangible personal property or the provision of service to the end user, whether the end user is a person, business or other entity.
 11. **Services** means provisions of labor and professional services. Labor, professional services and provisions of facilities, other than through a lease or rental agreement, shall not be taxed under this Article.
 12. **State transaction privilege taxes and county taxes** means taxes imposed on off Nation sales by the state and county and also taxes that may be imposed on non-Tribal or member owned businesses operating within the Fort McDowell Yavapai Nation. Businesses subject to state and county taxes shall deduct the tax revenue owed to the state and county as a credit before remitting the balance of this tax to the Nation. Businesses shall document sales, taxes and credits on a form or in an electronic format approved by the Nation.
 13. **Tangible personal property** means all property, except real property, which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.
 14. **Taxpayer** means any person who is liable for collecting any tax that is imposed by this Section. The taxpayer is the seller of tangible personal property and/or services.
 15. **Tax rate** or **tax levy** is the percent levied on the purchaser at the time of sale and which shall be collected by the business at the time of sale. The tax levy may be included in the sales price and not identified on sale receipts or charge slips.
 16. **Transaction** means the conducting of any business, to include sales, leasing, and rental of tangible personal property. This includes leasing and rental of equipment and livestock. This would include sales of tickets to theatres, amusement parks, animals parks, or other similar businesses.

(*Sec. 24-2 amended and added by Resolution No. McD. 2002-21, effective March 19, 2002.*)

(Law & Order Code 2006, § 24-2; Ft. McD. Res. No. 2002-21, eff. 3-19-2002; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2012-62, eff. 10-1-2012)

Sec. 24-3. - Administration.

1. The Nation's Finance Department, in conjunction with the Enterprise Accounting Office, shall be responsible for establishing a tax receipts account, procedures and forms for reporting of sales, tax receipts and credits. The Finance Department shall establish a record system showing separately the amount of taxes collected from each business subject to this tax.

2. Enforcement of this Article in the Tribal Court of the Fort McDowell Yavapai Nation shall be under the exclusive jurisdiction of the Nation's Legal Department and the Tribal Attorney.
3. Disbursement of collected taxes shall be for the purpose identified in Section 23-1 of this Article.

(Sec. 24-3 amended and added by Resolution No. McD. 2002-21, effective March 19, 2002.)

(Law & Order Code 2006, § 24-3; Ft. McD. Res. No. 2002-21, eff. 3-19-2002; Ft. McD. Res. No. 2002-26, eff. 3-25-2002)

Sec. 24-4. - Reporting and payment of taxes to the Nation.

1. The taxes levied under this Article are due and payable to the Nation monthly on or before the twentieth day of the succeeding month in which the tax is collected. Businesses shall submit with their tax payment a report, on an approved form, of gross sales, sales at applicable tax rates, state and county credits, total tax collected and total of tax paid to the Nation.
2. Intentional failure to collect or pay collected taxes to the Nation in accordance with this Section shall constitute a civil violation subject to a fine not to exceed two thousand dollars (\$2,000.00) for each occurrences.
 - a. Individuals, companies, and corporations (all businesses) engaged in business within or on the Fort McDowell Nation shall be notified and consent to the jurisdiction of the Tribal Court concerning disputes arising under this Section of the Nation's Law and Order Code.
3. Failure to pay or collect the tax imposed by this Article for any reason may result in the seizure of any assets owned by or in possession of the taxpayer within the boundaries of the Fort McDowell Yavapai Nation by the Nation. Seizures of property are subject to judicial review by the Tribal Court within three (3) business days at the request of the taxpayer or the owners of the seized property. The Tribal Court will recognize any existing liens or security interest asserted by any person, other than the taxpayer, on any seized asset and grant such lien priority.
 - a. The Finance Department shall have the discretion and the authority to direct the Nation's Tribal Police to seize and secure property and assets when the Department reasonably determines that there is sufficient information to warrant a reasonable belief that a person, business or organization is failing to collect and/or pay taxes as required by this Article.
4. The Finance Department shall assess a penalty equal to ten (10) percent of the actual or estimated tax liability for each five (5) business day period that the taxes remain unpaid after the due date. The Department may, at its discretion, waive any penalties upon a showing of good cause.
5. By engaging in business within the boundaries of the Fort McDowell Nation, all business statutorily consent to an annual audit by the Nation concerning gross proceeds from sales.
6. Any business may petition the Nation for an exemption (limited or otherwise) from the tax if the purpose of the exemption is for a particular charitable or educational cause.

(Sec 24-4 amended and added by Resolution No. McD. 2002-21, effective March 19, 2002.)

(Law & Order Code 2006, § 24-4; Ft. McD. Res. No. 2002-21, eff. 3-19-2002; Ft. McD. Res. No. 2002-26, eff. 3-25-2002)

Sec. 24-5. - Tax levy.

- a. The tax rate imposed on each sale, excepting the Identified exemptions or sales of items, if any, identified in Section 24-2(6) shall be nine (9) percent payable by the buyer at the time of transaction.

It is the responsibility of the business involved in the transaction to collect, record and report each transaction to the Nation either through digital data reporting or via Tribal approved forms.

- b. The tax rate imposed on sales of packaged beer, wine, and liquors shall be nine (9) percent. The tax rate for food and groceries generally sold for consumption off-premises and over the counter medications shall be nine (9) percent.
- c. The tax rate for food and alcoholic beverages sold primarily for consumption on premises shall be nine (9) percent for all purchasers.
- d. Purchases by enrolled Tribal members of tangible property shall be taxed at the nine-percent tax rate. Enrolled Tribal members must present a membership card at the time of purchase to avoid state and county taxes or to receive the lower tax rate or exemptions. Sales of alcoholic beverages normally sold for consumption on premises, or that are sold packaged or unpackaged, shall be taxed at the nine-percent rate for all purchases by any.

FORT MCDOWELL YAVAPAI NATION

MONTHLY REPORT OF SALES

FOR THE MONTH OF _____ / _____ / _____, 20 _____.

GROSS SALES (TOTAL SALES)	EXEMPT SALES	TAXABLE SALES BY RATE	STATE/COUNTY TAX CREDITS	TAX DUE
		9% x	0.00	
		1.7% x		

1. This report is due No Later than twenty (20) days from the end of the monthly reporting period. If the twentieth day falls on a Saturday, Sunday or on a Monday National Holiday, the report shall be due the close of business on the next business day.
2. Reports shall be submitted by 4:00 p.m. on the date due.
3. A record of exempt sales shall be maintained on a monthly basis reflecting the reporting period's sales and shall identify the basis for the exemption if the item would normally be subject to this tax. This report is subject to a monthly review at the discretion of the Finance Department or their agents.

(*Sec. 24-5 amended and added by Resolution No. Ft. McD. 2002-21, effective March 19, 2002.*)

(Law & Order Code 2006, § 24-5; Ft. McD. Res. No. 2002-21, eff. 3-19-2002; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2006-94, § 24-5, adopted 11-21-2006, eff. 1-1-2007; Ft. McD. Res. No. 2010-71, adopted 11-9-2010, eff. 12-1-2010)

ARTICLE II. - TRANSIENT LODGING TAXES

[**HISTORICAL NOTE:** Article II of Chapter 24, sections 24-6 through 24-11, enacted by Resolution No. Ft. McD. 2004-115, effective September 27, 2004]

Sec. 24-6.

The transient lodging classification is comprised of the business of operating, for occupancy by transients, a resort, hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, spaces for recreational vehicles, mobile home or house trailer at a fixed location or other intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.

(Law & Order Code 2006, § 24-6; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2004-115, eff. 9-27-2004; Ft. McD. Res. No. 2006-94, § 24-6, adopted 11-21-2006)

Sec. 24-7.

For purposes of this subsection, a "transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than three hundred sixty-six (366) consecutive days. The term "lodging space" shall include all items identified as transient lodging in Sec. 24-6.

(Law & Order Code 2006, § 24-7; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2004-115, eff. 9-27-2004; Ft. McD. Res. No. 2006-94, § 24-7, adopted 11-21-2006)

Sec. 24-8.

The transient lodging classification does not include:

1. A lease or rental of a mobile home or house trailer at a fixed location or any other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy for over three hundred sixty-six (366) or more consecutive days.
2. Leasing or renting two (2) or fewer rooms of an owner-occupied residential home, together with furnishing no more than a breakfast meal to transient lodgers.

(Law & Order Code 2006, § 24-8; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2004-115, eff. 9-27-2004; Ft. McD. Res. No. 2006-94, § 24-8, adopted 11-21-2006)

Sec. 24-9. - Tax rate.

1. The tax rate for the transient lodging classification is twelve and three-quarters (12.75) percent of the gross proceeds of sales or gross income derived from the business of transient lodging.

(*Sec. 24-9 amended by Resolution No. Ft. McD. 2005-50, effective April 5, 2005.*)

(Law & Order Code 2006, § 24-9; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2004-115, eff. 9-27-2004; Ft. McD. Res. No. 2005-50, eff. 4-5-2005; Ft. McD. Res. No. 2006-94, § 24-9, adopted 11-21-2006; Ft. McD. Res. No. 2010-71, adopted 11-9-2010, eff. 12-1-2010)

Sec. 24-10. - Administration.

1. The Nation's Finance Department, in conjunction with the Enterprise Accounting Office, shall be responsible for establishing a tax receipts account, procedures and forms for reporting of sales, tax receipts and credits. The Finance Department shall establish a records system showing separately the amount of taxes collected from each business subject to this tax.
2. Enforcement of this Article shall be in the Tribal Court of the Fort McDowell Yavapai Nation and shall be under the exclusive jurisdiction of the Nation's Court and the Office of the General Counsel shall have standing on behalf of the Nation.
3. Disbursement of collected taxes shall be for the purposes identified in Section 24-1 of this Chapter.

(Law & Order Code 2006, § 24-10; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2004-115, eff. 9-27-2004; Ft. McD. Res. No. 2006-94, § 24-10, adopted 11-21-2006)

Sec. 24-11. - Exemptions.

1. Special Events hosted by or sponsored by the Nation or its enterprises are exempt from the imposition of transient lodging taxes as designated by the Tribal Council.
2. Use of the Transient Lodging by Tribal Government or Tribal enterprises are exempt from this tax.

(Law & Order Code 2006, § 24-11; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2004-115, eff. 9-27-2004)

Secs. 24-12—24-20. - Reserved.

ARTICLE III. - TOBACCO TAX

[**HISTORICAL NOTE:** Art. III. was originally adopted as Chapter 20 by Resolution No. McD. 95-25, effective March 27, 1995.]

Sec. 24-21. - Tobacco tax levied.

There is levied and there shall be collected a privilege tax upon every person engaged in the retail business of selling tobacco products within the Fort McDowell Yavapai Nation, for the purpose of raising revenue for necessary expenses for the Fort McDowell Yavapai Nation, on all cigarettes, cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco the following tax:

1. On each cigarette, 5 cents.
2. On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco power or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, 11.3 cents per ounce or major fraction thereof.
3. On all cavendish, plug or twist tobacco, 2.8 cents per ounce or fractional part thereof.
4. On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, 22.3 cents.
5. On cigars of all descriptions except those included in paragraph 4 of this subsection, made of tobacco or any substitute therefore, if manufactured to retail at not more than 5 cents each, 11.0 cents on each three cigars, but if manufactured to retail at more than 5 cents each, 11.0 cents on each cigar.

(Law & Order Code 2006, § 24-6; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2002-109, eff. 11-25-2002)

Sec. 24-22. - Tribal members exempt.

The tax levied by this Tobacco Products Tax, Chapter 24, Article II of this Code does not apply to cigarettes, cigars, smoking tobacco, plus tobacco, snuff and other forms of tobacco sold at retail within the exterior boundaries of the Fort McDowell Yavapai Nation to any enrolled member of the Fort McDowell Yavapai Nation.

(Law & Order Code 2006, § 24-6; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2002-109, eff. 11-25-2002)

Sec. 24-23. - Effective date.

This ordinance shall be effective on midnight of November 25, 2002.

(Law & Order Code 2006, § 24-6; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2002-109, eff. 11-25-2002)

Sec. 24-24. - Regulations.

The Chief Financial Officer of the Nation is authorized to adopt Procedures for the administration of this Tobacco Tax Products Ordinance.

(Law & Order Code 2006, § 24-6; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2002-109, eff. 11-25-2002)

Sec. 24-25. - Repeal of previous tobacco products tax ordinance.

Any and all past tobacco products tax ordinance of the Nation, including the Section 20-1, Tobacco Products Tax, enacted by Resolution No. 95-25, shall be considered superseded upon the effective date of this Chapter 24, Article II, Tobacco Tax Products Ordinance.

(Law & Order Code 2006, § 24-6; Ft. McD. Res. No. 95-25, eff. 3-27-1995; Ft. McD. Res. No. 2002-26, eff. 3-25-2002; Ft. McD. Res. No. 2002-109, eff. 11-25-2002)

Chapter 25 - SEX OFFENDER REGISTRATION CODE

ARTICLE 1. - GENERAL MATTERS

Sec. 1.01. - Title.

This Code shall be known as the Sex Offender Registration Code.

(Ft. McD. Res. No. 2011-18, § 1.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 1.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 1.01), adopted 9-16-2014)

Sec. 1.02. - Purpose.

The intent of this code is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Section I of P.L. 109-248) (42 USC 16901 et seq.) and shall be interpreted liberally to comply with the terms and conditions of that Act as presently written or hereafter amended.

(Ft. McD. Res. No. 2011-18, § 1.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 1.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 1.02), adopted 9-16-2014)

Sec. 1.03. - Creation of registries.

- A. Sex Offender Registry. There is hereby established a sex offender registry program. The Fort McDowell Yavapai Nation Sex Offender Registry which the Fort McDowell Police Department shall maintain and operate pursuant to the provisions of this code, as amended.
- B. Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, Fort McDowell Yavapai Nation which the Fort McDowell Police Department shall maintain and operate pursuant to the provisions of this code, as amended.

(Ft. McD. Res. No. 2011-65, § 1.03, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 1.03), adopted 9-16-2014)

ARTICLE 2. - TERMINOLOGY AND COVERED OFFENSES

Sec. 2.01. - Definitions.

Convicted. An adult sex offender is "convicted" for the purposes of this code if the sex offender has been subject to penal consequences based on the conviction, however the conviction may be styled.

A juvenile offender is "convicted" for purposes of this code if the juvenile offender is either:

1. Prosecuted and found guilty as an adult for a sex offense; or
2. Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is fourteen (14) years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

Employee. The term "employee" as used in this code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation, or independent contractors. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

Immediate. "Immediate" and "immediately" mean within three (3) calendar days.

Imprisonment. The term "imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a local or tribal "jail". Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of "house arrest".

Jurisdiction. The term "jurisdiction" as used in this code refers to the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe that has asserted jurisdiction pursuant to section 127 of SORNA, including the Fort McDowell Yavapai Nation.

Minor. The term "minor" means an individual who has not attained the age of eighteen (18) years.

Nation. The term "Nation" means the Fort McDowell Yavapai Nation.

Resides. The term "reside" or "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

Sex Offense. The term "sex offense" as used in this code includes those offenses contained in 42 U.S.C. § 16911(5) (as amended) and those offenses enumerated in Section 2.02 of this code or any other registerable offense under tribal law.

An offense involving consensual sexual conduct is not a sex offense for the purposes of this code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

Sex Offender. A person convicted of a sex offense is a "sex offender".

Sexual Act. The term "sexual act" means:

Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intention to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of eighteen (18) years with the intention to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Sexual Contact. The intentional touching, either directly or through the clothing, or the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

Student. A "student" is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education or who is homeschooled.

SORNA. The Sex Offender Registration and Notification Act (Title 1 of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. § 16911 *et seq.*, as amended.

Sex Offender Registry. The term "sex offender registry" means the registry of sex offenders, and a notification program, maintained by the Fort McDowell Police Department.

National Sex Offender Registry (NSOR). The national database maintained by the Federal Bureau of Investigation pursuant to 42 U.S.C. § 16919.

SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.

"Tier 1 Sex Offender". A "tier 1 sex offender", or a "sex offender" designated as "tier 1", is one that has been convicted of a "tier 1" sex offense as defined in section 3.01.

"Tier 2 Sex Offender". A "tier 2 sex offender", or a "sex offender" designated as "tier 2", is one that has been either convicted of a "tier 2" sex offense as defined in section 3.02, or who is subject to the recidivist provisions of 3.02(A).

"Tier 3 Sex Offender". A "tier 3 sex offender", or a "sex offender" designated as "tier 3", is one that has been either convicted of a "tier 3" sex offense as defined in section 3.03, or who is subject to the recidivist provisions of 3.03(A).

(Ft. McD. Res. No. 2011-18, § 2.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 2.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 2.01), adopted 9-16-2014)

Sec. 2.02. - Covered offenses.

Sex offenders who reside within the exterior boundaries of the Nation or otherwise reside on property owned by the Nation in fee or trust regardless of location, are employed within the exterior boundaries of the Nation or on property owned by the Nation in fee or trust regardless of location, or who attend school within the exterior boundaries of the Nation or on property owned by the Nation in fee or trust regardless of location, or offenders who visit the Nation for a period of twenty-four (24) hours or more, that have been convicted of the following offenses are subject to the requirements of this code:

- A. Tribal offenses. Offenders that have been convicted of any of the following tribal offenses shall be subject to the requirements of the Sex Offender Registration Code:

Section 6-56 (Sexual Assault);

Section 6-57 (Aggravated Sexual Assault);

Section 6-58 (Sexual Assault of a Minor or Ward);

Section 6-60.A (Sexual Exploitation of a Minor);

Section 6-60.B (Commercial Exploitation of a Minor);

Section 6-60.C (Use of an Electronic or Mechanical Device to Facilitate a Child Sex Crime);

Section 6-60.D (Possession of Child Pornography); or

Section 6-64 (Incest).

Attempts and Conspiracies. Any attempt or conspiracy to commit any sex offense;

Federal Offenses. A conviction, for or a conviction for an attempt or conspiracy to commit any of the following, and any other offense here after included in the definition of "sex offense" at 42 U.S.C. § 16911(5): Including any offenses prosecuted under the Assimilative Crimes Act (18 U.S.C. § 1152 or § 1153):

18 U.S.C. § 1591 (sex trafficking of children);

18 U.S.C. § 1801 (video voyeurism of a minor);

18 U.S.C. § 2241 (aggravated sexual abuse);

18 U.S.C. § 2242 (sexual abuse);

18 U.S.C. § 2243 (sexual abuse of a minor or ward);

18 U.S.C. § 2244 (abusive sexual contact);

18 U.S.C. § 2245 (offenses resulting in death);

18 U.S.C. § 2251 (sexual exploitation of children);

18 U.S.C. § 2251A (selling or buying of children);

18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);

18 U.S.C. § 2252A (material containing child pornography);

18 U.S.C. § 2252B (misleading domain names on the internet);

18 U.S.C. § 2252C (misleading words or digital images on the internet);

18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);

18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);

18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity);

18 U.S.C. § 2423 (transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual conduct in foreign places);

18 U.S.C. § 2424 (failure to file factual statement about an alien individual); and

18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

Foreign Offenses. Any conviction for a sex offense involving any conduct listed in Section 2.02(F) which was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, and any foreign country where the United States State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial in that country during the year in which the conviction occurred.

Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. 951).

Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. § 2241 [a] and [b]) and committed by a minor who is fourteen (14) years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in sexual act with another by rendering unconscious or involuntarily drugging the victim.

Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including this Nation, that involves:

Any type of degree of genital, oral, or anal penetration;

Any sexual touching of or contact with a person's body, either directly or through the clothing;

Kidnapping of a minor;

False imprisonment of a minor;

Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct;

Use of a minor in a sexual performance;

Solicitation of a minor to practice prostitution;

Possession, production, or distribution of child pornography;

Criminal sexual conduct that involves physical contact with a minor or the use of the internet or an electronic or mechanical device to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;

Any conduct that by its nature is a sex offense against a minor; and

Any offense similar to those outlined in:

18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);

18 U.S.C. § 1801 (video voyeurism of a minor);

18 U.S.C. § 2241 (aggravated sexual abuse);

18 U.S.C. § 2242 (sexual abuse);

18 U.S.C. § 2244 (abusive sexual contact);

18 U.S.C. § 2422(b)(coercing a minor to engage in prostitution);

18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).

(Ft. McD. Res. No. 2011-18, § 2.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 2.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 2.02), adopted 9-16-2014)

ARTICLE 3. - TIERED OFFENSES

Sec. 3.01. - Tier 1. Offenses.

- A. Sex Offenses. A "Tier 1" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, by any jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves any sexual act or sexual contact with another person that is not included in Section 3.02 or Section 3.03.
- B. Offenses Involving Minors. A "Tier 1" offense also includes any offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered "Tier 1" offenses:

18 U.S.C. § 1801 (video voyeurism of a minor);

18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);

18 U.S.C. § 2252A (material containing child pornography);

18 U.S.C. § 2252B (misleading domain names on the internet);

18 U.S.C. § 2252C (misleading words or digital images on the internet);

18 U.S.C. § 2422(a) (coercion to engage in prostitution);

18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct);

18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places);

18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain);

18 U.S.C. § 2424 (failure to file factual statement about an alien individual); and

18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 3.01(A), (B), or (C) shall be considered "Tier 1" offenses.

(Ft. McD. Res. No. 2011-18, § 3.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 3.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 3.01), adopted 9-16-2014)

Sec. 3.02. - Tier 2. Offenses.

- A. Recidivism and Felonies. Unless otherwise covered by Section 3.03, any sex offense which is not the first sex offense for which a person has been convicted or an attempt or conspiracy to commit such an offense and that is punishable by more than one (1) year in jail is considered a "Tier 2" offense. In the case of subsequent tribal court convictions, the offense shall be treated as if it is punishable by more than one (1) year in jail if a substantially similar Arizona State or federal offense is punishable by more than one (1) year.
- B. Offenses Involving Minors. A "Tier 2" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense by a jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves:

The use of minors in prostitution, including solicitations;

Enticing a minor to engage in criminal sexual activity;

A non-forcible Sexual Act with a minor sixteen (16) or seventeen (17) years old;

Sexual contact with a minor thirteen (13) years of age or older, whether direct or through the clothing, that involves the intimate parts of the body;

The use of a minor in a sexual performance; or

The production or distribution of child pornography.

Certain Federal Offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered "Tier 2" offenses:

18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);

18 U.S.C. § 2244 (abusive sexual contact, where the victim is thirteen (13) years of age or older);

18 U.S.C. § 2251 (sexual exploitation of children);

18 U.S.C. § 2251A (selling or buying of children);

18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);

18 U.S.C. § 2252A (material containing child pornography);

18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);

18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);

18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);

18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct);

18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the traveling interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain).

Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 3.02(A), (B), or (C) shall be considered "Tier 2" offenses.

(Ft. McD. Res. No. 2011-18, § 3.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 3.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 3.02), adopted 9-16-2014)

Sec. 3.03. - Tier 3. Offenses.

- A. Recidivism and Felonies. Any sex offense that is punishable by more than one (1) year in jail where the offender has at least one prior conviction or an attempt or conspiracy to commit such an offense for a Tier 2 sex offense, or has previously become a Tier II sex offender is a "Tier 3" offense. In the case of subsequent tribal court convictions, the offense shall be treated as if it is punishable by more than one (1) year in jail if a substantially similar Arizona State or federal offense is punishable by more than one (1) year.
- B. General Offenses. A "Tier 3" offense includes any sex offense for which a person has been convicted, or an attempt to conspiracy to commit such an offense by a jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves:

Non-parental kidnapping of a minor;

A sexual act with another by force or threat;

A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or

Sexual contact with a minor twelve (12) years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered "Tier 3" offenses:

18 U.S.C. § 2241 (aggravated sexual abuse);

18 U.S.C. § 2242 (sexual abuse),;or

18 U.S.C. § 2243 (sexual abuse of a minor or ward).

Where the victim is twelve (12) years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact).

Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 3.03(A), (B), or (C) shall be considered "Tier 3" offenses.

(Ft. McD. Res. No. 2011-18, § 3.03, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 3.03, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 3.03), adopted 9-16-2014)

ARTICLE 4. - REQUIRED INFORMATION

Sec. 4.01. - General requirements.

- A. Duties. A sex offender covered by this code who is required to register with the Nation pursuant to Article 5 shall provide all of the information detailed in this chapter to the Fort McDowell Police Department or designee, and the Fort McDowell Police Department or designee shall obtain all of the information detailed in this chapter from covered sex offenders who are required to register with the Nation in accordance with this code and implementing policies and procedures.
- B. Digitization. All information obtained under this code shall be, at a minimum, maintained by the Fort McDowell Police Department or designee in digitized format.

Electronic Database. A sex offender registry shall be maintained in an electronic database by the Fort McDowell Police Department or designee and shall be in a form capable of electronic transmission, or otherwise electronically accessible by other jurisdictions.

(Ft. McD. Res. No. 2011-18, § 4.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.01), adopted 9-16-2014)

Sec. 4.02. - Criminal history.

- A. Criminal History. The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's sex offense criminal history:

The date of all arrests;

The date of all convictions;

The sex offender's status of parole, probation, or supervised release;

The sex offender's registration status; and

Any outstanding arrest warrants.

(Ft. McD. Res. No. 2011-18, § 4.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.02), adopted 9-16-2014)

Sec. 4.03. - Date of birth.

- A. Date of Birth. The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

1. The sex offender's actual date of birth and any other date of birth used by the sex offender.

(Ft. McD. Res. No. 2011-18, § 4.03, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.03, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.03), adopted 9-16-2014)

Sec. 4.04. - DNA sample.

- A. DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the tribal police or designee a sample of his DNA.
- B. CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS.

(Ft. McD. Res. No. 2011-18, § 4.04, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.04, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.04), adopted 9-16-2014)

Sec. 4.05. - Driver's licenses, identification cards, passports, and immigration documents.

- A. Driver's License. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.
- B. Identification Cards. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex offender's tribal enrollment card issued by any jurisdiction.

Passports. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.

Immigration Documents. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.

(Ft. McD. Res. No. 2011-18, § 4.05, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.05, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.05), adopted 9-16-2014)

Sec. 4.06. - Employment information.

- A. Employment. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

The name of the sex offender's employer;

The address of the sex offender's employer; and

Similar information related to any transient or day labor employment.

(Ft. McD. Res. No. 2011-18, § 4.06, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.06, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.06), adopted 9-16-2014)

Sec. 4.07. - Finger and palm prints.

- A. Finger and Palm Prints. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, both finger prints and palm prints of the sex offender in a digitized format.

(Ft. McD. Res. No. 2011-18, § 4.07, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.07, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.07), adopted 9-16-2014)

Sec. 4.08. - Internet identifiers.

- A. Internet Names. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

1. Any and all email addresses used by the sex offender;

Any and all Instant Message addresses and identifiers;

Any and all other designations or monikers used for self-identification in internet communications or postings; and

Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

(Ft. McD. Res. No. 2011-18, § 4.08, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.08, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.08), adopted 9-16-2014)

Sec. 4.09. - Name.

- A. Name. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

1. The sex offender's full primary given name;

Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used; and

Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

(Ft. McD. Res. No. 2011-18, § 4.09, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.09, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.09), adopted 9-16-2014)

Sec. 4.10. - Phone numbers.

- A. Phone Numbers. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:

1. Any and all land line telephone numbers;
2. Any and all cellular telephone numbers; and
3. Any and all internet or satellite telephone numbers; and
4. Any other designations used for the purposes of routing or self-identification in telephonic communications.

(Ft. McD. Res. No. 2011-18, § 4.10, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.10, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.10), adopted 9-16-2014)

Sec. 4.11. - Picture.

- A. Photograph. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.

- B. Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

Every ninety (90) days for Tier 3 sex offenders;

Every one hundred eighty (180) days for Tier 2 sex offenders; and

Every year for Tier 1 sex offenders.

(Ft. McD. Res. No. 2011-18, § 4.11, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.11, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.11), adopted 9-16-2014)

Sec. 4.12. - Physical description.

A. Physical Description. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

1. A physical description;
 2. A general description of the sex offender's physical appearance or characteristics; and
- Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

(Ft. McD. Res. No. 2011-18, § 4.12, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.12, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B § 4.12), adopted 9-16-2014)

Sec. 4.13. - Professional licensing information.

A. Professional Licenses. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

(Ft. McD. Res. No. 2011-18, § 4.13, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.13, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.13), adopted 9-16-2014)

Sec. 4.14. - Residence.

A. Residence. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

1. The address of each residence at which the sex offender resides or will reside; and
2. Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

(Ft. McD. Res. No. 2011-18, § 4.14, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.14, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.14), adopted 9-16-2014)

Sec. 4.15. - School.

A. School Location. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

1. The address of each school where the sex offender is or will be a student; and
2. The name of each school the sex offender is or will be a student.

(Ft. McD. Res. No. 2011-18, § 4.15, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.15, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.15), adopted 9-16-2014)

Sec. 4.16. - Social Security number.

- A. Social Security. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information:
1. A valid Social Security number for the sex offender; and
 2. Any Social Security number the sex offender has used in the past, valid or otherwise.

(Ft. McD. Res. No. 2011-18, § 4.16, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.16, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.16), adopted 9-16-2014)

Sec. 4.17. - Temporary lodging.

- A. Lodging Information. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for seven (7) calendar days or more:
1. Identifying information of the temporary lodging locations including addresses and names; and
 2. The dates the sex offender will be staying at each temporary lodging location.
 3. The registered sex offender shall provide the information in Section 4.17(1) and (2) to the Fort McDowell Police Department no later than forty-eight (48) hours before his or her scheduled travel. The information shall be provided in person.
- B. Travel Abroad. Absent exigent circumstances, a sexual offender who intends to travel abroad for any period of time shall provide the Fort McDowell Police Department or designee with twenty-one (21) days' advance notice of his or her intent to travel abroad and identifying information while traveling abroad of the temporary lodging locations, including names and addresses and the dates the sex offender will be staying at each temporary lodging location.

The Fort McDowell Police Department or designee will provide this information to any jurisdiction where the sex offender is either registered or required to register, the U.S. Marshall's Service and INTERPOL. The tribal police shall also ensure this information is immediately updated on NSOR.

(Ft. McD. Res. No. 2011-18, § 4.17, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.17, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.17), adopted 9-16-2014)

Sec. 4.18. - Offense information.

- A. Offense Information. The Fort McDowell Police Department or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

(Ft. McD. Res. No. 2011-18, § 4.18, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.18, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.18), adopted 9-16-2014)

Sec. 4.19. - Vehicle information.

- A. Detailed Information. The Fort McDowell Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles, owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:
1. License plate numbers;
Registration numbers or identifiers;

General description of the vehicle to include color, make, model, and year; and

Any permanent or frequent location where any covered vehicle is kept.

(Ft. McD. Res. No. 2011-18, § 4.19, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 4.19, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.19), adopted 9-16-2014)

Sec. 4.20. - Frequency, duration and reduction.

- A. Frequency, A sex offender who is required to register shall, at a minimum, appear in person at the Fort McDowell Police Department for purposes of verification and keeping their registration current in accordance with the following time frames.
 - 1. For "Tier 1" offenders, once every year for fifteen (15) years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of the sentencing for a sex offender who is not incarcerated for the registration offense.
 - 2. For "Tier 2" offenders, once every one hundred eighty (180) days for twenty-five (25) years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of the sentencing for a sex offender who is not incarcerated for the registration.
 - 3. For "Tier 3" offenders, once every ninety (90) days for the rest of their lives.

(Ft. McD. Res. No. 2011-65, § 4.20, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 4.20), adopted 9-16-2014)

ARTICLE 5. - REGISTRATION

Sec. 5.01. - Where registration is required.

- A. Jurisdiction of Conviction. A sex offender must initially register in the jurisdiction where the sex offender was convicted of a covered sex offense regardless of the sex offender's actual or intended residency.
- B. Jurisdiction of Incarceration. A sex offender must register in each jurisdiction in which the sex offender is incarcerated while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

Jurisdiction of Residence. A sex offender who resides in a jurisdiction must register with that jurisdiction, including the sex offender who resides within the exterior boundaries of the Nation or otherwise resides on property owned by the tribal jurisdiction in fee or trust regardless of location.

Jurisdiction of Employment. A sex offender who is employed within a jurisdiction must register with that jurisdiction, including a sex offender who is employed by the Nation in any capacity or who is otherwise employed within the exterior boundaries of the Nation or on property owned by the Nation in fee or trust regardless of location.

Jurisdiction of School Attendance. A sex offender who is a student at any school within a jurisdiction is required to register with that jurisdiction, including a sex offender if he or she is a student in any capacity within the exterior boundaries of the Nation or on property owned by the Nation in fee or trust regardless of location.

(Ft. McD. Res. No. 2011-18, § 5.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 5.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 5.01), adopted 9-16-2014)

Sec. 5.02. - Initial registration.

- A. Timing. A sex offender required to register with the Nation under this code shall do so in the following timeframe:

If incarcerated, before release from imprisonment for the registration offense;

If not incarcerated, within three (3) calendar days of sentencing for the registration offense; and

For foreign, federal, and military convictions, a sex offender must appear in person at the Fort McDowell Police Department within three (3) calendar days of establishing a residence within the Nation or on tribal property after either release from incarceration or, if not incarcerated, sentencing for purposes of complying with this code.

- B. Duties of Fort McDowell Police Department. The Fort McDowell Police Department shall have policies and procedures in place to ensure the following:

Any sex offender incarcerated or sentenced by the Nation for a covered sex offense completes their initial registration with the Nation;

Any sex offender initially registering with the Nation is informed of their duties under SORNA and this code, and that such duties under SORNA and this code are explained to them;

The sex offender reads and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement and that noncompliance with the registration process will be considered a Failure to Register;

That the sex offender is registered; and

That upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

(Ft. McD. Res. No. 2011-18, § 5.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 5.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 5.02), adopted 9-16-2014)

Sec. 5.03. - Retroactive registration.

- A. Retroactive Registration. The Fort McDowell Police Department or designee shall have in place policies and procedures to ensure the following three (3) categories of sex offenders are subject to the registration and updating requirements of this code:

1. Sex offenders incarcerated or under supervision of the Nation, whether for a covered sex offense or other crime;

Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Nation's laws; and

Sex offenders reentering the justice system due to conviction for any crime.

- B. Timing of Recapture. The Fort McDowell Police Department or designee shall ensure recapture of the sex offenders mentioned in Section 5.03(A) within the following timeframe to be calculated from the date of passage of this code:

1. For Tier 1 sex offenders, one (1) year;

For Tier 2 sex offenders, one hundred eighty (180) days; and

For Tier 3 sex offenders, ninety (90) days.

Recapture of Verified Sexual Offense Convictions. All sex offenders with verified convictions for sexual offenses in any jurisdiction at any time that are not otherwise recaptured under Subsection A of this Section, may be recaptured at any time and immediately subject the sex offender to appropriate registration requirements pursuant to this Code. In order to apply, the following shall occur:

A certified copy of the sex offense conviction shall be obtained from the issuing court.

The Fort McDowell Police Department or designee shall determine the appropriate Tier Level for the verified sexual offense conviction.

The sex offender shall be notified in writing of the determination of applicability of the Sex Offender Code provisions, the Tier level designation, the time and place to appear for an initial sexual offender registration, and shall be provided notice of the right to file a Notice of Appeal of the decision of the tribal police to the Nation's tribal court within a ten (10) calendar day period from the date of receipt of the notice.

If the sexual offender fails to file a timely Notice of Appeal and fails to appear at the initial registration, the Nation may file a criminal charge or may pursue civil relief as provided in Article 8 herein.

(Ft. McD. Res. No. 2011-18, § 5.03, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 5.03, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 5.03), adopted 9-16-2014)

Sec. 5.04. - Registration currency.

- A. Jurisdiction of Residency. All sex offenders residing within the exterior boundaries of the Nation or otherwise residing on land owned by the Nation or placed in trust for the Nation, must immediately appear at the tribal police department in person to update any change in their name, residence (including termination of residency), employment, school attendance, vehicle information, temporary lodging, email addresses, telephone numbers, Instant Messaging addresses, and any other designation used in internet communications, postings, or telephone communications. In the event of a change in temporary lodging if seven (7) days or more, the sex offender and Fort McDowell Police Department shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.
- B. Duties of Fort McDowell Police Department. With regard to changes in a sex offender's registration information, the Fort McDowell Police Department or designee shall immediately notify:
 - 1. All jurisdictions where a sex offender intends to reside, work, or attend school;
 - 2. Any jurisdiction where the sex offender is either registered or required to register; andSpecifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The Fort McDowell Police Department shall also ensure this information is immediately updated on NSOR.
- C. Jurisdiction of Employment. All sex offenders who are employed by the Nation in any capacity or otherwise are employed within the exterior boundaries of the Nation or on property owned by the Nation in fee or trust regardless of location that change or terminate their employment shall immediately appear in person at the Fort McDowell Police Department to update that information. The tribal police shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within the exterior boundaries of the Nation or on property owned by the Nation in fee or trust regardless of

location and changes their school, or otherwise terminates their schooling, shall immediately appear in person at the Fort McDowell Police Department to update that information. The Fort McDowell Police Department shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

(Ft. McD. Res. No. 2011-18, § 5.04, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 5.04, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 5.04), adopted 9-16-2014)

Sec. 5.05. - Failure to appear for registration and absconding.

- A. Failure to Appear. In the event a sex offender fails to register with the Nation as required by this code, the Fort McDowell Police Department or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Nation that the sex offender failed to appear for registration.
- B. Absconded Sex Offenders. If the Fort McDowell Police Department or designee receives information that a sex offender has absconded, the tribal police shall make an effort to determine if the sex offender has actually absconded.

In the event no determination can be made, the tribal police or designee shall ensure other appropriate law enforcement agencies are notified.

If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

If an absconded sex offender cannot be located then the Fort McDowell Police Department shall take the following steps:

Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located;

Seek warrants for the sex offender's arrest, and in the case of a non-Indian, the U.S. Marshals Service or FBI shall be contacted in an attempt to obtain a federal warrant for the sex offender's arrest;

Notify the U.S. Marshals Service regardless of whether the sex offender is Indian or non-Indian;

Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located;

Enter the sex offender into the National Crime Information Center Wanted Person File.

Failure to Register. In the event a sex offender who is required to register due to his or her employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the Fort McDowell Police Department or designee shall take all appropriate follow-up measures including those outlined in Section 5.05(B). The tribal police or designee shall first make an effort to determine if the sex offender is actually employed or attending school within the exterior boundaries of the Nation or on property owned by the Nation in fee or trust regardless of location.

(Ft. McD. Res. No. 2011-18, § 5.05, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 5.05, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 5.05), adopted 9-16-2014)

ARTICLE 6. - VERIFICATION AND APPEARANCE REQUIREMENTS

Sec. 6.01. - Frequency.

- A. Frequency. A sex offender who is or should be registered with the Nation shall, at a minimum, appear in person at the tribal police department for purposes of keeping registration current in accordance with the following time frames:

For "Tier 1" offenders, once every year for fifteen (15) years from the date of conviction;

For "Tier 2" offenders, once every one hundred eighty (180) days for twenty-five (25) years from the date of conviction;

For "Tier 3" offenders, once every ninety (90) days for the rest of their lives.

- B. Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:

1. A Tier 1 offender may have their period of registration and verification reduced to ten (10) years if they have maintained a clean record for ten (10) consecutive years.

A Tier 3 offender may have their period of registration and verification reduced to twenty-five (25) years if they were adjudicated delinquent of an offense as a juvenile which required Tier 3 registration and they have maintained a clean record for twenty-five (25) consecutive years.

- C. Clean Record. For purposes of Section 6.01(B) a person has a clean record if:

1. They have not been convicted of any offense for which imprisonment for more than one (1) year may be imposed. In the case of a conviction from any tribal court, the offense shall be treated as if it is punishable by more than one (1) year in jail if a substantially similar Arizona State or federal offense is punishable by more than one (1) year.

2. They have not been convicted of any sex offense;

They have successfully completed, without revocation, any period of supervised release, probation, or parole; and

They have successfully completed an appropriate sex offender treatment program certified by a jurisdiction or by the United States Attorney General.

(Ft. McD. Res. No. 2011-18, § 6.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 6.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 6.01), adopted 9-16-2014)

Sec. 6.02. - Requirements for in person appearances.

- A. Photographs. At each in person verification, the sex offender shall permit the Fort McDowell Police Department to take photographs of the offender.

- B. Review of Information. At each in person verification the sex offender shall review existing information for accuracy.

Notification. If any new information or change in information is obtained at an in person verification, the Fort McDowell Police Department shall immediately notify all other registration jurisdictions of the information or change in information.

If any new information or change in information is obtained at an in person verification, the Fort McDowell Police Department shall immediately update the public website, if applicable, and update information in NCIC/NSOR.

(Ft. McD. Res. No. 2011-18, § 6.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 6.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 6.02), adopted 9-16-2014)

Sec. 6.03. - Sex offender acknowledgement form.

The sex offender shall read, or have read to them, and sign a form stating that the duty to register has been explained to them by the Fort McDowell Police Department and that the sex offender understands the registration requirements.

The form shall be signed and dated by the Fort McDowell Police Department personnel registering the sex offender.

The Fort McDowell Police Department shall upload the acknowledgement form into the Fort McDowell Yavapai Nation sex offender registry.

(Ft. McD. Res. No. 2014-67, ex. B(§ 6.03), adopted 9-16-2014)

ARTICLE 7. - PUBLIC SEX OFFENDER REGISTRY WEBSITE

Sec. 7.01. - Website.

- A. Website. The Fort McDowell Police Department or designee shall use and maintain a public sex offender registry website. Any tribal specific national website provided or approved by the SMART Office shall qualify as a public sex offender registry website under this code.

Links. The registry website shall include links to sex offender safety and education resources.

Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

Search Capabilities. The registry website shall have the capability of conducting searches by name, county, city, zip code, and geographic radius.

Dru Sjodin National Sex Offender Public Website. The Nation shall include in the design of its registry website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

(Ft. McD. Res. No. 2011-18, § 7.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 7.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 7.01), adopted 9-16-2014)

Sec. 7.02. - Required and prohibited information.

- A. Required Information. The following information shall be made available to the public on the sex offender registry website:

Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded;

All sex offenses for which the sex offender has been convicted;

The sex offense(s) for which the offender is currently registered;

The address of the sex offender's employer(s);

The name of the sex offender including all aliases;

A current photograph of the sex offender;

A physical description of the sex offender;

The residential address and, if relevant, a description of a habitual residence of the sex offender;

All addresses of schools attended by the sex offender; and

The sex offender's vehicle license plate number along with a description of the vehicle.

B. Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

Any arrest that did not result in conviction;

The sex offender's Social Security number;

Any travel and immigration documents;

The identity of the victim; and

Internet identifiers (as defined in 42 U.S.C. § 16911).

Witness Protection. For sex offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshal Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

(Ft. McD. Res. No. 2011-18, § 7.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 7.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 7.02), adopted 9-16-2014)

Sec. 7.03. - Community notification.

A. Law Enforcement Community Notification. Whenever a sex offender registers or updates their information with the Nation, the Fort McDowell Police Department or designee shall:

Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status;

Immediately update NCIC/NSOR;

Immediately notify any agency, department, or program within the Nation that is responsible for criminal investigation, prosecution, or sex offender supervision functions, including but not limited to, the Nations' police, prosecutors, and probation;

Immediately notify any and all other registration jurisdictions due to the sex offender's residency, school attendance, or employment; and

Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).

Enter or update information posted on the public website.

B. Community Notification. The Fort McDowell Police Department or designee shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the Nation, the public registry website is immediately updated;

Email notice is available to the general public to notify them when a sex offender commences residence, employment, or school attendance with the Nation, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

(Ft. McD. Res. No. 2011-18, § 7.03, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 7.03, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 7.03), adopted 9-16-2014)

ARTICLE 8. - CRIMES AND CIVIL SANCTIONS

Sec. 8.01. - Indians.

- A. Crime. Any violation of a provision of this code by a sex offender who is an Indian shall be guilty of a Class I offense, punishable pursuant to Chapter 6, Art. I, Sec. 6-2 of the Code.

(Ft. McD. Res. No. 2011-18, § 8.01, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 8.01, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 8.01), adopted 9-16-2014)

Sec. 8.02. - Non-Indians.

- A. Civil Penalty. Any violation of a provision of this code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt, exclusion and banishment.

(Ft. McD. Res. No. 2011-18, § 8.02, adopted 4-19-2011; Ft. McD. Res. No. 2011-65, § 8.02, effective 12-20-2011; Ft. McD. Res. No. 2014-67, ex. B(§ 8.02), adopted 9-16-2014)

Sec. 8.03. - Hindrance of sex offender registration.

- A. A person is guilty of an offense if they:

Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this code;

Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this code; or

Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

Any violation of this section of the code shall be guilty of a Class 1 offense, punishable pursuant to Chapter 6, Art. I, Sec. 6-2 of the Code.

(Ft. McD. Res. No. 2014-67, ex. B(§ 8.03), adopted 9-16-2014)

CODE COMPARATIVE TABLE 2006 LAW AND ORDER CODE

This table gives the location within this Law and Order Code of those sections of the 2006 Law and Order Code, as supplemented through April 4, 2006 which are included herein. Sections of the 2006 Law and Order Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of resolutions adopted subsequent thereto, see the table immediately following this table.

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LAW AND ORDER CODE COMPARATIVE TABLE - RESOLUTIONS

This table gives the location within this Law and Order Code of those resolutions which are included herein. Resolutions not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

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