

**MESCALERO APACHE TRIBE
MESCALERO, NEW MEXICO**

ORDINANCE 22-10

WHEREAS, the Mescalero Apache Tribe, an Indian Tribe organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 5123) and under its Revised Constitution has the power to act for the Tribe; and

WHEREAS, the Mescalero Apache Tribal Council has the power to represent the Tribe and act in all matters that concern the welfare of the Tribe and to make decisions not inconsistent with, or contrary to, its Revised Constitution, pursuant to Article XI, Section 1 (i) of the Revised Constitution; and

WHEREAS, the Mescalero Apache Tribal Council has the power to enact ordinances establishing and governing Tribal courts, regulating social and domestic relations of members of the Tribe, including provision for the issuance of decrees of divorce, providing for the appointment of guardians for minors and mental incompetents, regulating the inheritance of personal property of tribal members, pursuant to Article XI, Section 1 (p) of the Revised Constitution; and

WHEREAS, the Mescalero Apache Tribal Council believes it is necessary to revise Chapter 35, "Torts and Claims Against the Mescalero Apache Tribe;" and

WHEREAS, the Mescalero Apache Tribal Council wishes to adopt the attached revisions to Chapter 35 and believes that the same are in the best interests of the Mescalero Apache people.

NOW, THEREFORE, BE IT ORDAINED that the following revisions to Chapter 35 of the Mescalero Apache Tribal Code are hereby adopted.

BE IT FURTHER ORDAINED that all contrary provisions are hereby repealed.

CHAPTER 35

TORTS AND CLAIMS AGAINST THE MESCALERO APACHE TRIBE

SECTION 1. TORTS.

[Section 1 remains unmodified.]

SECTION 2. CLAIMS AGAINST TRIBE.

35-2-1. NOTICE OF CLAIMS.

- A. Every person who claims damages from the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe shall cause to be presented to the President of the Mescalero Apache Tribe a written notice stating the time, place and circumstances of the loss of injury. Such notice shall be presented in person to

the President at 101 Central Boulevard, Mescalero, New Mexico 88340 or by mail at Post Office Box 227, Mescalero, New Mexico 88340.

- B. No suit or action shall be maintained and no court shall have jurisdiction to consider any suit or action against the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe unless notice has been given as required by this section, or unless the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe had actual notice of the occurrence. The time for giving notice does not include the time, not exceeding ninety (90) days, during which the injured person is incapacitated from giving the notice by reason of injury.
- C. When a claim under this provision is made for wrongful death, the required notice may be presented by, or on behalf of, the personal representative of the deceased person or any person claiming benefits of the proceeds of a wrongful death action, within six months after the date of the occurrence of the injury which resulted in the death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

35-2-2. STATUTE OF LIMITATIONS. Any actions against the Mescalero Apache Tribe, agencies of the Mescalero Apache Tribe or enterprises of the Mescalero Apache Tribe for torts shall be forever barred, unless such action is commenced within ~~two (2)~~three (3) years after the date of occurrence resulting in loss, injury or death, except that a minor under the full age of fourteen (14) years shall have until his or her sixseventeenth (17~~6~~) birthday in which to file. This subsection applies to all persons regardless of minority or other legal disability.

35-2-3. NO WAIVER OF SOVEREIGN IMMUNITY. No provision of this ordinance shall be construed as any waiver of the sovereign immunity of the Mescalero Apache Tribe.

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CERTIFICATION

The foregoing enactment of the Mescalero Apache Tribal Council is duly adopted and approved on the 17th day of October 2022, at a legally called session of the Mescalero Apache Tribal Council, by a vote of 7 in favor, 0 opposed, 1 abstained and 0 absent at which a quorum was present and at which a majority of the members voted in favor thereof. This enactment is approved by the President of the Mescalero Apache Tribe under authority of Article XII, Section 1, of the Revised Constitution.



Eddie Martinez, President



Ardena Orosco, Secretary