

**RESOLUTION NO. 114 -09**  
**OF THE GOVERNING BODY OF THE**  
**YAVAPAI-APACHE NATION**

**A Resolution Adopting Title 40, the Yavapai-Apache Nation Fireworks Code**

**WHEREAS:** The Yavapai-Apache Tribal Council ("Council") is empowered to represent the Yavapai-Apache Nation ("Nation") and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation; and

**WHEREAS:** The Council is the legislative body of the Nation empowered to enact laws, ordinances and resolutions incidental to the exercise of legislative powers as provided by Article V(v) of the Nation's Constitution; and

**WHEREAS:** The Council has the authority pursuant to Article V(a) and (o) of the Nation's Constitution to act in all matters that concern the health and welfare of the Nation and to enact codes and ordinances governing law enforcement on lands within the jurisdiction of the Nation; and

**WHEREAS:** The Council recognizes the inherent risks to the property, safety and welfare of the Nation's tribal members and the general public posed by the use of fireworks; and

**WHEREAS:** The Council wants to regulate the sale, possession and use of fireworks on the Nation's lands through the passage of the attached Title 40, the Yavapai-Apache Nation Fireworks Code; and

**WHEREAS:** The Council believes that passage of Title 40, the Yavapai-Apache Nation Fireworks Code, is in the best interests of the Nation.

**NOW THEREFORE BE IT RESOLVED** that the Yavapai-Apache Nation Tribal Council, in Council assembled, at which a quorum is present, hereby enacts the attached Yavapai-Apache Nation Fireworks Code ("Code") as Title 40 of the Yavapai-Apache Nation Tribal Code.

**BE IT FURTHER RESOLVED** that the originals of this Code shall be filed with the Secretary of the Nation, the Finance Director of the Nation, the Clerk of the Court, the YAN Police Department and the Attorney General.

**BE IT FINALLY RESOLVED** that the Chairman, and Vice-Chairman, or either of them, are hereby authorized and approved to take such further action as deemed necessary or warranted to carry out the purposes and intent of this Resolution.

**CERTIFICATION**

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, presented for approval on June 18 2009, by a vote of 8 in favor, 0 opposed and 1 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation.

Thomas Beauty  
Thomas Beauty, Chairman

**ATTEST:**

Karla Reimer  
Karla Reimer, Council Secretary

Approved as to Form:

Robb Hunter  
Robb Hunter, Attorney General

**TITLE 40  
YAVAPAI-APACHE NATION  
FIREWORKS CODE**

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# YAVAPAI-APACHE NATION FIREWORKS CODE

## SECTION 101. PURPOSE

The Yavapai-Apache Nation (“Nation”) Tribal Council (“Council”) recognizes the inherent risks to the safety and welfare of the Nation’s tribal members and the general public posed by the use of fireworks. This Code shall regulate the sale, possession and use of fireworks on the Nation’s lands.

## SECTION 102. AUTHORITY

A. Article V, Section (a) of the Nation’s Constitution grants the Council the power to represent the Nation and act in all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution.

B. Article V, Section (o) of the Nation’s Constitution grants the Council the power to enact codes and ordinances governing law enforcement on lands within the jurisdiction of the Nation.

## SECTION 103. SCOPE

This Code shall apply to all the Nation’s tribal members, the Nation’s employees and vendors, and all others selling, possessing, or using fireworks on the Nation’s lands.

## SECTION 201. DEFINITIONS

A. “Fireworks” means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and toy cannons in which explosives are used, the type of balloon which requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, sparklers or other device of like construction, devices containing any explosive or combustible compound, and any tablet or other device containing an explosive substance. The term “Fireworks” does not include:

1. Toy pistols, toy canes, toy guns or other devices in which paper caps containing not more than twenty-five hundredths grains of explosive compound are used if constructed so that the hand cannot come in contact with the cap when in place for the explosion;

2. Toy pistol paper caps that contain less than twenty-five hundredths grains of explosive mixture, or fixed ammunition or primers therefore;

3. Federally deregulated novelty items known as snappers, snap caps, party poppers or glow worms that contain less than twenty-five hundredths grains of explosive compound; and

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4. Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models.

B. “Manufacturer” means any Person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include Persons who assemble or fabricate sets or mechanical pieces in public displays of Fireworks.

C. “Nation Lands” means all lands within the boundaries of the Camp Verde Indian Reservation and to any and all lands held by the Nation, trust allotments located outside the reservation boundaries, and to any additional lands acquired by the Nation or by the United States for the benefit of the Nation.

D. “Permit” means the official written permission granted by the Nation for the purpose of establishing and maintaining a place where fireworks are constructed, stored, discharged or used.

E. “Person” means any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, fair, entity, or any other group or combination thereof acting as a unit.

F. “Public Display of Fireworks” means an entertainment feature where the public is admitted or permitted to view the display or discharge of Fireworks.

G. “Tribal Court” means the Yavapai-Apache Nation Tribal Court.

H. “YAPD” means the Yavapai-Apache Police Department

### **SECTION 301. IMPLIED CONSENT**

Any Person who enters upon Nation Lands shall be deemed to have given consent to the jurisdiction of the Nation for purposes of enforcing this Code.

### **SECTION 401. ADMINISTRATION**

The YAPD shall administer and enforce the requirements of this Code. The YAPD shall, with the prior consent and approval of the YAN Tribal Council, promulgate regulations implementing the requirements of this Code.

### **SECTION 402. PERMITS**

A. No Person shall advertise or undertake to use, possess, or engage in a display of Fireworks without obtaining prior thereto, “prior thereto” being defined as a minimum of five (5) working days before the use, possession or display of Fireworks, a Fireworks permit issued by the YAPD.

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B. The application for a Fireworks permit will, at a minimum, require the submission of the following:

1. The name, address, and telephone number of the Person making the application;
2. If applicable, the name and address of employees, agents, representatives, or vendors who engage in the sale activities under the applicant's permit(s);
3. The location of the Fireworks display, which location is required to be recommended for approval in accordance with paragraph C below;
4. The type and class of Fireworks to be displayed;
5. The permit processing fee of as determined by the Tribal Council;
6. The amount, if any, of an admission's charge payable by members of the public to view the display;
7. Proof of appropriate liability insurance and/or proof of financial responsibility sufficient to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the permit applicant in such amount, character, and form as the Nation determines necessary for the protection of the public.

C. The Fireworks display location shall be certified for compliance with all applicable safety regulations as determined by the YAPD at least five (5) working days in advance of the date set for the Fireworks display. The YAPD shall inspect the location of the proposed Fireworks display for the purpose of determining whether the provisions of this Code are complied with in the case of the particular display. If the YAPD is satisfied that the display is lawful and there has or will be full compliance with the law, then the YAPD may issue the permit.

D. Fireworks permit applicants must submit such information as deemed appropriate by the YAPD to insure that adequate traffic control and crowd protection policing has either been arranged through private security agencies or has been arranged with the YAPD. A written notice that the applicant has complied with these requirements shall be issued by the Director of the YAPD before a public display permit may be issued.

E. No permit granted hereunder shall be transferable.

F. After a permit has been granted, the possession, use, and distribution of Fireworks pursuant to such permit shall be lawful for that purpose only.

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## **SECTION 403. AUTHORITY TO ENFORCE CODE AND ISSUE PERMITS**

A. The Tribal Council hereby delegates the power to grant all permits required under this Code to the YAPD. As a condition of any permit, the YAPD may specify additional safeguards as necessary to provide for the public safety. The YAPD shall investigate all permit applications to determine potential hazard to property or individuals and shall file a written report if a permit is denied. These reports will be kept in the office of the YAPD and shall be available for review by the Tribal Council.

B. The Director of Public Safety, or his/her duly authorized representative is designated the enforcing officer of this Code. Any failure or refusal on the part of any Person holding a permit issued hereunder, or any Person employed by the permit holder, to obey any rule or regulation or request of the Director of Public Safety, or his/her duly authorized representative, concerning the use or display of Fireworks, is a violation of this Code and is grounds for the revocation of a Fireworks permit.

C. In addition to the provisions contained herein, the Tribal Council retains the authority to declare that the use, possession or display of fireworks be prohibited on the Nation's land at any time.

## **SECTION 404. USE AND DISPLAY OF FIREWORKS**

A. The use of Fireworks by any Person engaged in an organized display of Fireworks open to the public shall be:

1. Handled by a competent operator, licensed or certified as to competency by the YAPD; and
2. Of such composition and character and shall be located, discharged, or fired so as, in the opinion of the YAPD, after proper location inspection, not to be hazardous to any person or property.

## **SECTION 501. PROHIBITED ACTS**

A. The following acts are strictly prohibited on Nation Lands:

1. The discharge of any Fireworks by a minor under the age of 18;
2. The discharge of Fireworks inside or upon any structure, unless a permit has been obtained from the YAPD;
3. The discharge of Fireworks inside or upon Nation Lands, unless a permit has been obtained;
4. The discharge of Fireworks in a manner which constitutes a hazard to persons or property;

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5. The possession of Fireworks not otherwise allowed through permit issued pursuant to the requirements of this Code; and

6. Unless otherwise allowed pursuant to this Code, the sale, offer or exposure for sale, or use of any Fireworks upon Nation Lands.

### **SECTION 502. SEIZURE OF FIREWORKS**

The YAPD shall have the authority to seize, take, remove or cause to be removed at the expense of the owner, all fireworks offered or exposed for sale, stored, possessed or used in violation of this Code.

### **SECTION 503. VIOLATIONS AND PENALTIES FOR VIOLATIONS**

A. Any Person who violates the provisions of this Code shall be subject to any one or more of the following penalties:

1. A fine, to be imposed by the Tribal Court, for any violation of this Code in the minimum amount of \$100.00. The gravity of the violation, the number of past and present violations committed and the good faith of the violator in attempting to achieve compliance after notification of the violation shall be taken into consideration when assessing the penalty;

2. Any Person who uses, sells or possesses fireworks without a permit shall be subject to a minimum fine, upon conviction thereof, in the amount not less than \$250.00. The maximum fine shall not exceed \$5,000.00.

B. Any Person violating the provisions of this Code, which results in a fire, personal injury, or death, shall be guilty of a misdemeanor.

C. Any Person associated with the commission of a violation of this Code is a principal and may be charged with a violation although he or she did not directly commit the violation, and although the Person who directly committed the violation has not been convicted of a violation. A Person is associated in the commission of a violation if the Person:

1. Directly commits the violation;
2. Aids and abets in the commission of the violation; or
3. Is a party to a conspiracy with another to commit the violation or advises, hires, or counsels or otherwise procures another to commit the violation.

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D. Criminal complaints shall be filed prior to or within one (1) year after the violation occurs. The Tribal Court shall have the discretionary authority, upon good cause shown, to issue an appropriate order, injunction, or declaratory relief.

E. In addition to, or instead of, being charged with any criminal violation contained herein, any Person who engages in any act prohibited by this Code shall be, upon a finding of liability, subject to: 1) the payment of restitution for all damages caused by the prohibited act; 2) a civil fine not to exceed five thousand dollars (\$5,000.00); and/or 3) having any and all materials, equipment, and/or property utilized in, or connected to, the prohibited act(s) immediately impounded and subject to forfeiture for the benefit of the Nation.

### **SECTION 504. JURISDICTION**

Jurisdiction is hereby conferred upon the Yavapai-Apache Nation Tribal Court over all matters related to the enforcement of this Code.

### **SECTION 505. COURT COSTS**

Any Person adjudicated by the Tribal Court as having violated this Code shall be liable for court costs.

### **SECTION 506. PARENTAL LIABILITY**

A parent or legal guardian of a minor who uses Fireworks is criminally and/or civilly liable for the damages caused by the minor's use of fireworks.

### **SECTION 601. SEVERABILITY AND NON-LIABILITY**

A. If any provision of this Code is held to be unconstitutional or otherwise invalid, the remainder of this Code shall not be affected thereby.

B. The Nation declares that there is no liability on the part of the Nation, its officials, officers, agents, or employees for, from, and against any damages, which may occur as a result of reliance upon or conformance with this Code. The Nation, by the adoption of this Code, does not waive its sovereign immunity in any respect.

### **SECTION 602. REPEAL OF PRIOR ORDINANCES/CODES/LAW**

To the extent that any prior motion, resolution, ordinance, code, act, or other law of the Nation conflicts with any provision of this Code, the provisions of this Code shall control and the conflicting provision(s) are hereby repealed.

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## **SECTION 603. EFFECTIVE DATE**

This Code will take effect on June 22, 2009, except that any prior approved contract or event allowing Fireworks displays shall remain in effect in accordance with the applicable and approved contractual terms or event parameters.