

March 19, 1996

**YAVAPAI-APACHE NATION
ORDINANCE NO. 17**

TRESPASS CODE AND EVICTION PROCEDURES

Section 1. Policy.

This Code and the procedures herein provide a uniform system for evicting trespassers from lands subject to the Nation's jurisdiction within the Reservation for the purposes of protecting the privacy and proprietary interests of the Nation, its Tribal Members, and of all residents of the Reservation, including but not limited to their interests in personalty, realty, natural resources, cultural resources, and religious resources.

Section 2. Applicability.

This Code and the procedures herein apply to all persons that are present on Nation lands or other lands within the Nation's jurisdiction without right and authority; provided that, these procedures do not apply to the eviction of any person from a single family or multi-family structure used as a home or residence pursuant to a federal housing program administered by the United States Department of Housing and Urban Development.

Section 3. Tribal Court Jurisdiction.

The Tribal Court shall have exclusive jurisdiction over all matters arising from the enforcement of this Code.

Section 4. Definitions.

The following words have the following meanings as used in these procedures:

- A. "Chairperson" means the Tribal Chairperson of the Yavapai-Apache Nation;
- B. "Eviction" means any action initiated by the Nation to regain possession of Nation lands or other lands within the Nation's jurisdiction from a person present there without right and authority;
- C. "Law enforcement officer" means any law enforcement officer authorized to enforce the laws of the Nation on the Reservation;
- D. "Member Land" means land within the exterior boundaries of the Reservation in which a member of the Nation has an assignment or other right to use such land recognized by the Nation and over which the Nation has jurisdiction;
- E. "Nation" means the Yavapai-Apache Nation;

- F. "Nation Land" means land held by the United States of America in trust for the Nation, fee lands owned by the Nation, and Member Land;
- G. "Person" means an individual, trust, firm, association, partnership, political subdivision, government agency, industry, public or private corporation, or any other entity whatsoever;
- H. "Premise" or "Premises" means any land, building, facility, and other areas located on Nation Land or other lands subject to the Nation's jurisdiction within the Reservation;
- I. "Reservation" means all lands within the exterior boundaries of the Yavapai-Apache Nation Reservation;
- J. "Trespass" means an unauthorized entry and/or remaining on any Premise(s);
- K. "Trespasser" means any person that is liable under this Code for trespass;
- L. "Tribal Council" means the Tribal Council of the Yavapai-Apache Nation;
- M. "Tribal Court" means the Yavapai-Apache Nation Tribal Court;
- N. "Tribal Court of Appeals" or "Court of Appeals" means the Yavapai-Apache Nation Court of Appeals; and
- O. "Tribal Member" or "Member" means any member of the Nation.

Section 5. Evidence of Permission, Right, and Authority.

All persons entering or remaining on any Premise are required to have evidence of permission to document their right and authority to do so. Such evidence may include but is not limited to: a permit or license issued by the Nation or an agency of the Nation; an agreement, lease, or right-of-way between such person and the Nation or an agency of the Nation; or a license, permit, or other agreement between a member of the Nation that has rights to the Premise recognized by the Nation and such person. Any person that does not have evidence documenting his or her right and authority to enter and remain on a Premise is presumed to be a trespasser under this Code; provided that, permission to enter and remain upon Member Land shall be presumed for any Tribal Member to whom Member Land has been assigned by the Nation and for such other persons within the immediate family of such Tribal Member.]

Section 6. Citations Issued Against Trespassers.

- A. Any person who reasonably believes a person is a trespasser may notify the Chairperson or Tribal Council of such person's violation of this Code.
- B. Upon receiving such notification, or upon its own information if the Chairperson

or Tribal Council reasonably believes that a person is a trespasser, the Chairperson or Tribal Council shall issue a citation to such person concerning his or her violation of this Code.

C. The citation shall:

1. notify such person that he or she is in violation of this Code and that he or she is presumed to be a trespasser with respect to the Premise(s) identified in the citation;
2. order that, at the option of the person being cited, within seventy-two (72) hours, such person shall either:
 - a. vacate the Premise(s) described in the citation and pay a civil fine to the Tribal Court in the amount stated in the citation, which shall be not more than five thousand dollars (\$5,000) per citation, or
 - b. vacate the Premise(s) described in the citation and file a Request for a Hearing with the Tribal Court to rebut the presumption that such person is a trespasser under this Code;
3. be signed and dated by the Tribal Chairperson or other authorized member of the Tribal Council;
4. be served on the person named in the citation, or his or her authorized agent, personally by an authorized law enforcement officer, which law enforcement officer shall record and report to the Chairperson the date, time, place, and person upon which such service was made; and
5. order that, upon expiration of the seventy-two (72) hour period described in Section 6.C.2 of this Code, authorized law enforcement officers immediately and forcibly shall evict the person named on the citation.

D. Failure to file timely a Request for a Hearing with the Tribal Court waives all further rights to challenge the citation in Tribal Court. Failure to vacate timely the Premise(s) and to file timely a Request for a Hearing with the Tribal Court or to pay timely the civil fine shall subject such person to the civil liabilities provided herein for violations of this Code.

E. The Chairperson or Tribal Council may issue a citation for each day that a person violates this Code.

Section 7. Tribal Court Hearing.

A. In the event a person files timely a Request for a Hearing with the Tribal Court, the Tribal Court shall provide such person with notice of the hearing and an

opportunity to rebut the presumption that he or she is a trespasser under this Code. The Nation or its authorized representative shall be allowed to attend and participate in such hearing. In all other respects, the Tribal Court Rules of Procedure shall apply and govern the hearing.

B. Following the hearing, the Tribal Court may:

1. order that the person has rebutted the presumption that he or she is a trespasser under this Code and is authorized to re-enter and remain on the Premise(s) in question; or
2. order that, as a trespasser, such person must remain off the Premise(s) and pay the civil fine imposed by the citation and, as the Tribal Court deems appropriate and just, it also may order:
 - a. such person to pay other civil penalties not to exceed five thousand (\$5,000) and/or damages and costs, including but not limited to court costs, compensatory damages, punitive damages, and attorneys' fees and expert witness fees of the Nation; and/or
 - b. that such person be excluded from the Reservation to the extent such exclusion is not inconsistent with any applicable Nation or federal law.

Section 8. Prohibited Activities.

Except as permitted by this Code, it is prohibited for any person:

- A. to trespass on Nation lands or other lands within the Nation's jurisdiction without right and authority;
- B. to fail to perform timely any obligation imposed by a citation issued under this Code;
- C. to fail to obey timely an order of the Tribal Court issued pursuant to this Code.

Section 9. Civil Liability.

- A. The Chairperson or any other person authorized by the Tribal Council may bring a civil action in Tribal Court against any person that violates this Code and recover the amount of the civil fine imposed by a citation, plus interest from the date the citation was issued, monetary damages, restoration of a Premise, attorney's fees, court costs, injunctive relief, and/or any other relief that is just and equitable under the circumstances from the Tribal Court.
- B. The Tribal Court may impose a civil penalty against any person that violates this

Code not to exceed five thousand dollars (\$5,000); provided that each day that a person is a trespasser may constitute a separate violation of this Code.

- C. The Tribal Court may order the immediate forced eviction of such person from the Premise(s) by law enforcement officers.
- D. For good and sufficient cause found, the Tribal Court may exclude from the Reservation any person who engages in an activity or activities prohibited by this Code to the extent such exclusion is not inconsistent with any applicable Nation or federal law.

Section 10. Appeal.

Any party aggrieved by the judgement of the Tribal Court in an action brought under this Code may file an appeal in accordance with the Nation's Appellate Procedures. In its discretion, the Court of Appeals may stay the execution of any order of the Tribal Court, provided that, where the person cited for trespass is appealing a decision, the Court of Appeals shall issue a stay only when such person has vacated the Premise(s) in question and has paid into an escrow account established by the Tribal Court or Nation the amount of any fines or other monetary amounts ordered to be paid by the Tribal Court.

Section 11. Criminal Liability.

Nothing in this Code shall prohibit the Nation from prosecuting and punishing any Indian that commits criminal trespass under the Nation's Criminal Code.