

YAVAPAI-APACHE NATION
EXCLUSION ORDINANCE

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Exclusion Ordinance was “originally adopted approximately in 1978” as amended on March 10, 1995 by Council Resolution No. 21-95 and on November 29, 2018 by Resolution No. 57-18.

The Yavapai-Apache Nation

Exclusion Ordinance

Section 101 Findings and Purpose

The Tribal Council finds that violent crime and illegal drug use are significant issues affecting the Yavapai-Apache Nation and its people and that much of the problem is attributable to the conduct of individuals who are non-members of the Nation and that the presence of all such non-members within the Nation's lands threatens and endangers the public health, peace, safety, general welfare, and quality of life of the Nation and its members and also threatens the political integrity and economic security of the Nation and its lands and property. The purpose of this Ordinance is to provide for the exclusion and removal of non-members of the Nation as a means of protecting the public health, peace, safety, general welfare, quality of life, economy, environment, lands, and political integrity of the Nation and its members.

Section 201 Exclusion Authority

Pursuant to the Yavapai-Apache Constitution, Article 5, Sections (a), (t), (u), (v), and (w), the Tribal Council may file an action in Tribal Court to exclude any non-member of the Yavapai-Apache Nation who either resides or maintains a presence on any lands within the jurisdiction of the Yavapai-Apache Nation, including but not limited to Reservation lands. Any decision by Tribal Council to file an action in Tribal Court shall be reflected in a written resolution passed by a majority vote of the Tribal Council.

Section 301 Grounds for Exclusion

The Yavapai-Apache Tribal Council may exclude non-members of the Nation for any of the following reasons:

A. the individual has violated any law or custom of the Yavapai-Apache Nation, including both civil and criminal law;

B. the individual has been convicted of a crime (either a misdemeanor or felony) under federal law, the laws of the State of Arizona or any other state of the United States, or the laws of any other Indian Tribe or Alaska Community recognized as such by the United States (a "conviction may be established in Tribal Court by presenting a verified copy of any judgment or order of a court documenting the conviction);

C. the individual has engaged in possessing, dealing, distributing, transporting (or assisting in the dealing, distribution or transporting of) and or selling drugs of any kind (and any derivative forms of such drugs), including but not limited to:

1. Methamphetamine/crank
2. Cocaine
3. Heroin
4. Prescription drugs not prescribed to the person using them, and
5. Marijuana;

D. the individual has been convicted in any jurisdiction of one or more crimes involving sexual misconduct (i.e., including but not limited to rape, incest, sexual abuse of a minor, etc.), or under any circumstance where said individual is required by law to register under a state or tribal sex offender registration program (a “conviction may be established in Tribal Court by presenting a verified copy of any judgment or order of a court documenting the conviction);

E. the individual has committed any violent criminal activity that could result in a felony or misdemeanor conviction under the laws of the Yavapai-Apache Nation, the United States or the State of Arizona. The term “Violent Criminal Activity” shall include any activity that causes death or serious bodily injury to a person, causes substantial property damage, or involves the use, attempted use or threatened use of physical force likely to result in serious bodily injury or substantial property damage. Crimes such as homicide, battery, sexual assault, kidnapping, arson, or domestic violence are considered to be violent criminal activity;

F. the individual is alleged to have committed conduct within the lands of the Nation, which would be punishable under the laws of the Nation or the United States, if committed by a member of the Nation; and

1. said individual declines to give written consent to the jurisdiction of the Nation’s Tribal Court over said individual with respect to such conduct; and

2. said individual either admits to such conduct in the exclusion proceeding or is found by the Tribal Court in the exclusion proceeding to have committed the conduct in question;

G. the individual has done or threatened to do any act that threatens the peace, health, safety, or general welfare of the Nation or its members;

H. the individual has done or threatened to do any act upon the Nation’s lands which seriously threatens the environment, the land, water, natural resources, air, or other natural land or topographical feature on any of the Nation’s lands or which would in any way threaten the environmental integrity or quality of life for the Nation and/or its members;

I. the individual has engaged in exploring for or excavating items, sites, or locations of historic, religious, or scientific significance without the consent and permit of the Nation or in violation of tribal or federal laws and regulations;

J. the individual has obstructed the performance of governmental functions by any elected official, officer, agent, or employee of the Nation using force or violence, bribery, deception or any other unlawful means;

K. the individual has resisted arrest by a law enforcement officer of the Nation or any other law enforcement agency having authority within the Nation’s lands, using force or violence, bribery, deception or other unlawful means;

L. the individual has engaged in the unauthorized taking of any property from the Nation’s lands, whether said property is the property of the Nation or any of its members;

M. the individual has repeatedly (more than once) unlawfully and without invitation entered the home of any tribal member in a way that threatens the safety or well-being of the tribal member or any member of the tribal member's household;

N. the exclusion of the individual is in the best interests of the Nation;

O. the continued presence of the individual acts against the safety or well-being of the Yavapai-Apache Nation or any of its members; or,

P. the continued presence of the individual constitutes a threat to the safety or well-being of the Yavapai-Apache Nation or any of its members.

Section 401 Actions Prior to Filing an Exclusion Action

Prior to filing a complaint for exclusion, the Tribal Council shall notify the Yavapai-Apache Police Department ("YAPD") of the Nation's intention to file an exclusion action against a non-member and YAPD shall upon receiving said notice proceed to contact the non-member who is the subject of the exclusion action and provide a written notice of the Nation's intention to file an exclusion action in the Nation's Tribal Court and giving the non-member seven (7) calendar days to voluntarily remove themselves from the Nation's lands under a voluntary consent to exclusion for a minimum period of two (2) years, as evidenced by the non-member's signature, witnessed by the YAPD officer providing the notice, upon a form of voluntary consent to exclusion, which voluntary consent shall thereafter be filed with the Tribal Court for issuance of an exclusion order reflecting the non-member's voluntary consent to exclusion. Said Order shall thereafter be effective and enforceable as provided in this Ordinance.

Section 402 Exclusion Hearing Procedures

A. **Complaint for Exclusion.** An exclusion action shall commence with the filing of a Complaint for Exclusion. The Complaint for Exclusion shall include the following information:

1. Name and address of the non-member who is the subject of the exclusion action;
2. The alleged grounds for exclusion as specified under Section 301 hereinabove;
3. The alleged facts giving rise to the alleged grounds for exclusion; and
4. Any recommendation from the Tribal Council on the duration of the exclusion.

B. **Hearing Notice.** The Tribal Court shall schedule an Exclusion Hearing within thirty (30) calendar days of the filing of the Complaint for Exclusion and issue a Hearing Notice. The Hearing Notice shall advise the non-member that if they do not attend the Exclusion Hearing, the Tribal Court may enter judgment against him/her by default for the relief requested in the Complaint for Exclusion. The Tribal Court may continue the Exclusion Hearing for good cause upon the request of the parties.

C. **Service of Complaint and Hearing Notice.** The Complaint for Exclusion and Hearing Notice shall be served upon the non-member who is the subject of the exclusion action in accordance with the Service of Process Rules of the Nation's Tribal Court Rules of Civil Procedure.

D. **Written Response.** The non-member who is the subject of the exclusion action may file a written response to the Complaint not less than five (5) calendar days prior to the date of the Exclusion Hearing.

E. **Evidence.** The Tribal Court may consider any oral or documentary evidence presented which is relevant to the facts and issues raised by the Complaint without regard to their admissibility under the rules of evidence that apply to other court proceedings, however, the Court may give less weight to evidence that is hearsay or otherwise inadmissible under the rules of evidence.

F. **Testimony of Tribal Member Spouse.** In all cases involving a spouse of a Tribal member, the Tribal Court shall allow the spouse of the non-member subject to the exclusion action to present any testimony or information that the Court determines would be helpful to its decision

G. **Burden of Proof.** In all exclusion actions, a preponderance of the evidence before the Tribal Court shall be sufficient to exclude a non-member.

H. **Application of the Nation's Rules of Civil Procedure.** The Exclusion Hearing shall be conducted in accordance with the Nation's Rules of Civil Procedure to the extent that such Rules do not conflict with the provisions of this Ordinance.

I. **Judgment.** Within seven (7) calendar days of the date of the Exclusion Hearing, the Tribal Court shall issue an Order ruling on the Complaint for Exclusion.

J. **Duration.** The Court's Order shall state the duration of the exclusion. The Tribal Court shall consider any recommendation of the Tribal Council in determining the duration of the exclusion.

K. **No Appeal.** The decision of the Tribal Court shall be final and not subject to further appeal.

Section 403 Emergency Removal Prior to Exclusion Hearing

The Nation may remove a non-member from the Nation's lands prior to an exclusion hearing as follows:

A. In cases involving an immediate danger to the life, health, morals or property of the Nation or any of its members, and in all cases wherein a drug related activity as described under Section 301.C of the grounds for exclusion set out hereinabove is alleged, the Chairperson, or in the absence of the Chairperson, the Vice Chairperson, may petition the Tribal Court, without notice to the non-member to be removed, for an Emergency Exclusion Order directing the YAPD to physically remove the non-member and any property of said non-member from the

Nation's lands, prior to any exclusion action and exclusion order under the procedures of this Ordinance.

B. Upon receipt of the petition, the Court shall issue an Emergency Exclusion Order directing the YAPD to physically remove the non-member and any property of said non-member from the Nation's lands and to provide written notice to the non-member being removed that an emergency exclusion hearing will be held within ten (10) calendar days of the date of the emergency removal at which time the non-member shall be required to show cause why he/she should not be ordered excluded from the Nation's lands.

C. The Court's notice to the non-member shall also provide the non-member notice of the time and place on the boundary of the Nation's lands where he/she may reenter the Nation's lands, in the company of an officer of the YAPD, for the exclusive purpose of attending the emergency exclusion hearing.

D. Ruling on Emergency Exclusion. Within three (3) calendar days of the date of the emergency exclusion hearing, the Tribal Court shall issue a ruling either continuing the Emergency Exclusion Order or lifting the Emergency Exclusion Order pending the filing of a Complaint for Exclusion under Section 402 of this Ordinance.

Section 501 Enforcement of Exclusion Orders

A. If a non-member subject to an exclusion order issued by the Tribal Court does not promptly obey the Court's order, or if a non-member subject to an exclusion order returns to the Nation's lands after exclusion but prior to the expiration of the period of exclusion imposed by the Court, the Chairperson or Vice Chairperson shall petition the Tribal Court for an enforcement action or the Chairperson or Vice Chairperson may refer the matter directly to the United States Attorney, or both.

B. Upon receipt of a Petition for Enforcement of a Tribal Court Order for Exclusion, the Tribal Court shall immediately order the YAPD, or such federal and/or state law enforcement agency having jurisdiction over the excluded non-member, to bodily remove said non-member from within the boundaries of the Nation's lands, using only such force as is necessary to accomplish the removal.

Section 601 Registry of Excluded Non-Members

The YAPD shall establish and maintain a registry documenting all exclusion orders and the identity of all non-members subject to exclusion orders. Said registry shall, to the extent possible, include photographs of excluded individuals. The registry shall be published from time to time in the Nation's newspaper, but no less frequently than annually.

Section 701 Sovereign Immunity

Nothing in this Ordinance shall be construed as a waiver of the sovereign immunity of the Nation or the official immunity of the Nation's elected officials, officers, agents, attorneys, employees, or police officers, or as authorization for any claim for monetary damages against the Nation or said elected officials, officers, agents, attorneys, employees, or police officers.