

TITLE 5 – CIVIL CODE
CHAPTER 8 – PROVIDING FOR THE EXCLUSION AND REMOVAL OF NON-MEMBERS AND EXECUTIVE CLOSURE OF RESERVATION

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Legislative History: Amended on March 17, 1990 by Resolution No. C3-90-90 Chapter Eight of Pascua Yaqui Civil & Criminal Code providing for the exclusion & removal of non-members and executive closure of reservation.

Codified on November 4, 2004 by Resolution No. C11-198-04

Recodified on August 9, 2006 by Resolution No. C08-313-06.

Section 10 Declaration of Purpose (5 PYTC § 8-10)

Whereas it is the sacred duty and obligation of the Tribal Council of the Pascua Yaqui Tribe to safeguard, protect, manage, administer and develop the natural resources of the trust lands of the Pascua Yaqui Tribe for the sole economic, cultural, and social benefit of the people of the Pascua Yaqui Tribe; and whereas pursuant to the inherent sovereign power and authority reposing in the Pascua Yaqui Tribe, affirmed by the Constitution of the Pascua Yaqui Tribe, the Tribal Council possesses the inherent sovereign authority and constitutional obligation to initiate proceedings in order to protect its people, their property, natural resources, culture, land, water rights, wildlife from any threat or conduct by non-members of the Pascua Yaqui Tribe which might diminish, denigrate, damage, injure or threaten the Pascua Yaqui people, their natural resources, or the social, cultural and economic well being of the people of the Pascua Yaqui people in any manner whatsoever. The Exclusion and Removal and Executive Closure provisions set forth in this Chapter are hereby enacted to carry out and implement this Declaration of Purpose and the Tribal Constitutional obligations of the Tribal Council.

Section 20 Definitions (5 PYTC § 8-20)

- (A) “Tribe” as used in this Chapter refers to both singular and plural and represents each and every enrolled member of the Pascua Yaqui Tribe.
- (B) “Person” and “Non-Member” as used in this Chapter mean any individual, corporation, partnership, association, state, or local government and any of their respective agencies who are not enrolled members of the Pascua Yaqui Tribe, and denotes both the singular and plural wherever used.

Section 30 Executive Order Closure of All or Part of Reservation (5 PYTC § 8-30)

The Chairperson of the Pascua Yaqui Tribe, or in his absence, the Vice Chairperson, is empowered to close any part or all of the Pascua Yaqui Reservation to non-members whenever the presence of such non-members would constitute a threat or danger to life, property or the sovereign interests of the Pascua Yaqui Tribe. The exclusion order may permit certain named individuals (or classes of individuals) to remain and may provide for a procedure whereby individuals or classes of individuals may seek entry or reentry to closed areas. No such closure may continue for more than ten days without concurrence by the Tribal Council by Council resolution.

Section 40 Exclusion or Removal of Non-Members After Hearing, Interim Exclusion or Removal Pending Hearing (5 PYTC § 8-40)

- (A) A non-member of the Tribe may be excluded or removed from the Pascua Yaqui Reservation after a hearing and the entry of an exclusion or removal order, or in cases involving a threat or danger to the public health, safety or sovereignty of the Tribe, or for violating Section 60 pending such a hearing, upon order of a judge of the Pascua Yaqui Tribal Court.

- (B) Interim exclusion or removal of a non-member from the Pascua Yaqui Reservation shall only be ordered in cases involving a threat to a tribal member, the public health, or sovereignty of the Tribe and for a period no longer than necessary for an exclusion hearing to be held.

Section 50 Grounds for Exclusion or Removal of Non-Members (5 PYTC § 8-50)

An Order of Exclusion or Removal may be entered by the Tribal Court after a hearing or on an interim basis as provided in 3 PYT R.Civ.P. Rule 6 as follows:

- (A) When the non-member is accused of conduct within the Pascua Yaqui Reservation which would be punishable under the laws of the Tribe, the State of Arizona or the United States, if committed by a member of the Tribe; and
 - (1) Such non-member declines to give written consent to the jurisdiction of the Tribal Court over such non-member with respect to such conduct; and
 - (2) Such non-member either admits such conduct in the removal or exclusion proceedings, or is found by a preponderance of the evidence in the exclusion or removal proceedings to have committed the act in question; or
- (B) When the non-member either admits in an exclusion or removal proceeding or is found by a preponderance of the evidence presented in an exclusion or removal proceeding to have engaged in any of the followings acts:
 - (1) Unauthorized prospecting for petrified wood or artifacts, antiquities, wood or plant collecting, timber cutting, surveying, damaging or using property of the Tribe or any resident thereof without permission, disturbing any grave site or wildlife, vegetation, soil composition, or conducting any sociological or anthropological studies without prior Tribal Council permission; or
 - (2) Entry into any Pascua Yaqui home without the consent of the occupants; or if consent is revoked, refusing thereafter to vacate the premises; or
 - (3) Interference with or photographing, sketching, or recording of any other kind of any Pascua Yaqui traditional ceremony or other religious ceremony without appropriate authorization ; or
 - (4) Unauthorized or unlicensed trading business or peddling; or
 - (5) Unauthorized entry into an area of the Pascua Yaqui Reservation closed to non-members; or
 - (6) Removal by a non-member from the Pascua Yaqui Reservation of any member of the Tribe under the age of 18, without consent of parent or guardian, except by order of the Tribal Court pursuant to and in compliance with Pascua Yaqui Tribal law or in conjunction with a sectarian program administered by the Pascua Yaqui Tribe; or
 - (7) Violating any federal or Tribal hunting regulations applicable within the exterior boundaries of the Pascua Yaqui Reservation; or
 - (8) Committing fraud, confidence games, or usury against Pascua Yaqui people or inducing them to enter into grossly unfavorable contracts of any nature; or

- (9) Defrauding any Pascua Yaqui of just compensation for his or her labor or service of any nature done at the request of the non-member.

- (C) Any non-member who commits or is convicted of committing any act on the Pascua Yaqui Reservation which is a crime under state or federal law, or which would have constituted a violation of the criminal laws of the Tribe if it had been committed by a member of the Tribe, may be removed and excluded from the Reservation pursuant to the provisions of this Chapter prior to conviction, taken into custody by a tribal police officer, tribal security officer, federal law enforcement or tribally authorized sheriff or other officer of the State of Arizona, for delivery to state or federal authorities for prosecution.

Section 60 Protection of Natural Resources (5 PYTC § 8-60)

Entering upon the Pascua Yaqui Reservation by any non-member of the Pascua Yaqui Tribe for the purpose of conducting any study, surveying or mapping of the land, water, resources, soil, geology, topography, plants, forest, grazing lands, atmosphere, fish and wildlife, minerals or Pascua Yaqui culture or people for any purpose without the prior consent and approval of the Tribal Council of the Pascua Yaqui Tribe shall constitute grounds for the immediate removal and exclusion of said person from the exterior boundaries of the Pascua Yaqui Reservation pending an exclusionary hearing as set forth in this chapter.

Section 70 Duration of Exclusion (5 PYTC § 8-70)

Any exclusion or removal order entered by the Tribal Court shall either be for a definite period or may, under appropriate circumstances, be permanent. A non-member excluded or removed may petition the Court for modification of an exclusion or removal order at any time after the order is entered but may not file a petition to modify more than once every six months.

Section 80 Court Jurisdiction (5 PYTC § 8-80)

The Pascua Yaqui Tribal Courts are vested with civil jurisdiction over all non-members with respect to the exclusion or removal of non-members of the Pascua Yaqui Tribe from the Pascua Yaqui Reservation.

Section 90 Notice of Exclusion or Removal (5 PYTC § 8-90)

The Chairperson or in his absence, the Vice Chairperson, of the Tribal Council, may petition the Tribal Court for a notice of exclusion or removal to be served personally or by registered mail upon any non-member whenever either of such officers believes cause may exist for exclusion or removal of such non-member, or whenever the Tribal Council orders either officer to cause such notice to be served. Such removal notice shall state the reason for the proposed exclusion or removal and shall name time and place where the non-member may appear before the Tribal Court to show cause why he or she should not be excluded from the exterior boundaries of the Pascua Yaqui Indian Reservation.

Section 100 Hearing; Order of Exclusion (5 PYTC § 8-100)

- (A) After notice to the non-member proposed for exclusion or removal, the Tribal Court shall hold a hearing no later than ten days thereafter to decide whether or not the non-member shall be excluded from the exterior boundaries of the Reservation. Such non-member shall be given an opportunity to present his or her defense at such hearing and may be represented by counsel at his or her own expense.

- (B) After hearing, or after the time set for such hearing, if after notice, the nonmember proposed for exclusion or removal does not appear, the Tribal Court may order that such non-member may remain upon the Pascua Yaqui Reservation on such conditions as the Court sees fit to impose or may order said non-member to leave or be removed from the Pascua Yaqui Reservation. All

orders of exclusion or removal shall remain in force until revoked by the Tribal Court unless the order specifically provides otherwise.

- (C) The Attorney General or in his absence, the Chief Prosecutor, shall represent the Pascua Yaqui Tribe, the Chairperson of the Tribe or in his absence, the Vice-Chairperson of the Tribe, in any and all exclusion or removal proceedings initiated by the Tribal Court pursuant to this Chapter.

Section 110 Enforcement of Exclusion or Removal Order (5 PYTC § 8-10)

- (A) If any non-member ordered removed or excluded from the Pascua Yaqui Reservation by the Tribal Court does not promptly obey the order, the Chairperson of the Tribe or in his absence, the Vice-Chairperson of the Tribe, may petition the Tribal Court for appropriate enforcement action or he may refer the matter directly to the United States attorney, or both.
- (B) Upon receipt of a Petition for Enforcement of the Tribal Court's previous Removal or Exclusion Order, the Tribal Court shall immediately order either the Pascua Yaqui police, federal law enforcement or authorized deputized sheriff's officer of the State of Arizona, to bodily remove the non-member and/or to remove the property of such non-member from within the exterior boundaries of the Pascua Yaqui Reservation. The law enforcement officers executing such order shall use only so much force as is necessary to effect the removal or exclusion.

Section 120 Forcible Removal of Persons and Property Prior to Hearing (5 PYTC § 8-120)

- (A) In extreme cases involving grave danger to the life, health, morals or property of the Tribe or any of its members or because of a violation of Section 60, the Chairperson of the Tribe, or in his absence from the Reservation, the Vice Chairperson of the Tribe, may petition the Tribal Court, without notice, for an Order directing any tribally authorized law enforcement officer to bodily remove a non-member and/or to remove any property of such non-member from Tribal land, before such non-member has been ordered excluded by the Tribal Court as provided in Section 100(B). The tribal or tribally authorized law enforcement officer executing such order shall use only so much force as is necessary to effect the removal.
- (B) If service of the notice provided for in Section 90 has not already been made on such non-member, the Court shall cause the Bureau of Indian Affairs officer or a tribally authorized law enforcement officer to serve such notice upon the non-member at the time of removal as possible.
- (C) In all cases where the non-member has not already been ordered excluded by the Tribal Court, the Court shall notify the non-member of a place on the Reservation Boundary where he may reenter in the company of a tribal or tribally authorized law enforcement officer who is to accompany such non-member while he is on the Reservation traveling to and leaving his hearing.
- (D) Any non-member ordered by the Tribal Court to leave the Reservation, pursuant to Sections 40, 60, 100(B), 110, or 120 of this Chapter may be delivered to the custody of state or federal authorities for prosecution.

Disposition Table

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