



MODEL TRIBAL HEALTH & SAFETY CODE

INTER TRIBAL COUNCIL OF ARIZONA

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1. Background

Health and safety codes are systematic collections of statutes (laws, ordinances) and regulations (rules) created to protect the health and safety of a community. Currently, most Tribes have not developed and implemented their own Health and Safety Codes (HSC), and as a result have limited regulatory authority or legal processes to deal with public health threats in their communities. The purpose of this document is to outline key features of a HSC and to present a model format Tribes can use to develop their own codes.

Benefits of Tribal Health and Safety Codes:

- A. The first benefit is the **protection of public health**. Public health is protected when effective prevention strategies are applied at the community level.

The three major approaches that are used to apply these strategies are:

- Education
- Environmental modification
- Regulation

These approaches compliment one another, with each approach being particularly effective in providing protection against specific types of health risks. Accordingly, the absence or neglect of any one of the approaches will significantly compromise the protection of public health. Regulation is possible only if an enforceable health and safety code has been adopted and is in place. Because of the essential nature of regulation, it is clear that tribal public health programs benefit from health and safety codes.

- B. The second benefit of a tribal health and safety code is the role that it can play in the **manifestation of tribal sovereign power**. Tribal governmental sovereign power is achieved only in the exercise and implementation of the power to adjudicate (bring persons before its courts) and to regulate activities of members and non-members within a tribe's reservation boundaries. As the Supreme Court has recently suggested, a tribe's adjudicatory authority may only go so far as its regulatory authority. In the absence of tribal health and safety codes and ordinances, a tribe's regulatory authority over activities of non-members within its sovereign territory may be severely limited and may be aggressively challenged. A tribal government's exercise of the duties, powers, and responsibilities of a sovereign government, as generally understood by the United States Congress and the courts, confirms a tribe's sovereign powers. Moreover, exercising such powers leads to eligibility for federal and other funding for tribal health and safety programs while providing a firm legal and factual foundation to protect

tribal sovereignty. Clearly, the enhancement of a tribe's sovereign powers associated with the adoption and enforcement of a health and safety code is a meaningful benefit.

A potential barrier to implementation of a Tribal HSC is the cost associated with enforcement. These issues need to be considered by communities and weighed against the benefits of development of this legislation.

Potential Roles for ITCA in Tribal Health and Safety Code Development

- *Tribal Health and Safety Code Training Course*

The *Tribal Health and Safety Code Training Course* is a one-day course designed to inform Tribes of the benefits, potential barriers, components of and other considerations regarding development of a Tribal Health and Safety Code. It is intended for Tribal leaders and health agency leaders that will be involved with development, implementation and enforcement of the code.

- **Baseline Assessments**

ITCA can assist tribes in conducting baseline assessments of Tribal health ordinances and determine key components that may already be developed as another part of general Tribal legislation and to identify key missing components.

- **Feasibility Analyses**

ITCA can assist Tribes in determining feasibility of Health and Safety Code development in terms of costs for development, infrastructure analyses regarding appropriate agencies regulatory authority and potential costs related to enforcement.

- **Technical Assistance**

On-going evaluation of Health and Safety Code effectiveness is an important component of ensuring the Code development evolves as circumstances evolve in the community and as new programs and services are developed. ITCA can provide technical assistance in this evaluation process.

2. The Structure of a Code¹

A "Code" is simply a collection of laws and regulations that commonly deals with a specific topic or issue. For example, the U.S. Code (USC) contains the laws of the United States, arranged by subject matter, and the Code of Federal Regulations (CFR) contains the regulations that guide federal departments and agencies. Codes can also be arranged according to a specific area of subject matter, such as a criminal code dealing with the set of laws and regulations guiding criminal procedure, and a Health and Safety Code (HSC) deals with protection the health and safety of a community.

¹ Model Tribal Research Code, Third Edition. American Indian Law Center, 1999.

There are numerous ways in which a code can be arranged, but typically it contains basic information related to content that is divided into sections. The following is an example of how a code can be organized:

- A. Title—the formal title that the code will be referred to in legal proceedings and documents.
- B. Policy Statement—describes the philosophical basis for the code.
- C. Statement of Purpose—describes the intent of the code and what it is intended to accomplish.
- D. Statement of Jurisdiction—describes the community and geographical region involved.
- E. Definitions—describes the definitions of key terms to promote a common understanding of intent of the code to be used for enforcement, legal proceeding or adjudication.
- F. Procedural Sections—describe how the code is to be used and applied to concerns that fall within the jurisdiction of the code. These sections may include enforcement, agencies with regulatory authority, review and amendment procedures, etc.
- G. Substantive Provisions—contains the substance of the code including rights, duties and legal obligations set forth by the code.
- H. Remedies Section—sets forth the consequences for breaking the laws or regulations in the code. For a criminal code this section describes sentencing guidelines, and for a civil code the section might contain monetary damages, loss of licensure or privileges, etc.

3. Using a Model Code²

A Model Code should be viewed as a tool that can be used to assist Tribes in developing a set of laws or regulations to protect their communities and to meet the needs of the Tribe. The Model Code should not be viewed as a complete document that can meet all of the needs of an individual Tribe. For example, it should not be adopted “as-is” without modifications to meet the unique needs of the community, and it should not be dismissed because it does not meet all of the needs of the community. Rather, a Model Code is intended to accomplish two primary goals:

- Guide discussion of a problem
- Call attention to issues that need to be addressed and to decisions that need to be made regarding development of laws and regulations

In this case, the Model HSC is intended to guide discussion regarding the protection of public health of Tribal community members and to call attention to specific activities in the community that need to be examined in terms of need for regulation to protect the community’s health and safety. This is done by providing examples of activities and processes that can be discussed as part of

² Model Tribal Research Code, Third Edition. American Indian Law Center, 1999.

the Tribe's regulatory and legislative deliberations. Therefore, this model code is successful if it has assisted the Tribe in asking appropriate questions regarding the need for regulation of activities in the community that have a potential impact on public health.

A suggested method to use this model code is for the Tribal Council of Health Committee/Health Department to work through the materials presented in a step-by-step manner and to identify pertinent issues that need regulatory development in their community. Conducting hearings with key stakeholders and appropriate agencies might also be of benefit to develop the most appropriate and effective community-base regulations, implementation strategies and enforcement processes.

With consideration for all the appropriate data collected, it may be of benefit for the Council or Committee drafting the legislation to gather input from the executive branch and key Tribal departments and agencies that will be responsible for implementing and enforcing the Code. Input from Tribal executives and the leaders from various community agencies will also be value in determining competing or parallel interests (e.g. economic development needs balanced with public health protective regulations). The Model Code is designed to promote flexibility to meet unique needs of individual Tribes.

4. The Development Process³

The Tribal Council or Health Committee using these materials may want to begin with an examination of the underlying policies that form the basis for legislation. Clarifying the underlying policy bases for Code development will help to ensure consistency of language and purpose as regulations are written, implemented and enforced.

- **Policy Statement**

Codes and other broad-based legislation routinely begin with opening statement regarding the underlying policies that form the basis and purpose for the code. This helps to clarify the rationale for the legislation and helps to clarify the purpose of the code to the general public/Tribal community. It also serves to clarify the regulations to those individuals, businesses or agencies that fall under the regulatory authority of the code, and it helps to articulate interpretation of the legislation to the courts.

Tribal legislation regarding the community's health and safety should begin with an opening statement concerning the general policies underlying the Tribe's health promotion and disease prevention priorities, and the statement should reflect the Tribe's needs in terms of disease patterns and potential public health risks. This statement will reflect the Tribe's attitudes and priorities regarding protection of community health and promotion of sovereignty. A clear statement

³ Model Tribal Research Code, Third Edition. American Indian Law Center, 1999.

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of policy can help the community clarify its policy priorities, and it will serve as a statement of policy to all those interested in the legislation.

Another consideration Tribes may need to consider is that while they have immunity from suit, it is not uncommon for disputes between the Tribes and other entities to be challenged in federal court. A Tribe's ability to adjudicate (bring persons before its courts) is dependent on its ability to legislate. If the Tribe does not have appropriate legislation in place regarding the health and safety of the community, it cannot bring individuals or entities before its courts. In this way, code development and policy statements are an expression of sovereignty and should be stated clearly so as not to allow for misinterpretation in courts outside its jurisdiction.

5. The Model Tribal Health Code^{4, 5}

Chapter One—General Provisions

Section 1.1 Title

This ordinance shall be known as the _____ Tribal Health and Safety Code.

Section 1.2 Authority and Declaration of Policy

Health Promotion and Disease Prevention Services for Tribal Members are vital to the well being of the _____ Tribe/Community. The _____ Tribal Health and Safety Code is enacted pursuant to the inherent sovereign authority of the _____ Tribe in accordance with _____ Treaties, the _____ Tribal Constitution and applicable federal law. By this code, the _____ Tribe intends to ensure that its Tribal Members receive quality health promotion and disease prevention services in an equitable manner. This Code is civil in nature and hereby amends all existing Tribal legislation inconsistent with it.

Section 1.3 Jurisdiction

The provisions of this Code shall apply to the fullest extent of the sovereign jurisdiction of the _____ Tribe, authorized by the Constitution of the _____ Tribe, the _____ Treaty and applicable federal law. The provisions of this Code shall apply to and be in conformity with all agreements and other cooperative arrangements entered into by the _____ Tribe. This Code shall apply to all persons and entities who are eligible to receive health services and benefits in/from the _____ Tribe and engage in activities or businesses on Tribal land that may have a potential impact on public health in the community.

Section 1.4 Liberal Construction

This Code shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

Section 1.5 Severability

If any provision of this Code, or its application to any person, legal entity or circumstance, is held invalid, the remainder of the Code, or the application of the provision to other persons, legal entities, or circumstances, shall not be affected.

⁴ Health and Safety Code, White Mountain Apache Tribe

⁵ Skokomish Health Care Code, Skokomish Tribe, 2001

Section 1.6 Tribal Health Board/Committee

The Health Board/Committee (HBC) of the _____ Tribe is hereby established. The role of the HBC is to act in an advisory capacity to the Tribal Council and shall have the authority to promote the health and well being of the Community through continuous oversight of Tribal health programs and related services that have an impact on public health. Community participation in the HBC is intended to give the Community a voice in administrative decisions regarding the management and provisions of healthcare delivery and public health promotion activities in the Community.

Section 1.7 Tribal Health Board/Committee Membership & Officers

The _____ Tribal HBC shall consist of six voting members, including (1) a senior physician appointed by the IHS/Tribal health clinic/hospital, (1) representative from the Tribal Health Department, (1) representative from Tribal Social Services Department, (1) representative from Tribal Council and (2) community members at large. All appointments to the HBC will receive final approval from Tribal Council and will serve on the HBC for staggered two-year terms.

Commentary Discussion

The number of members required on the Health Board/Committee is variable and should reflect the needs as determined by individual Tribes.

The HBC shall elect a Chairperson and Secretary. Officers will be elected using Roberts Rules of Order, by a voice vote or secret ballot. Offices will be held for two years or until a successor is elected.

The Chairperson will call meetings to order, conduct meetings, organize the agenda and may call special meetings as necessary. The Chairperson will also serve as the formal communication link to the Tribal Council.

The Secretary will take minutes from the meetings, summarize and distribute minutes to the HBC within one week of the meetings, develop and send agendas at least two days prior to meetings and will keep computer disk copies and hard copies of all materials and shall distribute these materials to the Tribal Council.

Section 1.8 Vacancy, Removal, Resignation

(a) Vacancy—The Tribal Council may, on its own or at the request of the HBC, declare a position on the BHC to be vacant if an HBC member is unwilling or unable to fulfill their duties, provided:

- The Tribal Council appoints a member to fill the vacant position, except in the case of vacancy of a position previously filled by a member of the community at large, which shall be filled by majority vote of the remaining members of the HBC. In either case, final approval of the appointment by the Tribal Council is required.
- The HBC member subject to removal is given the opportunity to be heard in opposition to the proposed removal prior to the Tribal Council's action.

(b) Removal—The HBC shall submit in writing to the Tribal Council a “Notice of Proposed Removal and Declaration of Vacancy” for review. A member of the HBC may be removed for the following reasons:

- Absence from four, regularly scheduled meetings in any given calendar year; or
- For cause (e.g. breach of confidentiality) by a unanimous vote of the remaining members resent at a regularly scheduled meeting of the HBC at which a quorum is present.

(c) Resignation—A member of the HBC may resign the position. Such resignation must be in writing and be submitted to both the HBC and the Tribal Council.

Section 1.9 Meetings, Voting & Compensation

Meetings shall be held no less frequently than six (6) times per year. The Secretary shall send out a notice at least one week in advance of the scheduled meeting time. Each member has one vote, and no proxies will be permitted. A quorum is considered to be in effect when at least half of the voting members (>50%) are present at a meeting. All meetings are open to community members, however meetings shall be closed and records shall be sealed when client privacy needs arise. Confidential client information where the client is identified can only be discussed if a signed release of information is executed by the client involved. Compensation for attendance at meetings shall be paid to tribal member according to a schedule set up by the Tribal Council.

Section 1.10 Duties

The HBC shall have the following duties:

- (1) Provide oversight to the _____ Tribal Health Services and Social Services Departments and/or other IHS funded programs;
- (2) Review as requested policies and procedures for CHS/CHR as well as other health programs, services and functions;
- (3) Participate in the planning, assessment and evaluation of health care services as requested and/or as may be recommended by the BHC;

- (4) Work with Health Services and Social Services staff, other staff providing IHS funded services, and the community on short-and long-range planning for the Health and Social Services Departments and, as applicable, to other departments involved in community public health;
- (5) Participate in the development, implementation and evaluation of on-going quality assurance/improvement programs for the Tribal Health Department;
- (6) Make specific recommendations to the Tribal Council and/or applicable Tribal Administration regarding needed improvements or changes in services to promote community health;
- (7) Perform duties as they arise and/or may be recommended by the Tribal Council

Section 1.11 Powers of the Health Board/Committee

The _____ Tribal Health Board/Committee shall have general supervision over all matters relating to the preservation of health and life of citizens of the _____ Reservation. The _____ Tribal HBC may submit to the Tribal Council recommendations for such additional reasonable rules and regulations as it may deem necessary, and such rules and regulations will be effective only upon the approval of the Tribal Council.

Section 1.12 Enforcement

Tribal Health Officials, Sheriffs, Constables, Policemen, Marshals and all other persons in charge of public buildings and institutions and all other public officers and employees shall respect and enforce this Code and all lawful rules, orders and regulations adopted in pursuance hereof.

Section 1.13 Penalty

Each and every person violating any of the provisions of the Code or refusing or neglecting to obey any lawful order, rule or regulation of the _____ Tribal Health Board/Committee shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum up to fifty dollars (\$50), or by imprisonment not to exceed 30 days in jail, or by both fine and imprisonment.

Commentary Discussion

Individual Tribes should determine the details regarding penalties for Health and Safety Code violations consistent with internal policies and procedures.

Section 1.14 Treatment by Traditional Healers or Spiritual Means

- A. None of the laws of the _____ Tribe regulating the practice of medicine or healing shall be construed to interfere with the treatment by

prayer, or with any person who administers to or treats the sick or suffering by mental or spiritual means, nor shall any person who selects such treatment for the cure or management of disease be compelled to submit to any form of medical treatment, except in the case of a dangerous communicable disease, nor any person be removed to any isolation hospital or camp without their consent, except in the case of a dangerous communicable disease.

- B. The Healer must report all cases coming to him/her for treatment to the _____ Tribal Health Board/Committee, and instruct the patient to submit to examination only that the nature of the disease may be ascertained and if quarantine or isolation is necessary, that it may be carried out in accordance with Public health laws.

Chapter Two—Sanitation & Contagious Disease

Section 2.1 Adoption of Arizona Quarantine Laws, Sanitary Code

The Quarantine Laws and Sanitary Code for the _____ Tribe shall be the same as those of the State of Arizona, with no changes. Nothing in this Code shall be construed as permitting the State of Arizona to enforce such laws and code unless and until said authority shall be passed to the State of Arizona by due process of law through the Congress of the United States of America, and the concurrence of the Tribal Council.

Section 2.2 Sanitation of Camp Sites

A. For every camp there shall be provided convenient and suitable privy or other toilet facilities, which shall be kept in a clean and sanitary state. A privy other than a water closet shall consist of a pit at least two feet deep with suitable shelter over same, and the openings of shelter and pit shall be enclosed. No privy pit shall be filled with excreta and the pit shall be covered with earth, ashes, lime or other suitable substance.

B. All garbage, kitchen wastes and other rubbish in such camp shall be deposited in suitable covered receptacles, which shall be emptied daily or more frequently if necessary, and the contents shall be burned, buried or otherwise disposed of in such a way as not to be or become offensive or unsanitary.

Section 2.3 Dead Animals, Garbage, Etc

A. Dead animals as the term is used in this Act are defined as all dead animals or parts thereof.

B. Dirt is defined to include loose earth, ashes, manure from barns, stables, corrals and pens, offal from butchering, and all foul and filthy substances.

C. Garbage is defined to include solid or semisolid kitchen refuse subject to decay or putrefaction, and market wastes of animal or vegetable matter which has been or was intended to be used as food for men or animals.

D. Rubbish is defined as old tin cans, iron or other metallic cans, and containers of like materials, wood and paper boxes, old metals, wire, rope, cordage, bottles, bags and bagging, rubber and rubber tires and tubes, paper, and all used and cast-off article or materials, including old plaster, brick, cement, glass, stoves, tanks, refrigerators, ice boxes, and all old building materials.

E. It shall be unlawful for any person to throw away, set aside, store in the open, or abandon any stove, tank, refrigerator, ice box, or any other container which may be entered by a child and the opening thereto closed. The lids, cover, doors, or other closures shall be removed or destroyed before the article is placed among rubbish.

F. It shall be unlawful for any person to throw away or deposit or cause to be thrown away or deposited on any public highway within the limits of the Reservation or within a distance of one-thousand feet from the center or any public highway, any dead animal, dirt, garbage, or rubbish as defined by this Act.

Section 2.4 Involuntary Confinement of Contagious Persons

A. There are members of the _____ Tribe who are afflicted with contagious or infectious diseases and who will not submit to voluntary treatment, and the presence of these people at large upon the reservation subjects others to the risk of infection. This Section is enacted to provide legal means to prevent these people from mingling with others or compelling them to accept treatment.

B. Any member of the _____ Tribe, residing upon the _____ Reservation, who has been diagnosed by a Public Health or Private Physician as being afflicted with active tuberculosis, or any other contagious or infectious diseases and arrangements have been made for isolation and treatment but the patient refuses such isolation and treatment, he will be deemed guilty of an offense and upon conviction thereof, shall be imprisoned in solitary confinement for a period of not to exceed six months, the imposition of this sentence may be suspended by the court provided the patient accepts voluntary isolation and treatment in an approved hospital, sanitarium or rest home.

Section 2.5 Contagious Diseases in Schools

A. Duty of Health Officer. Upon the appearance of any dangerous contagious disease in a school, it shall be the duty of the Health Officer to notify at once the

principal or teachers of such school. Rules of the White Mountain Apache Board of Health provide for the exclusion from school of teachers, or pupils from homes where such disease exists. The health officer shall request the principal of the school to exclude from school attendance all such persons until a written order signed by the health officer permitting attendance at school is presented.

B. Duty of Principal or Teacher. Whenever the principal or teachers of the school have been notified of the presence of a dangerous contagious disease in the school district, or whenever the principal or teacher knows or believes that a dangerous communicable disease is present in the school district, it shall be the duty of such principal or teacher to at once notify the health officer of such sickness. The health officer shall then investigate all such cases, to determine whether or not a dangerous contagious disease is present in such a family, and take proper action.

C. Exclusion from School. Parents, guardians or persons having custody of any child or children shall not knowingly permit such child or children, if affected with a dangerous contagious disease, to attend school.

Section 2.6 Placarding

Premises where contagious or communicable disease exists shall be placarded in accordance with the rules of the State of Arizona.

Section 2.7 Venereal Disease

A. Venereal diseases as referred to in this Act includes syphilis, gonorrhea, chlamydia, genital herpes, chancroid, lymphogranuloma venereum, and granuloma inguinale.

B. Every Indian, or other person on this Reservation, who shall infect another person with a venereal disease shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed three months. The _____ Tribal Court shall have authority to order and compel the medical examination and treatment of any person charged with violation of this section. Every Indian found by a Medical Officer or any other licensed physician to be suffering from a venereal disease shall be reported by said physician to the Judge of the _____ Tribal Court. Every effort shall be made by the physician to persuade said afflicted Indian to take the prescribed treatment, but if he shall fail, neglect, or refuse to do so, he shall be guilty of an offense and upon conviction thereof, shall be sentenced to jail for a period not exceeding three months, and to take treatment as prescribed by the Physician.

Chapter Three—Food Establishments

Section 3.1 Purpose

The United States Public Health Service and/or the _____ Tribal Health Department has assumed responsibility for health and sanitation on the _____ Reservation; and it is the responsibility of the United States Public Health Service and/or the _____ Tribal Health Department to inspect all food establishments on the reservation; and there is need for routine inspection of all food establishments, including: Restaurants, Cafes, Bakeries, Grocery Stores, Trading Posts, and itinerant food establishments on the reservation.

Section 3.2 Failure to Correct Unsanitary Conditions; License Suspension

If any trader fails to correct any of the unsanitary conditions as recommended by Public Health authorities for a period of thirty (30) days, his/her trader's license shall be terminated.

Chapter Four—Pollution & Poisons

Section 4.1 Poisoning Food or Water

No person shall willfully mingle poison in any food, drink or medicine intended or prepared for the use of a human being, and no person shall willfully poison or pollute any spring, well, stream, river, reservoir, or other water. This shall be considered a crime punished under the "Law and Order Code" of the _____ Tribe.

Section 4.2 Deposit of Unwholesome Substance

No person shall deposit, leave or keep on or near a highway any unwholesome substance, or shall establish, maintain or carry on, upon or near a highway or route of public travel, any business, trade or manufacture which is detrimental to the public health; or shall deposit or cast into any lake, creek, rivers, well, reservoir, or other waters, wholly or partly, the dead body of any animals.

Section 4.3 Pollution of Waters

No person or person shall deposit on any of the waters or the rivers, streams and ditches in or running into, out of or through the Reservation, any sawdust, pulp, oils, rubbish, filth, or poisonous or deleterious substance which affects the health

of persons, fish, or livestock, or render said waters unpalatable, distasteful, or unsafe.

Chapter Five—Domestic Animals

POLICY STATEMENT

The _____ Reservation has become overpopulated with domesticated animals. Multiple animals are sick, starving, neglected or homeless. These animals pose a threat to the public health of residents of the reservation by roaming throughout the communities uncontrolled. In order to protect our residents, livestock, natural resources, and control animal neglect, starvation, disease and overpopulation, the following Animal Control Ordinance shall become effective.

Section 5.1 Definitions

In this Ordinance, unless the context otherwise requires, or unless otherwise defined for a particular purpose herein:

- A. "Animal" means any domesticated animal of a species that is susceptible to rabies, except man.
- B. "At large" means being neither confined by rope, pasture, pen, enclosure nor physically restrained by a leash or harness.
- C. "Animal Control Officer" means a civilian appointed by the Chief of Police whose work within the _____ Tribal Police Department shall be to enforce applicable provisions of the Health and Safety Code of the _____ Tribe.
- D. "Tribal Pound" means any establishment authorized by the Tribal Council for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the Animal Control Officer in the performance of his official duties.
- E. "Impound" means the act of taking or receiving into custody by the Animal Control Officer of any dog or other animal for the purpose of confinement in a tribal pound in accordance with the provisions of this Ordinance.
- F. "Kennel" means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five or more dogs under controlled conditions.

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G. "Harboring" means the keeping of an animal by the occupant of any premises on which said animal is kept or to which customarily returns daily for food and care for a period of three or more consecutive days.

H. "Collar" means a band, chain, harness or other suitable device worn around the neck of an animal to which a license can be attached.

I. "Leash" means a line made of rope, chain or other suitable material not less than one-fourth inch in diameter for the purpose of restraining an animal.

J. "Livestock" means cattle, horses, sheep, goats, swine, mules or burros.

K. "Owner" means any person keeping an animal other than livestock for more than six consecutive days.

L. "Stray dog" means any dog four months of age or older running at large that is not wearing a valid license tag.

M. "Vaccination" means the administration of an anti-rabies vaccine to animals by a veterinarian.

N. "Veterinarian", unless otherwise indicated, means any veterinarian licensed to practice in this state or any veterinarian employed in this state by a governmental agency.

O. "Vicious animal" means any animal of the order carnivora that has a propensity to bite human beings without provocation, or any animal that, while at large, kills or causes injury to domestic animals.

P. "Aggressive Dog" means any dog of the following breed: hybrid wolves, german shepard, doberman pinscher, pitbull, rottweiler.

Section 5.2 Animal Control Officer

A. The position of Animal Control Officer is established by the Tribal Council and replaces the position of "Special Officer" for the purposes of this code.

B. The Animal Control Officer shall enforce the provisions of this code and any other regulations pertaining thereto. He shall be empowered to issue summons, citations and complaints relating to this code.

C. The Animal Control Officer shall be under the employ and control of the _____ Tribal Police Department.

Section 5.3 Registration; Issuance of Dog Tags

A. Every dog owned within the exterior boundaries of the _____ Reservation 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. The registry of ownership shall contain the following information: name, breed (if known), sex, color and location of the residence where the animal resides. The name of the owner shall also be included.

B. Upon completion of the registration, a certificate shall be issued to the owner. A metal tag shall be also issued to the owner with a number and date of issue. The tag shall be attached to a collar or harness which shall be worn by the dog at all times while running at large, except as otherwise provided in this ordinance. Whenever a dog tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a fee established by the Tribal Council. Without the tag, the dog will be considered unregistered and will be dealt with as shown in this code. The number of the tag shall also be recorded in the registry. The period of registration is one year and must be renewed thereafter. The tag is non-transferable. The fee for such a tag is in the fee schedule as approved by the Tribal Council.

C. Proof of vaccination is required before a registration certificate can be issued. This proof and the vaccination is obtained through the Indian Health Service/Tribal Hospital/Other facility in the _____ Tribal Community. If the dog has been previously registered elsewhere, then the appropriate documentation must be provided before the registration can be final. The Indian Health Service/appropriate facility shall provide a list of all animals vaccinated each year to the Animal Control Officer.

D. Any person who knowingly fails within fifteen days after written notification from the Animal Control Officer to obtain registration for a dog required to be licensed, counterfeits an official dog tag, removes such tag from any dog for the purpose of intentional and malicious mischief or places a dog tag upon a dog unless the tag was issued for that particular dog is guilty of an offense and is subject to the penalties set forth in Section 10.13 of this Ordinance.

Section 5.4 Dogs Not Permitted At Large; Wearing of Licenses

A. Neither a female dog during her breeding or mating season nor a vicious dog shall be permitted at large.

B. Any dog over the age of four months running at large shall wear a collar or harness to which is attached a valid license tag, and must be physically restrained by a leash.

C. No person in charge of any dog shall permit such dog in any public place unless the dog is physically restrained by a leash, enclosed in a car, cage or similar enclosure.

Section 5.5 Policies & Procedures Related to Pounds, Impounding and Disposal of Dogs and Cats

A. The Tribal Council may provide or authorize a pound or pounds or enter into a cooperative agreement with a veterinarian or an Arizona incorporated humane society for the establishment and operation of a pound.

B. Any stray dog shall be impounded. All dogs and cats impounded shall be given proper care and maintenance.

C. Each stray dog or any cat impounded shall be kept and maintained at the pound for a minimum of seventy-two hours (72 hours) unless claimed by its owner. Upon such an action, the Animal Control Officer will make every attempt to notify the owner where the animal can be redeemed. Any person may purchase such a dog or cat upon expiration of the impoundment period, provided such person pays all pound fees established by the Tribal Council and complies with the licensing and vaccinating provisions of this ordinance. If the animal is not redeemed within the seventy-two hour period, then it shall be sold to the public to the highest bidder. A bill of sale shall be tendered to the highest bidder at the time of sale. Should there be no bidder, then the animal shall be destroyed. The Animal Control Officer may destroy impounded sick or injured dogs or cats whenever such destruction is necessary to prevent such dog or cat from suffering or to prevent the spread of disease.

D. Any impounded licensed dog or any cat may be reclaimed by its owner or such owner's agent provided that the person reclaiming the dog or cat furnishes proof of right to do so and pays all pound fees established by the Tribal Council. If the dog or cat is not reclaimed within the impoundment period, the Animal Control Officer shall take possession and may place the dog or cat for sale or may dispose of the dog or cat in a humane manner. Any person purchasing such a dog or cat shall pay all pound fees established by the Tribal Council.

Section 5.6 Handling of Biting Animals and Reporting Requirements

A. An unlicensed dog or unvaccinated dog or cat that bites any person shall be confined and quarantined at the home of the owner or upon request of and at the expense of the owner, at a veterinary hospital, for a period of seven to ten days. A dog properly licensed and vaccinated pursuant to this ordinance, that bites any person, shall be confined and quarantined at the home of the owner or wherever

the dog is harbored and maintained with the consent of and in a manner prescribed by the Animal Control Officer.

B. Any animal other than a dog or cat that bites any person shall be confined and quarantined at the home of the owner, or upon the request of and at the expense of the owner, at a veterinary hospital for a period of seven to ten days. If the animal is a caged rodent, it shall be confined and quarantined at the home of the owner or where it is harbored or maintained, for the required period of time, with the consent of and in a manner prescribed by the Animal Control Officer.

C. Any wild animal which bites any person may be killed and submitted to the Animal Control Officer or his deputies for transmission to an appropriate diagnostic laboratory.

D. Whenever an animal bites any person, the incident shall be reported to the Animal Control Officer immediately by any person having direct knowledge.

E. The Animal Control Officer may destroy any animal confined and quarantined pursuant to 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 such animal consents to its destruction.

F. Any animal subject to licensing under this article found without a tag identifying its owner shall be deemed unowned.

G. The Animal Control Officer shall destroy a vicious animal upon an order of a tribal court judge. A Tribal Court judge may issue an order after notice to the owner, if any, and a hearing.

Section 5.7 Diseased Animals

A. Any animal afflicted with a contagious or infectious disease shall, at all times, be confined by a fence or pen and shall not be removed from such enclosures, even when held by a leash, except for the purpose of being transported to a licensed veterinarian.

B. 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 or from the _____ Reservation, except under the order of the Animal Control Officer through the Chief of Police.

C. If any owner, Animal Control Officer, or other person knows, or has reason to believe, that an animal has rabies, or has been exposed to rabies, they shall report this to the Chief of Police, who in turn will notify the Indian Health Service/Tribal Health Services.

Section 5.8 Neglected Animals

A. It shall be unlawful for any animal owner to neglect their pet by failure to provide food, water, shelter, grooming and protection.

B. It shall be unlawful for any animal owner or other person, to dispose of unwanted animals at any place other than the Tribal Pound.

Section 5.9 Control of Vicious Animals/Aggressive Dogs

A. Any animal declared vicious by a Judge of the Tribal Court after a hearing about the animal's behavior shall be summarily destroyed by the Animal Control Officer or restrained at the premises of the owner by means of a locked pen, depending upon the decision of the Judge.

B. If a vicious animal is out of the pen, then it must be on a secure leash, under direct control of the owner.

C. Any aggressive dog shall be strictly required to be controlled by chain or pen, and under no circumstances shall be allowed to roam freely.

Section 5.10 Public Nuisance

A. An animal shall be considered a public nuisance under the following conditions:

1. Molests passersby or passing vehicles;
2. Attacks other animals;
3. Barks, howls, crows or creates other animal noises so as to corrupt the peace and quite of people;
4. Is repeatedly at large, especially on school grounds;
5. Overturns or spreads garbage about;
6. Runs through or tears up gardens, landscaping or lawns.

B. Anyone who harbors, owns or controls such an animal is guilty of the offense of "Public Nuisance" as set forth in the Law and Order Code.

Section 5.11 Unlawful Interference with Animal Control Officer

A. It is unlawful for any person to interfere, threaten or harass the Animal Control Officer in the performance of his duties.

B. Anyone found guilty of unlawful interference with the Animal Control Officer shall be punished as prescribed in the Tribal Law and Order Criminal Code.

Section 5.12 Removing Impounded Animals

No person may remove or attempt to remove an animal that has been impounded or that is in the possession of the Animal Control Officer except in accordance with the provisions of this ordinance and the regulations promulgated thereunder.

Section 5.13 Dogs; Household Limit/Unlawful Harbor

A. The maximum number of dogs permitted for each household on the _____ Reservation shall be two (2).

B. In cases where a dog owner maintains more than two dogs on his property, he must obtain a special permit from the Animal Control Officer. The Animal Control Officer shall issue a special permit to a dog owner to maintain more than two dogs for good cause, i.e., breeding, kennel, hunting/tracking, etc. There shall be no fee to obtain this permit.

C. It is unlawful for a person to keep, harbor or maintain a dog within the _____ Reservation except as provided by the terms of this Code.

Section 5.14 Violation Penalties

A. Any person who fails to comply with the requirements of this ordinance, or violates any of its provisions, is guilty of an offense and can be punished up to and including a fine of One hundred fifty (\$150.00) dollars, ten (10) days in jail, or both.

B. Any civil penalties brought forth in a suit for damages are in addition.

Section 5.15 Dogs; Liability

Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person or persons responsible for the dog when such damages were inflicted.

Section 5.16 Fee Schedule

- A. Initial Registration \$5.00
- B. Annual Renewal \$1.00
- C. Impoundment Fee Per Day \$1.00
- D. Voluntary Request by Owner to Destroy Animal.....No Charge

Commentary Discussion
Individual Tribes should determine the details regarding fee schedules for animal control activities in accordance with local standards.

Chapter Six—Regulation of Motor Vehicles

Article 1

GENERAL PROVISIONS

Section 6.1 Arizona Law Adopted

A. The Tribal Council of the _____ Tribe hereby adopts as tribal law, the traffic laws of the State of Arizona as set forth in the Arizona Revised Statutes at this date, and any amendments thereto, with the following exception:

(1) All references in the Arizona laws to "local authorities", "State of Arizona", "Superior Court", or any related state agencies shall mean the corresponding authorities of the tribal government of the _____ Tribe.

(2) Any tribal laws, duly authorized by the Tribal Council of the _____ Tribe, at this date or hereinafter passed which are inconsistent with the traffic laws of the State of Arizona shall be deemed amendments to the tribal traffic code, as herein adopted.

(3) Nothing in this Chapter shall prohibit the Tribal Council from duly enacting traffic laws in addition to or inconsistent with those passed by the State of Arizona and herein adopted as tribal law.

B. The interpretation of the traffic laws of the State of Arizona, as herein adopted, shall be made, as best as possible, consistent with tribal governmental structure and organization.

C. Adoption of State of Arizona traffic laws does not grant jurisdiction to the State of Arizona over roads within the Reservation. Civil jurisdiction over all nonstate roads within the Reservation resides exclusively with the _____ Tribe.

Section 6.2 Parties to Crime in Motor Vehicle Cases

The Law and Order Code of the _____ Tribe and any ordinances appertaining to parties to a crime in Motor Vehicle Cases are hereby amended by eliminating therefrom any provision including, but without limitation, Section 28-1051, Arizona Revised Statutes Annotated.

Section 6.3 Special Truck Provisions

A. **Speed Limit.** There is an established speed limit of twenty-five miles an hour on all trucks of one and one half ton capacity or more on roads where school buses transport children and thirty-five miles an hour on all other roads of the _____ Reservation.

B. **Logging Trucks.** All logging trucks using reservation roads shall have the logs tied and secured with two wrappers of chain or cable or combination thereof and secured with a binder or boomer and one gut wrapper if there are courses of logs above the top of the stakes. Logging trucks operating on the Reservation under contract to _____ Tribal Timber Company need not be registered by any state to operate on nonstate roads within the Reservation.

C. **Violations.** A violation of this section by any person will be grounds for expulsion by the Tribal Council of said driver from the _____ Reservation and a termination of the contract whereby and under which the driver was operating the truck.

D. **Misdemeanor.** It is a misdemeanor for any member of the _____ Tribe to violate any of the speed provisions of this section, and every person convicted of said misdemeanor is punishable by a fine of not more than \$300.00, by imprisonment for not more than six months, or both.

E. **Exception.** This section is not applicable to roads which the State of Arizona has been granted an easement or right-of-way on which Arizona State laws govern.

Section 6.4 Off-Road Travel Without Consent of Property Owner

A. To drive a motor vehicle on the _____ Reservation outside of designated or traveled roads without the consent of the beneficial owner of the land over which the motor vehicle is driven is a public offense punishable upon conviction by a fine up to One Hundred (\$100.00) Dollars or up to thirty (30) days in jail, or both.

B. Any motor vehicle driven in violation of subsection A of this section shall be impounded and a description thereof, including license plate numbers, serial numbers, and the name and address of the driver and of the owner thereof, together with a Notice of Impoundment, shall be given to the Clerk of the _____ Tribal Court. If the name and address of the driver or of the owner of the motor vehicle be not known or be not given, the Court shall make every reasonable effort to ascertain the name and address of the driver and of the owner and shall give notice by certified mail to, or cause notice to be served on, the driver and on the owner of such motor vehicle, notifying such driver and owner of the place and the time, not less than two (2) nor more than thirty (30) days after impoundment, of the hearing to ascertain damages, if any, caused by the impounded motor vehicle. If name and address of either the driver or owner cannot be reasonably ascertained, notice of such hearing shall be caused to be posted in three (3) public places at least five (5) days before hearing. Damages, if any, being assessed by the _____ Tribal Court after hearing, shall be entered as a judgment against the motor vehicle and the driver thereof. The motor vehicle shall be released from impoundment upon payment to the Clerk of the Tribal Court of the amount of damages, if any be assessed, or upon the Court's determination that there were no damages or the motor vehicle was being driven with the consent of the beneficial owner of the land.

C. If in judgment of the Court damages are assessed and the same are not paid within thirty (30) days after judgment, the Court shall cause the motor vehicle to be sold at public auction after reasonable notice by certified mail or personal service has been given to the owner as shown on the Court record and by posting in not less than three (3) public places on the _____ Reservation. Proceeds of the sale necessary for satisfaction of the judgment of the Court shall be paid by the Clerk of the Tribal Court to the appropriate Tribal or BIA Agency, for the benefit of the beneficial owners of the land as damages, and any excess over such judgment shall be paid to or held for the owner of the motor vehicle.

Article 2

ABANDONED VEHICLES

Section 6.5 Purpose

The purpose of this Article is to clear the roadways and public business areas of abandoned vehicles which may cause a threat to the life and/or property of the _____ Reservation, and to clear the roadways of abandoned vehicles which clutter these roadways and surrounding areas.

Section 6.6 Definitions

- A. **Abandoned Vehicle:** Any motor vehicle left without supervision on a tribal roadway for a period greater than 48 hours.
- B. **Disabled Vehicle:** Any motor vehicle which is currently inoperable because it has malfunctioned.
- C. **Roadways:** Any public road, street, highway, freeway, or other area designated and ordinarily used.
- D. **Unattended Vehicle:** Any motor vehicle which is operable and is clearly in use but has been temporarily left unsupervised.

Section 6.7 Stopping, Standing or Parking Outside of Business or Residence District

- A. Upon any roadway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the roadway when it is practicable to stop, park or so leave the vehicle off that part of the roadway, but in every event an unobstructed width of the 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 feet in each direction upon the roadway.
- B. This section shall not apply to the driver of any vehicle which is disabled while on the paved or main traveled portion of a roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.

Section 6.8 Guidelines for Removal of Abandoned Vehicles

A. A red warning label shall be placed upon any vehicle that is to be towed. This label shall state the date and time when the officer discovered the abandoned vehicle and the mile post location or address where the vehicle stands. The warning shall state that the vehicle will be towed 48 hours from the time posted on the label.

B. All vehicles shall be towed by the nearest towing garage and upon express order of the Tribal police officer who located the vehicle.

C. A complete inventory and legal description of the vehicle to be towed shall be made by the police officer, and placed on file at the Tribal Police Department along with information regarding the towing company and its location.

Section 6.9 Towing Fees

A. The _____ Tribe and the Tribal Police Department and any agent thereof shall not be liable for any expenses incurred by the towing company for towing and storing an abandoned vehicle.

B. All expenses for the towing and storage of an abandoned vehicle shall be the sole liability of the vehicle's owner; and shall be collected by the towing company that moved and stored the vehicle.

C. The towing company shall have the sole responsibility for collecting the expenses incurred by the towing company from the owner of the vehicle. The towing company shall have no claim for these expenses against the Tribal Police Department.

D. A complete inventory and legal description of the vehicle to be towed shall be made by the police officer; and placed on file at the Tribal Police Department along with information regarding the towing company and its location.

Chapter Seven—Emergency Aid

Section 7.1 Emergency Aid Non-Liability

Any health care provider licensed or certified to practice as such on the _____ Reservation or in any state, or elsewhere, or a tribal employee, including police officers, Game and Fish Officers, ski patrolmen, ambulance attendants, or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence in good faith shall not be liable for any civil or other damages as a result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care

for the injured or ill persons, unless such person, while rendering such emergency care, is found guilty of gross, willful negligence.

Section 7.2 Limited Liability for Emergency Healthcare at Athletic Events

A health care provider licenses or certified to practice as such on the _____ Reservation or in any state, or elsewhere or a tribal employee, including police officers, Game and Fish officers, ski patrolmen, ambulance attendants, or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence who agrees with any person to attend an amateur athletic practice, contest or event to be available to render emergency health care within the provider's authorized scope of practice to an athlete or competitor injured during such event is not liable for any civil or other damages as the result of any act or omission by the provider rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured athlete, if the provider acts in good faith, unless such person, while rendering such emergency care is guilty of gross, willful negligence.

Section 7.3 Limited Liability for Treatment Related to Delivery of Infants

A. A health care provider licensed or certified to practice as such on the _____ Reservation or in any state, or elsewhere, or a tribal employee, including police officers, Game and Fish officers, ski patrolmen, ambulance attendants, or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence shall not be liable to a pregnant female patient, the child or children delivered, or their families for medical negligence related to labor or delivery rendered on an emergency basis, unless the patient was previously treated for the pregnancy by the very same licensed physician who was rendering treatment on an emergency basis.

B. This section does not apply to treatment rendered in connection with labor and delivery if the patient has been seen regularly by or under the direction of the licensed physician attending the patient during an emergency labor and delivery.

C. For the purposes of this Section, "Emergency" means when labor has begun or a condition exists in a pregnant woman requiring the delivery of a child or children.

Chapter Eight—Elderly & Incapacitated Adult Protection

Section 8.1 Declaration of Purpose

It is the tradition and custom of the _____ Tribal people to honor and protect their elderly as they are the possessors of the spiritual and collective wisdom and traditions of the _____ Tribe of the _____ Reservation which are passed on from generation to generation. As such, the elderly of the _____ Tribe warrant the special concern and protection of the people of the _____ Tribe. This Elderly Protection Chapter is to be liberally construed for their protection.

Section 8.2 Definitions

A. In this Chapter, unless the context otherwise requires:

(1) "Abuse" means:

- (a) Intentional infliction of physical and or emotional harm,
- (b) Injury caused by negligent acts or omissions,
- (c) Unreasonable confinement.
- (d) Sexual abuse or sexual assault.

(2) "Adult" means any person who is eighteen years of age or older.

(3) "Exploitation" means the illegal or improper use of an elderly person or an incapacitated adult or his resources for another's profit or advantage.

(4) "Elderly" shall mean any person who has reached the age of sixty (60) years or older.

(5) "Incapacity" means an impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.

(6) "Neglect" means a pattern of conduct resulting in deprivation of necessities to maintain physical and mental health.

(7) "Protective services worker" means a person who has been trained and employed to provide protective services to the elderly and incapacitated; and shall consist of, but not be limited to, Elderly Services Staff, Social Services Staff and any other person specifically employed to protect the best interest of the elderly and incapacitated adults.

Section 8.3 Protective Services Workers; Powers and Duties

A. Protective Services Workers shall:

(1) Receive oral or written reports of abused, exploited or neglected incapacitated adults and elderly persons.

(2) Upon receipt of such information, determine if the incapacitated adult or elderly is in need of protective services.

(3) File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator as provided for in the _____ Tribal Probate Code. When filing petitions for Guardianship or Conservator, the Protective Services Worker shall try to locate a responsible and willing person to accept the responsibility of guardian and/or conservator. Every attempt shall be made to notify immediate members of the family of any guardianship proceedings.

(4) The Protective Services Worker shall immediately file a report with the Tribal Prosecutor for investigation in all cases of possible abuse, neglect or exploitation of elderly or incapacitated persons. In cases of physical abuse, the prosecutor shall cause the case to be investigated within 12 hours of receiving the report.

B. A member of the Protective Services Staff may not be appointed as guardian, conservator or temporary guardian for their own clients. Persons convicted of violation of this Chapter shall not be appointed as guardian, temporary guardian, or conservator.

C. The Protective Services Workers are immune from civil liability for applying for or filing a petition for guardianship or conservatorship unless the application or filing is done in bad faith.

D. A guardian need not be a member of the _____ Tribe or reside on the _____ Reservation if the Court determines it would be in the best interest of the client to appoint a person as guardian who does not meet these qualifications.

Section 8.4 Immunity of Participants; Non-Privileged Communication

A. Any person making a complaint, furnishing a report, information or records required or authorized by this chapter or otherwise participating in the program authorized by this chapter or in a judicial or administrative proceeding or investigation resulting from reports, information or records submitted or obtained pursuant to this chapter is immune from any civil or criminal liability by reason of such action, unless the person acted with malice or unless such person has been

charged with or is suspected of incapacitating, abusing, exploiting or neglecting the adult or elderly in question. Except as provided in subsection B of this section the physician-patient privilege, husband-wife privilege or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, 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 an investigation of an adult's or elderly's exploitation, abuse or neglect is being conducted by a peace officer or a protective services worker.

B. In any civil or criminal litigation in which incapacitation, abuse, exploitation or neglect of an adult or elderly is an issue, a clergyman, priest or recognized traditional Medicine Man or Medicine Woman shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman, priest or Medicine Man or Medicine Woman in the course of the discipline enjoined by the church to which he belongs.

Section 8.5 Duty to Report Abuse, Neglect & Exploitation

A. A physician, hospital intern or resident, surgeon, dentist, psychologist, social worker, peace officer or other person who has responsibility for the care of an adult or elderly who suffers from incapacity and whose examination or observation of the adult or elderly yields a reasonable basis to believe that abuse or neglect of the adult or elderly has occurred or the exploitation of the adult's or elderly's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight (48) hours or on the next working day if the forty-eight hours expires on a weekend or holiday.

B. An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an adult or elderly who suffers from incapacity or a person who has responsibility for any other action concerning the use or preservation of the adult's or elderly's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult's or elderly's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker.

C. Reports pursuant to subsections A and B shall contain:

(1) The names and addresses of the adult or elderly and any persons having control or custody of the adult or elderly, if known.

(2) The adult's or elderly's age and the nature and extent of his incapacity.

(3) The nature and extent of the adult's or elderly's injuries or physical neglect or of the exploitation of the adult's or elderly's resources.

(4) Any other information that the person reporting believes might be helpful in establishing the cause of the adult's or elderly's injuries or physical neglect or of the exploitation of the adult's or elderly's property.

D. Any person other than one required to report or cause reports to be made in subsection A who has a reasonable basis to believe that abuse or neglect of an incapacitated adult or elderly has occurred may report the information to a peace officer or a protective services worker.

E. When a report has been filed and upon written request from a peace officer or a Protective Services worker, a person having custody or control of medical or financial records of an incapacitated adult or elderly shall make such records, or copy of such records, available for inspection and copying. 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 filed under this section.

F. If reports pursuant to this section are received by a peace officer, he shall notify the adult protective services worker.

G. A person required to receive reports pursuant to subsection A, B, or D may take or cause to be taken photographs of the abused adult or elderly and the vicinity involved. Medical examinations including radiological examinations of the involved adult or elderly may be performed. Accounts, inventories or audits of the exploited adult's or elderly's property may be performed. The person, department, agency, or court that initiates such photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the abuse, neglect or exploitation of an incapacitated adult or elderly in a criminal or civil action, the tribal court may order the person to make restitution as the court deems appropriate.

H. If psychiatric and/or psychological records are requested pursuant to subsection E, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

(1) Personal information about individuals other than the patient.

(2) Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist or psychologist certifies in writing that

release of the information would be detrimental to the patient's health or treatment.

I. If any portion of a psychiatric or psychological record is excised pursuant to subsection H, the tribal court, upon application of a peace officer or protective services worker, may order that the entire record or any portion of such record containing information relevant to the reported abuse or neglect be made available to the peace officer, or elderly protective services worker investigating the abuse or neglect.

J. A person found guilty of violating any provision of this section may be sentenced to imprisonment for a period not to exceed 365 days or to pay a fine not to exceed \$5,000.00, or both.

Section 8.6 Permitting Life or Health to be Imperiled by Neglect or Abuse

A. Any person who inflicts physical injury on, exploits or abuses an elderly or incapacitated person is guilty of a criminal offense, punishable by imprisonment for a period not to exceed 365 days or a fine not to exceed \$5,000 or both.

B. A person who has been employed to provide care, or who has assumed a legal duty to provide care, or who has been appointed by a court to provide care to an incapacitated adult or elderly and who causes or permits the life of the adult or elderly to be endangered, his health to be injured or to be imperiled by neglect, is guilty of a criminal offense, punishable by imprisonment for a period not to exceed 365 days or a fine not to exceed \$5,000.00 or both.

C. An incapacitated adult or elderly whose life or health is being or has been endangered, injured or imperiled by neglect, abuse or exploitation may file an action in tribal court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such incapacitated adult or elder, for having caused or permitted such conduct.

D. The tribe may file an action pursuant to this section on behalf of those persons endangered, injured or imperiled to prevent, restrain, or remedy the conduct described in this section.

E. The tribal court has jurisdiction to prevent, restrain and remedy the conduct described in this section, after making provision for the rights of all innocent persons affected by such conduct and after hearing or trial, as appropriated, by issuing appropriate orders.

F. Prior to a determination of liability, the orders may include, but are not limited to, appointment of guardian, entering restraining orders or temporary injunctions

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or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers and the enforcement of constructive trusts, as the court deems proper.

G. After a determination of liability such order may include, but are not limited to:

(1) Ordering the restitution of actual and consequential damages, as well as punitive damages, costs of suit and reasonable attorney fees, to those persons injured by the conduct described in this section.

(2) Ordering the restitution of all costs and expenses of the prosecution and investigation of the conduct described in this section, civil and criminal, incurred by the tribe as appropriate, to be paid to the general fund of the tribe.

H. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding. For the purpose of this subsection, a conviction may result from a verdict or pleas, including a plea of no contest.

I. The initiation of civil proceedings pursuant to this section shall be commenced within seven years after actual discovery of the cause of action.

J. The standard of proof in actions brought pursuant to this section is the preponderance of the evidence.

K. The tribal prosecutor may, upon timely application, intervene in any civil action or proceeding brought under this section if the tribal prosecutor certifies that in his opinion the action is of special public importance. Upon intervention, the tribal prosecutor may assert any available claim and is entitled to the same relief as if the tribal prosecutor has instituted a separate action.

L. In addition to the Tribe's right to intervene as a party in any action under this section, the Tribal prosecutor may appear as a friend of the court in any proceeding in which a claim under this section has been asserted or in which a court is interpreting Section 8.4 of this Chapter.

M. A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.

N. The tribal prosecutor shall maintain a registry containing such public records as are available identifying the names of persons and enterprises against whom civil or criminal complaints have been filed with the court pursuant to this Chapter, the dates of the conduct set forth in the complaint, the general nature of

the complaint and the disposition of the complaint, if known. This information is available to the public on written request. A person or agency that distributes information in the registry in good faith is immune from civil liability or criminal penalty based on the release of the information. Any person or enterprise desiring to do so may present a written statement in his own behalf to the custodian of the registry, and such statement becomes a part of the record for distribution in response to all inquiries concerning that person or enterprise.

O. The cause of action or the right to bring a cause of action pursuant to subsection B or C of this section shall not be limited or affected by death of the incapacitated person.

P. In this section, "enterprise" means any corporation, partnership, association, labor union, or other legal entity, or any group of persons associated in fact although not a legal entity, which is involved with providing care to an incapacitated adult or elderly.

Section 8.7 Traditional Medicine

Nothing in this Chapter shall be construed to mean that an adult is abused, neglected or in need of protective services for the sole reason that he relies on treatment from a recognized religious method of healing in lieu of medical treatment.

Chapter Nine—Nuisance

Section 9.1 Public Nuisance Defined; Prohibited

A. No public nuisance shall be committed.

B. A public nuisance is a crime against the order and economy of the Reservation.

(1) No person shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons.

(2) No person shall offend public decency

(3) No person shall unlawfully interfere with, befoul, obstruct or tend to obstruct, or render dangerous for passage a stream, canal ditch, mill-race or basin, or a public park, square, street, alley, bridge, culvert, causeway or highway.

(4) No person shall in any way render a considerable number of persons insecure in life or the use of property.

Section 9.2 Maintaining a Nuisance

A. No person shall commit or maintain a public nuisance for which no special punishment is prescribed; or shall willfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and no person shall let or permit to be used any building or portion thereof knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance.

B. The Court before whom there may be pending any proceedings for a violation of the next preceding paragraph, shall in addition to any punishment that it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant.

Chapter Ten—Burial

Section 10.1 Burial Permit

A permit issued by a Register or Sub-Register or Vital Statistics of the State of Arizona is necessary to bury a body, or to exhume or disinter any body buried in the ground.

Section 10.2 Burial of the Dead

A. All dead bodies must be buried in the ground at least six feet deep and in a location designated as a cemetery.

B. Any body dying of a deadly contagious disease must immediately be placed in a coffin, the coffin sealed, not reopened, and buried within 24 hours after death.

D. All unembalmed bodies must be buried within 48 hours after death.

Chapter Eleven—Sale of Toxic Substances & Gasoline

Section 11.1 Definitions

A. **Person** - shall mean a natural person, Indian or non-Indian, or any individual employed by a business.

B. **Business** - a profession, trade or occupation or other calling carried out for profit of livelihood, or any employee or agent of the same.

C. **Agency** - Any organizational unit engaged in carrying out business on the _____ Reservation, i.e., United States Government, _____ Tribe or Non-Tribal Government.

D. **Psycho Toxic Chemical Solvents or Toxic Substance:** As used in this section the terms Psychotoxic chemical solvents and toxic substances shall be used interchangeable and include any glue, cement or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, methyl alcohol, methyl ethyl, ketone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or of the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

Section 11.2 Sales to Persons Under Eighteen Prohibited

It shall be unlawful for any business or person to sell, permit the sale of, attempt to sell, conspire to sell, trade, give, or transfer any psychotoxic chemical solvents or tobacco products to any person under the age of eighteen (18) years of age.

Section 11.3 Direct Introduction into Motor Vehicle Fuel Tank Permitted

It shall be unlawful for any person or business engaged in the sale of Psychotoxic chemical solvents to permit the sale of said Psychotoxic chemical solvents to any person under the age of eighteen (18) years of age. It will only be permitted if the substance is directly introduced into a motor vehicle fuel tank.

Section 11.4 Restricted Storage and Display Required

All business on the _____ Reservation engaged in the sale of Psychotoxic chemical solvents and tobacco products will place such products behind counters or in locked display counters and in any way make them inaccessible to persons under the age of eighteen (18) years of age, and prohibit the sale of these items to such minors.

Section 11.5 Locking Gas Caps Required

All _____ Tribe, and other Non-Tribal, Non-Federal Governmental Agencies on the Fort Apache Indian Reservation shall install locking gas caps on their respective vehicles.

Section 11.6 Destruction or Safekeeping of Chemicals

All business operating on the _____ Reservation will destroy or remove all Psychotoxic chemical solvents and their containers when no longer in use. All toxic substances shall be placed in a safe locked place when not in use.

Section 11.7 Locking of Gas Dispensing Tanks and Pumps Required

All construction companies and United States Government Agencies, shall lock all gas dispensing tanks and pumps when unattended or not in regular use.

Section 11.8 Penalties for Violation

Any person or business found guilty of violating this Chapter or committing unlawful acts against this Chapter shall be punished by a Civil Penalty of not less than Twenty-Five (\$25.00) dollars or more than Two Hundred (\$200.00) Dollars.

Section 11.9 LICENSE SUSPENSION OR REVOCATION

Any Indian or Non-Indian business licensee violating any provision of this Chapter shall be subject to a business license suspension of not less than two (2) days or not more than fourteen (14) days. Failure to comply with the suspension shall result in the business license being revoked.

Chapter Twelve—Tobacco

STATEMENT OF POLICY

The _____ Tribe recognizes the cultural importance of the Traditional use of tobacco for ceremonial purposes. No part of this Code applies to Traditional use of tobacco that is guided by a Traditional Healer. The _____ Tribe also recognizes the significant public health threats posed by the non-Traditional, commercial use of tobacco, and it is toward this type of tobacco use that this regulation applies.

Section 12.1 Definitions

A. **Tobacco** - Any substance derived from the tobacco leaf. Cigarettes, cigars, snuff, chewing tobacco, and loose tobacco.

B. **Traditional Use of Tobacco** – Use of Tobacco for Traditional purposes includes use for ceremonies, prayer and other activities under the guidance of a Traditional Healer.

Section 12.2 Tobacco Sales to Persons Under Eighteen Prohibited

A business or person violates this Chapter if it or he sells to, or otherwise obtains for or arranges for the obtaining of tobacco or a tobacco product for a person under the age of eighteen (18) years of age, or knowingly permits such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management of operation.

Section 12.3 Penalties for Violation

Any person or business found guilty of violating this Chapter or committing unlawful acts against this Chapter shall be punished by a Civil Penalty of not less than Twenty-Five (\$25.00) dollars or more than Two Hundred (\$200.00) Dollars.

Section 12.4 Smoke-Free Workplace

Smoking cigarettes, cigars, pipes and other forms of tobacco outside the use of Traditional purposes is not permitted in indoor workplaces on the _____ Reservation. Smoking may be permitted in designated outdoor sections of the workplace as long as there are non-smoking outdoor sections made available to non-smoking employees working within the _____ Tribal community.

Chapter Thirteen—Explosives

Section 13.1 Possession of Explosives Restricted

It shall be unlawful for any person, firm, company, association or corporation to keep, store or possess dynamite, gun cotton, nitroglycerin, giant powder or other highly explosive material, or torpedoes, mines, bombs or grenades on the _____ Reservation unless duly authorized by the _____ Tribal

Council, or unless the explosive is used in the regular course of construction or other works supervised by some department of the Federal, State or County Government or in any other construction or mining operation authorized by the _____ Tribe, or unless said explosive is used in some project connected with and authorized by an enterprise of the _____ Tribe.

Section 13.2 Use of Explosives Restricted

It shall be unlawful for any person to explode or to attempt to explode, at, in, under, or near any building, automobile, theater, school house, church, dwelling house or other places where human beings usually inhabit, assemble, frequent or pass on the _____ Reservation, any chemical compound or explosive unless duly authorized by the _____ Tribal Council, or unless the explosive is used in the regular course of construction or other works supervised by some department of the Federal, State, or County Government or in any other construction or mining operation authorized by the _____ Tribe, or unless said explosive is used in some project connected with and authorized by an enterprise of the _____ Tribe, and then only provided that all laws and regulations relative to the use of explosives in the State of Arizona are complied with.

Section 13.3 Penalties Member; Non-Member

A. Any member of the _____ Tribe who shall violate this Chapter, or any part thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00) or by imprisonment in the Tribal Jail for a period not to exceed 90 days, or both fine and imprisonment.

B. Any non-member who shall violate this Chapter, or any part thereof, as provided in the Law and Order Code, may be expelled from this Reservation; and in addition, if the violation of this Chapter is also a violation of the Criminal Code of the State of Arizona, then said non-member shall be taken before the appropriate state court for punishment.

Chapter Fourteen—Civil Defense

Section 14.1 Adoption of Arizona Civil Defense Statute

The _____ Tribal Council hereby adopts those portions of Title 26, Chapter 2, Arizona Revised Statutes, as pertaining to County Civil Defense Agencies as its Civil Defense Law.

Section 14.2 Authority Tribal Chairman to Enter into Agreements with Arizona Pertaining to Civil Defense

The Chairman of the _____ Tribal Council is hereby empowered to enter into agreement with the State of Arizona whereby the Tribal Council will assume the status similar to that of a County for the purpose of receiving support from the State of Arizona for active participation by the Tribal Council in the Civil Defense and Emergency Planning Programs.

Chapter Fifteen—Alcoholic Beverage Control

SECTION 15.1 Declaration of Public Policy and Purpose

A. The introduction, possession and sale of liquor on the _____ Reservation has since executive order time, been clearly recognized as a matter of special concern to the _____ Tribe.

B. Federal Law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. §1154), and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. §1161).

C. The Tribal Council finds that a complete ban on liquor within the _____ Reservation is ineffective and unrealistic. However, it recognizes a need still exists for strict regulation and control over liquor transactions within the reservation because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, and consumption of liquor. The Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the tribe, to protect the health and welfare of our tribal members, and to address specific tribal concerns relating to alcohol use on the reservation.

D. The enactment of a tribal ordinance governing liquor sales on the _____ Reservation and providing for exclusive purchase and sale through a tribally owned and operated establishment will enhance the ability of the tribal government to control reservation liquor distribution and possession, and at the same time, will provide an important source of revenue for the continued operation of the tribal government and the delivery of essential tribal social services.

E. This chapter shall be cited as the " _____ Tribal Liquor Control Ordinance" and under the inherent sovereignty of the _____ Tribe, shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the tribe, and all its provisions shall be

liberally construed for accomplishment of that purpose, and it is declared to be public policy that the traffic in alcoholic beverages if it affects the public interest of the people, should be regulated to the extent of prohibiting all traffic of liquor, except as provided in this Chapter.

SECTION 15.2 Definitions

As used in this Chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) **Alcohol** is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) **Alcoholic Beverage** is synonymous with the term liquor as defined in Section 15.2(o) of this Chapter.

(c) **Application** shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

(d) **Beer** - means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley malt, hops, or other ingredients not drinkable, or any combination of them.

(e) **Board** - means the _____ Tribal Liquor Board as constituted under this Chapter.

(f) **Broken Package** - means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed.

(g) **Bulk Container** - shall mean any package, or any container within which container are one or more packages.

(h) **Club** - includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members only:

(1) A post, chapter, camp or other local unit composed solely of veterans and its duly recognized auxiliary and which is a post, chapter, camp or other local unit composed solely of veterans which has been chartered by the Congress of the United States for patriotic, fraternal or benevolent purposes, and which has, as the owner, lessee or occupant, operated an establishment for the purpose in this state.

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(2) A chapter, aerie, parlor, or other local unit of an American national fraternal organization which has as the owner, lessee or occupant operated an establishment for fraternal purposes in this state. An American national fraternal organization as used in this subdivision shall actively operate in not less than thirty-six states or have been in active continuous existence for not less than twenty years.

(3) A hall building association of such a local unit mentioned in subdivision (1) and (2), all of the capital stock of which is owned by the local or the members, and which operates the club room facilities of the local unit.

(4) A golf club which has more than fifty bona fide members which owns, maintains or operates a bona fide golf links together with a club house.

(5) A social club with more than one hundred bona fide members who are actual residents of the county in which it is located, which own, maintains or operates club quarters, and which is authorized and incorporated to operate as a non-profit club under the laws of this state, and has been continuously incorporated and operating for a period of not less than one year, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the subjects of the club. The club's memberships shall consist of bona fide dues paying members paying at least six dollars per year, payable monthly, quarterly or annually, which have been recorded by the secretary of the club and the members at the time of application for a club license shall be in good standing having for at least one full year paid dues. At least fifty-one percent of the members shall have signified their intention to secure a social club license by personally signing a petition, on a form prescribed by the board, which shall also include the correct mailing address of each signer. The petition shall not have been signed by a member at a date earlier than thirty days prior to the filing of the petition. The club shall qualify for exemption from the payment of state income taxes under the provisions of Title 43, it being the intent of this paragraph that a license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purpose of the club.

(i) **Company and Association** - when used in reference to a corporation includes successors or assigns.

(j) **Distillery, Winery, and Brewery** - shall mean not only the premises wherein alcohol is distilled, or rectified wine is fermented or beer is brewed, but in addition a person owning, representing, or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of intoxicating liquor or beer in any form.

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- (k) **Election days** - means the biennial primary election for the nomination of United States, state, county and precinct officers, a special election called pursuant to Section 1, Article 21 of the Constitution of the State of Arizona, the biennial general election of the State of Arizona and all _____ Tribal elections.
- (l) **Foreign Corporation** - shall mean any corporation not incorporated under the laws of the _____ Tribe.
- (m) **Legal Age** - shall mean the age requirements as defined in this Chapter.
- (n) **Liquor Store** - shall mean any store, established by Tribal Enterprise for the sale of alcoholic beverages.
- (o) **Liquor** - includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor, or otherwise intoxicating; and every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semi-solid, or solid substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.
- (p) **Malt Liquor** - means beer, ale, stout, and porter.
- (q) **Package** - shall mean the bottle or immediate container of any alcoholic beverage.
- (r) **Package Dealer** - shall mean the _____ Tribe as distinguished from a distiller, manufacture, or wholesaler, that sells, or keeps for sale, any alcoholic beverage authorized under this Chapter for consumption of the premises where sold.
- (s) **Person** - includes partnership, association, enterprise, company or corporation, as well as a natural person.
- (t) **Public Places** - means a place where the public has an interest as effecting the safety, health, welfare and morals of the community.
- (u) **Sale and Sell** - include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor or any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.
- (v) **Spirituous Liquor** - includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, absinthe or compound or mixture or any of them or of any of them with any vegetable or other

substance, alcohol bitters, bitters containing alcohol and any liquid mixture or preparation whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one percent of alcohol by volume.

(w) **Stamp** - shall mean the various stamps required by this Chapter to be affixed to the package or bulk container, as the case may be, to evidence payment of the tax prescribed by this Chapter.

(x) **Vehicle** - means any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.

(y) **Veteran** - means a person who served the United States during war time or in any expedition of the United States armed forces as a member of the United States Army, Air Force, Navy, Marine Corps, Nurse Corps of any branch of the armed services; as a member in any other branch of the United States Armed Services; or as an active nurse in the services of the American Red Cross provided that such person has received a discharge other than a dishonorable one.

(z) **Wholesaler** - shall mean any person other than a brewer or bottler of beer, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in intoxicating liquor or low-point beer; no wholesaler shall be permitted to sell for consumption upon the premises.

(aa) **Wine** - means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four percent of alcohol by volume.

(bb) **Public Modern Dance** - as used in this Chapter shall be any public gathering, dance, party or other social event held for any purpose other than a traditional tribal ceremony.

(cc) **Bootlegging**: means the illegal manufacture, sale, possession, or transporting of liquor as defined in Section 11.2 (o) of this Chapter.

SECTION 15.3 General Prohibition

A. It shall be unlawful to manufacture, sell, offer, keep for sale, possess or transport liquor except upon the terms, conditions, limitations, and restrictions specified in this Chapter.

B. All liquor manufactured, sold, possessed or transported in violation of this Chapter is hereby declared contraband and in addition to any penalties or fines imposed by the court for violation of this section, shall be confiscated and forfeited in accordance with the procedures set forth in Rule 2.5 of the _____ Tribal Rules of Criminal Procedure governing the disposition of seized property.

SECTION 15.4 Liquor Agency Created

There is hereby established a branch of _____ Tribal Enterprises known as the Liquor Agency. This branch shall be constituted as an agency and department of the _____ Tribal Government and be known as _____ Tribal Enterprise.

SECTION 15.5 _____ Tribal Liquor Board

A. Liquor Board Established - Composition. There is hereby established a _____ Liquor Board. The members of the _____ Tribal Council shall serve as the _____ Tribal Liquor Board. The Board is empowered to:

- (1) Administer this Chapter by exercising general control, management, and supervision of all liquor sales, places of sale, and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Chapter;
- (2) Adopt and enforce rules and regulations in furtherance of the purposes of this Chapter and the performance of its administrative functions;
- (3) Employ managers and such other persons as shall be reasonably necessary to allow the Board to perform its functions. Pursuant to authority, the Board shall appoint a manager who shall have the powers and perform the duties set forth in Section 15.6;
- (4) Bring suit in the appropriate court to enforce the provisions of this Chapter with the consent of the _____ Tribal Council. The Board shall not, without the specific consent of the Council, waive the Board's or the Tribe's immunity from suit.

SECTION 15.6 Liquor Business Manager

A. Powers and Duties. The manager appointed by the Board shall have the following powers and duties in regard to the Liquor Agency:

- (1) To manage the Liquor Agency for the benefit of the _____ Tribe.

- (2) To purchase, in the name of the _____ Tribe, liquor products from wholesale distributors, and distribute them to such tribal liquor outlets as he deems appropriate.
- (3) To establish, with the Board and subject to its approval, such administrative procedures as are necessary to govern the operation of the Liquor Agency.
- (4) To report and account to the board at least four times a year regarding the operation and financial status of the Liquor Agency. The Board and the manager shall establish the dates on which such accounting shall take place. The Board may require more frequent accounting if deemed necessary.
- (5) To hire and set the salaries of additional personnel, subject to Board approval, as he deems necessary to the successful operation of the Liquor Agency.
- (6) To supervise all persons employed by the Liquor Agency.
- (7) To purchase, with Board approval, and to maintain the Liquor Agency's real and personal property.
- (8) To collect the _____ Tribal Liquor excise tax.
- (9) To transfer all tax revenues and gross proceeds of the Liquor Agency to the tribal treasurer for disposition in accordance with Section 11.13.
- (10) To set the retail price for liquor in cooperation with and subject to the approval of the Board.
- (11) To obtain and maintain in full force and effect a policy of general liability insurance covering the premises in an amount set by the Board. The policy shall contain the stipulation that the Tribe shall be given ten days notice of the proposed cancellation or expiration of such policy. The manager shall submit to the Board a certificate of insurance from such policy and shall have available for inspection, a complete copy of such policy.
- (12) The manager shall be bonded for such additional amount and for such additional purposes as the Board shall determine to be appropriate in managing the Liquor Division.

SECTION 15.7 Sovereign Immunity Preserved

Nothing in this Chapter is intended or shall be construed as a waiver of the sovereign immunity of the _____ Tribe. No manager or employee of the Liquor Agency shall be authorized nor shall he attempt to waive the immunity of the Tribe.

SECTION 15.8 Sales

A. Only Tribal Sales Allowed. No sales of alcoholic beverages shall be made within the exterior boundaries of the _____ Reservation except at the Tribal Liquor Store Outlets, _____ Tribal Enterprise, and other locations which from time to time, the Liquor Agency Manager with the Liquor Board's approval may designate.

B. All Sales Cash. All sales at tribal liquor stores shall be on a cash only basis and no credit shall be extended to any person, organization, or entity except by means of recognized bank and other credit cards.

C. All Sales for Personal Use. All sales shall be for the personal use of the purchaser, and resale for profit of any alcoholic beverage purchased at a tribal liquor store is prohibited within the _____ Reservation. The purchase of an alcoholic beverage at a tribal store and subsequent resale of that beverage for profit, whether in the original container or not, shall be a violation of this Chapter and the violator shall be subject to the penalties prescribed in Section 15.11.

D. Tribal Property. The entire stock of liquor and alcoholic beverages referred to under this Chapter shall remain tribal property, owned and possessed by the _____ Tribe until sold.

SECTION 15.9 Taxation

A. Tax Imposed. There is hereby levied and shall be collected, a tax on each retail sale of alcoholic beverages on the _____ Reservation in the amount of five percent (5%) of the retail sales price. The tax imposed by this title shall apply to all retail sales of liquor on the Reservation and shall preempt any tax imposed on such liquor sales by the State of Arizona. No municipality, city, town, county, nor the State of Arizona shall have any power to impose an excise tax on liquor or alcoholic beverages as defined by this Chapter, or to govern or license the sale or distribution thereof in any manner within the _____ Reservation, not to be effective until ordered by the Tribal Council or the _____ Tribal Liquor Board.

B. Distribution of Taxes. All taxes from the sale of alcoholic beverages on the _____ Reservation by or through the Board shall be paid over to the tax fund of the _____ Tribe and be subject to distribution by the _____ Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services. Provided, however, that priority in funding shall be given to those tribal programs which demonstrate the greatest need and past successful performance in providing community services to tribal members, with specific consideration to the Detox Program as more fully set forth in Section 15.13 of this Chapter.

SECTION 15.10 Illegal Activities

A. Violations.

(1) **Liquor Stamp Contraband.** It shall be a violation of this Chapter for any person to sell alcoholic beverages on the _____ Reservation without a stamp of the Board affixed to the package. All alcoholic beverages not so stamped which are sold or held for sale on the _____ Reservation are hereby declared contraband and in addition to any penalties or fines imposed by the court for violation of this section, shall be confiscated and forfeited in accordance with the procedures set out in the _____ Tribe Court Rules and Civil Procedure governing forfeiture of contraband.

(2) **Use of Seal.** It shall be a violation of this Chapter for any person, other than an employee of the Board, to willfully keep or have in his possession any legal seal prescribed under this Chapter unless the same is attached to a package which has been purchased from a tribal liquor store, or to willfully keep or have in his possession any design in imitation of any official seal prescribed under this Chapter or calculated to deceive by its resemblance to any official seal, or any paper upon which such design is stamped, engraved, lithographed, printed or otherwise marked.

(3) **Illegal Sale of Liquor by Drink or Bottle.** It shall be a violation of this Chapter for any person to sell by the drink or bottle any liquor, except as otherwise provided in this Chapter.

(4) **Illegal Transportation, Still, or Sale Without Permit.** It shall be a violation of this Chapter for any person to sell or offer for sale or transport in any manner any liquor in violation of this Chapter, or to operate or have in his possession without a permit, any mash capable of being distilled into liquor.

(5) **Illegal Purchase of Liquor.** It shall be a violation of this Chapter for any person within the boundaries of the _____ Reservation to buy liquor from any person other than at a properly authorized tribal liquor store or approved outlet or location.

(6) **Illegal Possession of Liquor - Intent to Sell.** It shall be a violation of this Chapter for any person to keep or possess liquor upon his person or in any place or on premises conducted or maintained by him as a principal or agent with the intent to sell it contrary to the provisions in this Chapter.

(7) **Sales to Persons Apparently Intoxicated.** It shall be a violation of this Chapter for any person to sell liquor to a person apparently under the influence of liquor.

(8) **Possession and Use of Liquor by Minors.** Except in the case of liquor given or permitted to be given to a person under the age of twenty-one (21) years by his parent or guardian, for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes; it shall be a violation of this Chapter for any person under the age of twenty-one (21) years to consume, acquire, or have in his possession any alcoholic beverage except when such beverage is being used in connection with religious services.

(9) **Furnishing Liquor to Minors.** It shall be a violation of this Chapter for any person to permit any other person under the age of twenty-one (21) to consume liquor on his premises under his control.

(10) **Sales of Liquor to Minors.** It shall be a violation of this Chapter for any person to sell any liquor to any person under the age of twenty-one (21) years.

(11) **Unlawful Transfer of Identification.** It shall be a violation of this Chapter for any person to transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor; provided, that corroborative testimony of a witness other than the minor shall be a requirement for conviction.

(12) **Possession of False or Altered Identification.** It shall be a violation of this Chapter for any person to attempt to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years.

(13) **Identification - Proof of Minimum Age.** Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following officially issued cards of identification which shows correct age and bears his or her signature and photograph:

(a) Liquor Control Authority Card of Identification of any state.

(b) Driver's License of any state or an identification card issued by any State Department of Motor Vehicles.

(c) United States Active Duty Military Identification.

(d) Passport.

(14) It shall be a violation of this Chapter to employ a person under the age of twenty-one (21) years to manufacture, sell or dispose of spirituous liquors.

(15) It shall be a violation of this Chapter to employ a person under the age of nineteen (19) years in any capacity connected with the handling of spirituous liquors.

(16) It shall be a violation of this Chapter to engage in the following: For an employee of a tribally owned liquor outlet, during his working hours or in connection with his employment, to give to or purchase for any other person, accept a gift or purchase for himself or consume spirituous liquors.

(17) It shall be a violation of this Chapter for an employee of a tribal liquor outlet to sell, dispose of, deliver or give spirituous liquor to a person, or to allow a person to consume spirituous liquors on the outlet premises, between the hours of one o'clock a.m. and six o'clock a.m. on week days and Saturdays and one o'clock a.m. and ten o'clock a.m. on Sundays.

(18) It shall be a violation of this Chapter for an employee of a tribal liquor outlet to sell spirituous liquors except in the original container, to permit spirituous liquor to be consumed on the outlet premises, or to sell spirituous liquor in a container having a capacity of less than eight ounces except as approved by the liquor business manager and Board.

(19) It shall be a violation of this Chapter for a person to consume spirituous liquor from a broken package in a public place, through fare or gathering except as approved by the liquor business manager and Board.

(20) It shall be a violation of this Chapter for a person to have in his possession or to transport spirituous liquor which is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States and the State of Arizona.

(21) It shall be a violation of this Chapter for an employee of a tribal liquor outlet, when engaged in waiting on or serving customers, to consume spirituous liquor or remain on or about the premises while in an intoxicated or disorderly condition.

(22) It shall be a violation of this Chapter for any person to be in a state of intoxication or to sell, attempt to sell, solicit, consume, possess, acquire or transfer liquor within three hundred (300) feet of a Traditional Ceremony.

(23) **Public Modern Dances** - All public modern dances are hereby imposed with a curfew of 1:00 a.m. It shall be a violation of this Chapter for any person to sponsor or participate in any public modern dance past the hour of 1:00 a.m.

(a) Any sponsor of a public modern dance shall be responsible for clean-up of the public area. Failure of any sponsor to clean-up any public area where a public modern dance is held shall be a violation of this Chapter and said sponsor shall be subject to civil liability for the cost of clean-up.

SECTION 15.11 Tribal Court Jurisdiction; Enforcement

A. **Jurisdiction.** The _____ Tribal Court of the _____ Tribe shall have jurisdiction over all offenses and unlawful acts enumerated in this Chapter when committed by an Indian, be they members or non-members of the _____ Tribe.

B. **Proof of Unlawful Sale - Intent.** In any proceeding under this Chapter, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this Chapter.

C. **General Penalties.** Any person adjudged to be in violation of this Chapter shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation. The Board may adopt by separate rule or regulation a schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such a schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars (\$500) limitation set forth above.

D. **Illegal Items Declared Contraband.** Alcoholic beverages which are possessed contrary to the terms of this section are declared to be contraband. Any tribal law enforcement officer who issues a citation under this section shall seize any contraband in a manner consistent with the _____ Tribal Constitution and the applicable provisions of 25 U.S.C. 1302.

E. **Preservation and Forfeiture.** Any tribal law enforcement officer seizing contraband shall preserve the contraband by placing it in a secured area provided for storage of impounded property and shall promptly prepare an inventory. Upon entry of judgment, any person adjudged to be in violation of this Chapter shall forfeit all right, title and interest in the items seized, which shall be disposed of in accordance with Tribal law governing the disposition of seized contraband; provided, however, that the items so forfeited shall not be sold to any person not entitled to possess them under applicable law.

F. **Criminal Penalties.** Any person subject to tribal criminal jurisdiction and prosecution and adjudged to be in violation of this Chapter may be subject to a criminal penalty of up to 180 days imprisonment and/or a maximum fine of \$500.00.

(1) Any person subject to tribal criminal jurisdiction and prosecution and adjudged to be in violation of Sections 15.10 A(3), 15.10 A(4), 15.10 A(5), 15.10 A(6) and Section 15.3 shall be sentenced as follows:

(a) **First Offense:** Mandatory 180 days imprisonment in addition to a maximum fine of \$500.00;

(b) **Second Offense:** Mandatory 240 days imprisonment in addition to a maximum fine of \$1,500.00;

(c) **Third Offense:** Mandatory 365 days imprisonment in addition to a maximum fine of \$3,000.00.

SECTION 15.12 Abatement

A. Declaration of Nuisance. Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Chapter or any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

B. Institution of Action. The Chairman of the Board shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. The plaintiff shall not be required to give bond in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings against the defendant, and upon final judgment against the defendant the Court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the court in the sum of not less than One Thousand Dollars (\$1,000), payable to the tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of therein in violation of the provisions of this Chapter or any other applicable tribal law, and that he will pay all fines, costs, and damages assessed against him for any violation of this Chapter or other tribal liquor laws. If any condition of the bond be violated, the whole amount may be recovered as a penalty for the use of the tribe. Any action taken under this section shall be in addition to any other penalties provided for in this Chapter.

C. In all cases where any person has been adjudged to be in violation of this Chapter or tribal laws relating to the manufacture, importation, transportation, possession, distribution, or sale of liquor, an action may be brought in tribal court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action, a certified copy of the record of such judgment shall be admissible in evidence as prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

SECTION 11.13 Profits

A. Distribution of Profits. The gross proceeds collected by the Board for all sales of alcoholic beverages on the _____ Reservation shall be distributed as follows:

- (1) For the cost of goods;
- (2) For the payment of taxes provided in Section 15.9 of this Chapter if authorized by the Tribal Council;
- (3) For the payment of all necessary personnel, administrative costs of the liquor business management and board;
- (4) To the _____ Tribe's Alcohol Detox Program, in an amount of at least 20% of the total tax received.
- (5) The remainder of the taxes received shall be turned over to the general fund of the _____ Tribe on a monthly or other periodic payment schedule established by the Board and shall be expended by the _____ Tribal Council for the general governmental service of the tribe;
- (6) The remainder of all gross proceeds shall be paid over to _____ Tribal Enterprise except for those monies paid over in items 1 through 5 inclusive, and except for the gross proceeds obtained from the sale of alcoholic beverages at _____ Casino and hotel.