

Ordinance No. 46. – Resolution H-27-91 approves the Ordinance for Regulation, Exclusion and Removal of Nonmembers.

REPEALS ORDINANCE NO. 2 & 13.

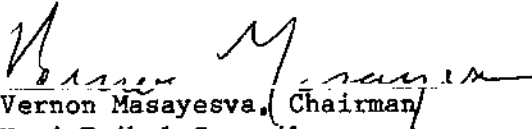
HOPI TRIBAL COUNCIL  
RESOLUTION  
H-27-91

- WHEREAS, the Hopi Indian Tribe both owns and has sovereign governmental powers over the Hopi Indian Reservation; and
- WHEREAS, the Hopi Indian Tribe as landowner has the power to admit or exclude nonmembers of the Hopi Indian Tribe from the Hopi Indian Reservation; and
- WHEREAS, the Hopi Indian Tribe in the exercise of its sovereign powers can establish standards and procedures for the admission or exclusion of nonmembers from the Hopi Indian Reservation; and
- WHEREAS, the Constitution and By-Laws of the Hopi Indian Tribe authorizes the Hopi Tribal Council to exclude nonmembers from the Hopi Indian Reservation; and
- WHEREAS, the Hopi Tribal Council has determined that enactment of Ordinance #46 will protect the rights and interests of members of the Hopi Indian Tribe to the peaceable use of the Hopi Indian Reservation; and
- WHEREAS, Ordinance #46 incorporates rights established under all applicable Hopi and federal law, including, but not limited to the Indian Civil Rights Act and the Navajo-Hopi Settlement Act; and
- WHEREAS, Ordinance #46 will be fairly enforced while respecting all rights secured under all applicable Hopi and federal laws.
- NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council enacts Ordinance #46 as law throughout the Hopi Indian Reservation.


HOPI TRIBAL COUNCIL  
RESOLUTION  
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C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the Hopi Tribal Council on December 05, 1990, at a meeting at which a quorum was present with a vote of 14 in favor, 0 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by Section 1(i)(g) of Article VI of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Hopi Tribal Council on October 24, 1936, and approved by the Secretary of the Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution is effective as of the date of adoption and does require Secretarial approval.

  
Vernon Masayesva, Chairman  
Hopi Tribal Council

ATTEST:

  
Anita Horace, Tribal Secretary  
Hopi Tribal Council

APPROVED  
FEB 28 1991  
OFFICE  
1/29

FEB 22 1991

Tribal Government Services  
(602) 379-6786  
FTS 261-6786

Through: Superintendent, Hopi Agency

Mr. Vernon Masayesva

Chairman, Hopi Tribal Council

Dear Mr. Masayesva:

On December 5, 1990, the Hopi Tribal Council enacted Resolution No. H-27-90, adopting Ordinance 46 entitled, "Ordinance For the Regulations, Exclusion and Removal of Nonmembers." Ordinance 46 authorizes the Chairman of the Hopi Tribal Council to exclude from the Hopi Reservation a nonmember whose presence on the reservation is harmful to the Hopi Indian Tribe.

The Hopi Agency Superintendent has reviewed Ordinance 46, and recommended a legal review to assure compliance with S. 3189, a legislative action giving tribes' jurisdiction over nonmember Indians until September 30, 1991, taking care of the jurisdictional void as a result of the Supreme Court decision in Duro v. Reina.

A legal review has been completed, and we find Ordinance 46 is not impacted either by the Supreme Court's decision in Duro v. Reina or by 104 Stat. 1892, and thus will not be affected by the expiration of this statute.

Therefore, by the authority delegated to me by the Commissioner of Indian Affairs, I hereby affirm the Superintendent's approval of December 28, 1990. Said Ordinance No. 46, is in full force and effect as of the date of approval.

Sincerely,

(Sdg) Philip Niles

**ACTING** Area Director

Enclosure

cc: Superintendent, Hopi Agency, Attn: Tribal Operations/  
PAO, Branch of Law Enforcement Services - FYI  
Tribal Relations, Code 440C, MS-4627, BIA, Washington, D.C.

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**Ordinance For The Regulation,  
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ORDINANCE 46

**Ordinance For The  
Regulation, Exclusion  
and Removal of Nonmembers**

I. Statement of Findings and Purposes; Closure  
of Hopi Indian Reservation; and Permits.

46.01.01. Findings. The Hopi Tribal Council finds:

(a) That regulation of use of the Hopi Indian Reservation by nonmembers is necessary to protect the health, safety, economic security and general welfare of members of the Hopi Indian Tribe; and

(b) That regulation of use of the Hopi Indian Reservation by nonmembers is necessary to protect against removal or destruction of religious, ceremonial, historical and archaeological materials important to the religion, traditions, customs, ceremonies and history of members of the Hopi Indian Tribe; and

(c) That regulation of use of the Hopi Indian Reservation by nonmembers is necessary to conserve and protect natural resources such as land, plants, wildlife, water and wood for use by members of the Hopi Indian Tribe; and

(d) That regulation of the use of the Hopi Indian Reservation by nonmembers is necessary to ensure that members of the Hopi Indian Tribe receive the full benefits of the Hopi Indian Reservation; and

(e) That regulation of use of the Hopi Indian Reservation by nonmembers is necessary to prevent interference with efforts of the Hopi Indian Tribe, on its own or in

cooperation with the United States, to manage and improve the Hopi Indian Reservation; and

(f) That regulation of the use of the Hopi Indian Reservation by nonmembers is an exercise of one of the sovereign power of Indian tribes which is recognized under the laws of the United States; and

(g) That regulation of use of the Hopi Indian Reservation by nonmembers is in furtherance of powers of the Hopi Tribal Council under Article VI, Section 1(a), (c), (g), (i)-(j) and Article VII, Sections 1-3 of the Hopi Constitution.

46.01.02. Determinations. The Hopi Tribal Council has determined that it is the policy of the Hopi Indian Tribe to exercise its sovereign powers to protect, conserve and manage resources of the Hopi Indian Reservation for the benefit of members of the Hopi Indian Tribe. This Ordinance shall govern use of the Hopi Indian Reservation by nonmembers consistent with this policy. This Ordinance shall also govern the exclusion and removal of nonmembers whose presence on the Hopi Indian Reservation may be harmful to members of the Hopi Indian Tribe.

46.01.03. Purposes. The purposes of this Ordinance include, but are not limited to:

(a) Protection of the health, safety, economic security and general welfare of members of the Hopi Indian Tribe; and

(b) Protection of natural resources of the Hopi Indian Reservation for the benefit of members of the Hopi Indian

Tribe; and

(c) Protection of religious, ceremonial, archaeological and historical materials important to the religion, traditions, customs, ceremonies and history of members of the Hopi Indian Tribe; and

(d) Protection of interests of members of the Hopi Indian Tribe against encroachment by nonmembers; and

(e) Provision of a reasonable system for issuing permits to nonmembers to use the Hopi Indian Reservation consistent with the right of members of the Hopi Indian Tribe to fully use and enjoy the Hopi Indian Reservation; and

(f) Provision of procedures for the exclusion and removal from the Hopi Indian Reservation of nonmembers whose presence on the Hopi Indian Reservation is deemed harmful to members of the Hopi Indian Tribe; and

(g) Provision of civil penalties and forfeitures of property of nonmembers who remain on the Hopi Indian Reservation in violation of exclusion orders.

46.01.04. Consent to Jurisdiction. Any person who enters the Hopi Indian Reservation shall be deemed to have consented to this Ordinance and to the jurisdiction of the Hopi Indian Tribe and the Hopi Tribal Court to enforce this Ordinance.

46.01.05. Preservation of Duties and Rights. Nothing in this Ordinance shall be construed to relieve the United States of any duty it may have to remove nonmembers who are upon the Hopi Indian Reservation in violation of any law or regulation of the

United States or of the Hopi Indian Tribe. Nothing in this Ordinance shall be construed to interfere with the right of any person to be upon or pass through the Hopi Indian Reservation in accordance with any law or regulation of the United States or of the Hopi Indian Tribe.

46.01.06. Closure Of The Hopi Indian Reservation;  
Exceptions.

(a) The Hopi Indian Reservation is closed and shall be for the exclusive use and benefit of members of the Hopi Indian Tribe. Closure of the Hopi Indian Reservation means that entry into and use of the Hopi Indian Reservation is restricted to members of the Hopi Indian Tribe and those persons authorized to be upon the Hopi Indian Reservation in accordance with Hopi and federal laws and regulations.

(b) Notwithstanding subsection (a) of this section, the following persons are excepted from the closure of the Hopi Indian Reservation:

(i) Nonmember employees, agents, contractors and other persons doing business with or for the United States (and their families and guests), where the United States had directed the employee, agent, contractor or other person to perform work or services on the Hopi Indian Reservation; and

(ii) Nonmembers who are authorized to be upon the Hopi Indian Reservation under any law or regulation of the United States or of the Hopi Indian Tribe as well as their spouses and minor children (and any person necessary to attend

upon and care for such nonmembers during an illness or disability), plus a reasonable number of visitors staying for not more than twenty-four hours; and

(iii) Nonmember employees, agents, contractors and other persons doing business with or for the Hopi Indian Tribe as well as their spouses and minor children (and any person necessary to attend upon and care for such nonmembers during an illness or disability), plus a reasonable number of visitors staying for not more than twenty four-hours; and

(iv) Nonmembers holding leases, easements, licenses, permits, rights-of-way or other approvals from or by the Hopi Indian Tribe which reasonably entitle holders and their duly authorized employees, agents and contractors to be upon the Hopi Indian Reservation.

(v) Nonmembers traveling upon any open and unrestricted federal or state highway system or road within the Hopi Indian Reservation; and

(vi) Nonmembers visiting any Hopi village, traditional village farming lands, clan lands or village holding in conformity with the laws and rules of the applicable village or clan; and

(vii) Nonmembers visiting or doing business at any offices of the Hopi Indian Tribe or of the United States and at any motel, restaurant, gift shop, or other business on the Hopi Indian Reservation during open business hours and days; and

(viii) Attorneys and their legal assistants while

consulting with clients who are included in any other exception in this section; while investigating claims on behalf of such clients; while attending the Hopi Indian Tribal Court on behalf of their clients; while representing such clients at any office of the Hopi Indian Tribe or of the United States during open business hours and days; and while representing such clients in any proceeding under this Ordinance.

(c) The following places are excepted from the closure of the Hopi Indian Reservation for Purposes listed in subsection (b):

(i) Offices of the Hopi Indian Tribe and the United States during open business hours and days; and

(ii) Lands included within leases, easements, licenses, permits, rights-of-way and other approvals from or by the Hopi Indian Tribe which reasonably entitle holders to use and occupy portions of the Hopi Indian Reservation described in the lease, easement, license, permit, right-of-way; and

(iii) Open and unrestricted federal and state highway systems or roads within the Hopi Indian Reservation; and

(iv) Hopi villages, traditional village farming lands, clan lands, and village holdings subject to whatever limitations, laws and rules promulgated by the applicable village or clan.

46.01.07. Permits; Judicial Review.

(a) Nonmembers who are not within any exception to section 46.01.05(b) may apply to the Chairman of the Hopi Tribal

Council for a permit to enter closed portions of the Hopi Indian Reservation. The Chairman shall have discretion to grant, conditionally grant, deny or revoke permits to enter closed portions of the Hopi Indian Reservation. The Chairman may delegate these responsibilities.

(b) The discretion of the Chairman to grant, conditionally grant, deny or revoke a permit shall not be subject to judicial review for an abuse of discretion. However, the Chairman's exercise of discretion shall be subject to limited review in the Hopi Tribal Court under this Ordinance and the Indian Civil Rights Act. It is not necessary to the right of action in Hopi Tribal Court authorized by this section to seek review of the Chairman's action by the Hopi Tribal Council. In any Tribal Court action, the burden of proof shall be upon the nonmember to prove that the Chairman's action violates this Ordinance or the Indian Civil Rights Act. In any Tribal Court action, review shall be on the record as judicial review of administrative action. Only that information provided to the Chairman or otherwise considered by the Chairman shall be reviewed by the Tribal Court. The Hopi Tribal Court shall dismiss for lack of jurisdiction any action brought more than sixty (60) days after the Chairman's action on the ground that the Chairman's action is final and no longer subject to judicial review. Collateral attack on a Chairman's action may not be made in a hearing on an exclusion or removal order, civil penalty or forfeiture proceeding. Appeals may be taken from decisions of

the Hopi Tribal Court to the Hopi Tribal Court of Appeals as in other civil actions.

## II. Exclusion and Removal

46.01.08. Definitions. All words shall have their normal and commonly understood meaning when used in this Ordinance. The following terms shall have, in addition, the meanings defined:

1. "Chairman" means the Chairman of the Hopi Tribal Council or the Vice-Chairman of the Hopi Tribal Council when acting on behalf of the Chairman.

2. "Hopi Indian Reservation" shall mean all that part of the 1882 Hopi Executive Order Reservation held in trust by the United States for the Hopi Indian Tribe, the Moenkopi Administrative Unit, other areas as may be partitioned to the Hopi Indian Tribe in the 1934 Act Reservation area, and all other lands held in trust by the United States for the benefit of the Hopi Indian Tribe.

3. "Member" means a member of the Hopi Indian Tribe under Article II of the Hopi Constitution.

4. "Nonmember" means a person who is not a member of the Hopi Indian Tribe under Article II of the Hopi Constitution and includes corporations, associations, cooperatives, partnerships, joint-ventures and any other entity whether organized for business or nonbusiness purposes.

5. "Officer of the Hopi Indian Tribe" includes officers of other jurisdictions who have been commissioned by the Hopi Indian

Tribe to enforce the ordinances and laws of the Hopi Indian Tribe.

6. All references to number of days for action to be taken in this Ordinance refer to calendar days. In computing any period of time prescribed or allowed by this Ordinance, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period of so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

46.02.01. Persons Subject To Exclusion And Removal.

Any nonmember:

- (a) Who enters or remains upon a closed portion of the Hopi Indian Reservation in violation of this Ordinance; or
- (b) Who violates any other Ordinance or law of the Hopi Indian Tribe or any Hopi village; or
- (c) Who violates any law of the United States; or
- (d) Who engages in conduct that would be a violation of the criminal laws of the Hopi Indian Tribe if that nonmember were subject to the criminal laws of the Hopi Indian Tribe,

shall be deemed a person whose presence on the Hopi Indian Reservation may be harmful to members of the Hopi Indian Tribe. All such persons may be excluded and removed from the Hopi Indian

Reservation.

46.02.02. Notice of Proposed Order of Exclusion. When the Chairman believes that a reason exists to exclude a nonmember, the Chairman shall set forth that reason, or reasons, in a written notice of proposed order of exclusion. A copy of this notice shall be served upon the nonmember by personal service when the nonmember can be found by reasonable diligence within the Hopi Indian Reservation; or in the event personal service cannot be so made then by certified mail, return receipt requested; and if service by mail cannot be made because the nonmember has no address reasonably known to the Chairman or because the United States Postal Service returns the letter as undeliverable, then by posting a notice at three public places within the Hopi Indian Reservation and by publication in a newspaper circulated on the Hopi Indian Reservation. The date of service shall be the date of delivery in the case of personal service, the date the letter is signed for in the case of service by certified mail, or the date of publication in the case of notice by publication. The notice shall advise the nonmember of a date and place, not earlier than fifteen (15) days after service, where the nonmember may submit a written response to the notice.

46.02.03. Hearing On Notice Of Proposed Order Of Exclusion. (a) When requested by the nonmember, the Chairman shall appoint a hearing officer who shall schedule a hearing on the notice of proposed order of exclusion. At such hearing, the

nonmember may be represented by counsel, present oral and documentary evidence relevant to the proposed order of exclusion, call witnesses and offer explanations why exclusion should not be ordered. The Chairman shall preside at such hearings, and may administer oaths, issue subpoenas, rule on procedure and the admission of evidence, and set reasonable limits on the scope, time and length of presentations at any hearing.

(b) The Chairman may appoint a hearing officer to carry-out the responsibilities of the Chairman under this section.

46.02.04. Decisions and Orders. (a) After considering evidence and explanations offered at the hearing, if one is held, or if none is held after considering any written response to the notice, the Chairman shall issue a written decision and order. The decision and order shall summarize the facts upon which the Chairman relies. The decision and order may rule for or against ordering exclusion, or may order that the nonmember be excluded from all or part of the Hopi Indian Reservation on such terms and conditions as the Chairman shall specify. Exclusion orders under this section are effective ten (10) days after the date of the decision unless the order states a different date that may be earlier or later than ten (10) days.

(b) When the Chairman appoints a hearing officer under section 46.020.03(b), the hearing officer shall issue a recommended decision and order. After reviewing the record, the Chairman shall issue a decision and order as in subsection (a) of this section in all other respects.

46.02.05. Emergency Temporary Exclusion Orders. When the Chairman finds that a nonmember's presence on the Hopi Indian Reservation poses an immediate and substantial risk of harm to the public health, safety or general welfare to the governmental, property or liability interests of the Hopi Indian Tribe or any Hopi village, clan or private person, or to the ability of the Hopi Indian Tribe to exercise or carry-out any of its legal duties or rights, the Chairman may issue a written emergency temporary order of exclusion which shall be effective upon personal service or such other terms as the Chairman shall state. Not less than five (5) days after service of the emergency temporary order of exclusion, the Hopi Tribal Court shall hold a hearing to determine whether the emergency temporary order of exclusion shall remain in effect until a full hearing, decision and order are completed as in section 46.02.03 through 46.02.04. If within five (5) days of issuing an emergency temporary order of exclusion the Chairman has not prepared a written notice of proposed order of exclusion under section 46.01.02, the Hopi Tribal Court shall rescind the emergency temporary order of exclusion upon application by the nonmember. The nonmember who is the subject of the emergency temporary exclusion order may re-enter the Hopi Indian Reservation to attend the hearing authorized in this section on whether to continue the emergency temporary exclusion order. The nonmember may be represented by counsel, present oral and documentary evidence relevant to the issues, call witnesses and offer explanations of why the order

should be suspended or modified. The Hopi Tribal Court shall give priority on its docket to ruling on whether to continue, modify or rescind an emergency temporary order of exclusion pending completion of procedures under sections 46.02.02 through 46.02.04. The burden of proof shall be on the nonmember under standards applicable to the issuance of preliminary injunctions in seeking a modification or rescission of an emergency temporary order of exclusion under the standards of the Indian Civil Rights Act and any other applicable law or regulation of the Hopi Indian Tribe or of the United States.

### III. Judicial Review and Civil Enforcement

46.03.01. Exclusion Orders; Judicial Review. The Hopi Tribal Court shall have jurisdiction to review exclusion orders under this Ordinance. The Tribal Court may enjoin enforcement of an exclusion order pending resolution of the action if the court finds sufficient grounds for issuance of a preliminary injunction. In any action to review an order of exclusion, the burden of proof shall be on the nonmember to prove the Chairman's decision was not supported by the evidence produced at the hearing or relied upon by the Chairman in his written order of decision. Judicial review shall be on the record as judicial review of administrative action. Only that information provided at the hearing or otherwise part of the record and considered by the Chairman shall be reviewed by the Court. Any challenge to a decision ordering exclusion must be filed within sixty (60) days after the date the order is issued. The Hopi Tribal Court shall

dismiss for lack of jurisdiction any action brought to review an order of exclusion more than sixty (60) days the date the order is issued on the ground that the order is final and no longer subject to judicial review. In an action challenging an exclusion order which is based on Section 46.01.06, collateral attack may not be made on the Chairman's action if the nonmember did not timely file an action for judicial review under section 46.01.060. The nonmember who is the subject of the exclusion order may re-enter the Hopi Indian Reservation to file the action and attend court hearings and proceedings relating to the case. Appeals may be taken from decisions of the Hopi Tribal Court under this section to the Hopi Tribal Court of Appeals as in other civil actions.

46.03.02. Removal. If a nonmember who is the subject of an exclusion order does not comply with the order, the Hopi Indian Tribe may file an action requesting the Hopi Tribal Court to enter an order authorizing any law enforcement officer of the Hopi Indian Tribe or any other person to physically remove the nonmember and any property of or in possession or control of the nonmember from the Hopi Indian Reservation. The case shall proceed as other civil actions except that upon filing of the Complaint and a certified copy of the exclusion order the Court shall automatically issue an order of removal pending resolution of the case. On application of the person affected by automatic judicial removal order provided for in this section, the exclusion and removal orders may be modified or stayed pending

resolution of the case if the Court finds that grounds exist for issuance of a preliminary injunction against enforcement of the exclusion order. The nonmember may re-enter the Hopi Indian Reservation to attend removal hearings and proceedings of the Hopi Tribal Court.

46.03.03. Civil Penalty. Whoever violates an order of exclusion shall pay a civil penalty of FIVE HUNDRED DOLLARS (\$500) for the first day that the order is violated. The civil penalty shall double each additional calendar day or portion thereof that the order is violated. In addition to the civil penalty, the Hopi Indian Tribe shall recover attorneys fees and costs in any civil action commenced in Hopi Tribal Court to collect the civil penalty.

46.03.04. Civil Forfeiture Of Property. Whoever violates an order of exclusion shall forfeit to the Hopi Indian Tribe any personal property owned, used, possessed or controlled by that person within the Hopi Indian Reservation while the person remains in violation of an exclusion order. An officer of the Hopi Indian Tribe who believes that a nonmember is upon the Hopi Indian Reservation in violation of an exclusion order may apply to the Hopi Tribal Court for a civil impoundment order directing the impoundment of any property being used, possessed or controlled by the nonmember. An officer of the Hopi Indian Tribe may impound property without a civil impoundment order when the officer has probable cause to believe that the property is being used, possessed or controlled within the Hopi Indian Reservation

by a nonmember who is subject to an exclusion order under this Ordinance and that impoundment is justified by exigent circumstances to prevent concealment, transport, removal, destruction, loss or damage to the property. As soon as practicable after property is impounded pursuant to a civil impoundment order, the officer shall notify the Chairman and the Hopi Tribal Court. When the Chairman believes the property was seized from a person who was lawfully upon the Hopi Indian Reservation, the Chairman shall order the property to be returned promptly. Otherwise, the Hopi Indian Tribe shall promptly file a civil action against the property seeking a judicial order of forfeiture. Notice of the forfeiture action shall be given to the person from whom the property was seized, the person who is the subject of the exclusion order, and any other person claiming a property interest in the impounded property. If the Hopi Tribal Court finds the property was used, possessed or controlled within the Hopi Indian Reservation by a nonmember while violating an order of exclusion, the Court shall order the property be forfeited to the Hopi Indian Tribe. An application for mitigation or remission of forfeiture, in whole or in part, must be filed with the Chairman by any person claiming a property interest in the property which is the subject of the forfeiture action within thirty (30) days of the judicial order of forfeiture. Subject to any applicable requirements of the Indian Civil Rights Act, the Chairman may grant remission of forfeiture in whole or in part in the sole discretion of the Chairman. The

person seeking mitigation or remission of forfeiture must produce evidence explaining the manner in which the forfeiture property came into the possession of the person from whom it was impounded, and showing that, prior to parting with the property, the person seeking remission or mitigation of forfeiture did not know and did not have reasonable cause to believe that the property would be used in violation of rights of the Hopi Indian Tribe to exclude nonmembers from the Hopi Indian Reservation.

IV. Miscellaneous

46.04.01. Repeals. Ordinances 2 and 13 are repealed.

46.04.02. Severability. If the court shall declare any portion of this Ordinance to be invalid, the remainder shall remain in force.

Ordinance No. 46 as enacted by Resolution No. H-27-91 is hereby approved by:

  
Agency Superintendent

Date: December 28, 1990