



**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

APPROVAL OF

**PALA BAND OF MISSION INDIANS
LEASING ORDINANCE**

The attached Leasing Ordinance, submitted by the Pala Band of Mission Indians (listed in the Federal Register, Vol. 87, No. 19 FR 4638 (January 28, 2022) as the Pala Band of Mission Indians), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 21 pages and adopted by the Pala Band of Mission Indians Tribal Council on September 29, 2021, is hereby approved.

Dated: MAR 25 2022

A handwritten signature in blue ink, appearing to read "B. T. ...", written over a horizontal line.

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Pala Band of Mission Indians
Ordinance No. 32
LEASING ORDINANCE



GC Adopted: July 10, 2019
EC Amended: September 29, 2021

CHAPTER ONE
AUTHORITY, SCOPE AND PURPOSE

Section 1.1 Authority and Delegation

- A. This Ordinance is enacted by the General Council pursuant to the powers vested to it pursuant to Article III, Section 2. C the Constitution of the Pala Band of Mission Indians.
- B. After its enactment by the General Council, whether before or after approval by the Secretary of the Interior, this Ordinance may be amended by a majority vote of the Executive Committee at a duly called Executive Committee meeting at which a quorum is present.

Section 1.2 Scope

This Ordinance shall apply to all Business Site Leases approved pursuant to this Ordinance in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), Pub. L. No. 112-151, 126 Stat. 1150 (2012) (25 U.S.C. § 415), governing leases on Tribal Trust Land, and to all actions and decisions taken in connection with such leases. This Ordinance shall not apply to Indian allotted lands, fee lands, or mineral leases, and nothing herein shall be construed to affect the terms and conditions of valid leases existing prior to the enactment of this Ordinance.

Section 1.3 Purpose

The purposes of this Ordinance are to:

- A. Recognize the authority of the Pala Band of Mission Indians ("Tribe"), to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review.
- B. Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on Tribal Trust Land.
- C. Implement the HEARTH Act and this Ordinance.

CHAPTER TWO DEFINITIONS

Section 2.1 **Definitions.** As used in this Ordinance, the capitalized terms set forth below shall have the following meanings:

- A. "*Assignment*" means an agreement between a Lessee and an assignee whereby the assignee acquires all or some of the Lessee's rights and assumes all or some of the Lessee's obligations under a Business Site Lease.
- B. "*Best Interest of the Tribe*" means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.
- C. "*BIA*" means the Bureau of Indian Affairs, United States Department of the Interior.
- D. "*Business Site Lease(s)*" means the same as "Lease" but shall be limited to leases for business and commercial purposes only.
- E. "*Development Period*" means the time period from when a lease is executed to when improvements are expected to be substantially completed.
- F. "*Environmental Review Process*" means the process for conducting tribal environmental review to assess whether a proposed project as defined under this Ordinance will have a significant environmental impact.
- G. "*Environmental Reviewer*" means an official from the Tribe's Natural Resources Department or as otherwise designated by the Executive Committee.
- H. "*Executing Official*" means the Tribal Chairman or his properly authorized delegate, who shall execute all Business Site Leases of the Tribe and take all necessary and proper action on leases and subleases including amendments, modifications, assignments, and cancellations of leases and subleases.
- I. "*Executive Committee*" means the duly elected Executive Committee of the Tribe pursuant to the Constitution.
- J. "*Fair Annual Lease Value*" means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment, and revaluation, permitted uses, use restrictions, and expense obligations.

- K. "*Holdover*" means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
- L. "*Lease*" means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration. The Lessee's right to possess will limit the Lessor's right to possess the leased premises only to the extent provided in the Lease.
- M. "*Leasing Decision*" means the following type of lease transactions that will be acted on by the Tribe: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, and Lessee leases.
- N. "*Leasehold Mortgage*" means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
- O. "*Lessee*" means a person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Ordinance.
- P. "*Lessor*" means the Tribe.
- Q. "*LTRO*" means the Land Title and Records office of the BIA.
- R. "*Project*" means any development activity occurring on or intended to occur on Tribal Trust Land pursuant to a Business Site Lease.
- S. "*Public*" for purposes of Chapter 7 of this Ordinance means enrolled members of the Pala Band of Mission Indians and other individuals and businesses that may be significantly affected by a proposed Business Site Lease.
- T. "*Significant Effect on the Environment*" means a substantial adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas, and objects of historic, cultural, or aesthetic significance.
- U. "*Space Lease*" means a lease of space within existing facilities on Tribal Trust Land that is not already leased.
- V. "*Sublease*" means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.
- W. "*Tribe*" means the Pala Band of Mission Indians.

- X. *"Tribal Trust Land"* means all lands owned by the Tribe over which the Tribe exercises governmental power and is held in trust by the United States for the benefit of the Tribe.
- Y. *"Trust or Restricted Land"* means any tract held by the United States in trust or restricted status for the benefit of a tribe.
- Z. *"Trust or Restricted Status"* means that the United States holds title to the tract in trust for the benefit of a tribe; or a tribe holds title to the tract, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instruments under federal law or limitations in federal law.

CHAPTER THREE BUSINESS SITE LEASE REQUIREMENTS

Section 3.1 Terms and Conditions. Leases shall be governed by the terms and conditions set forth in the Business Site Lease agreement or equivalent document. The terms and conditions may be modified only with the approval of the Tribe. The Lessee is responsible for understanding these terms and conditions.

Section 3.2 Approval Process. After all the necessary requirements of this Ordinance have been met, the Lessee shall be notified in writing and the proposed Business Site Lease shall be presented to the Executive Committee for approval. The Executive Committee shall, within sixty (60) days of the date of receipt thereof, approve, disapprove, or inform the Lessee that it needs additional time. If additional time is needed, the Executive Committee will have an additional thirty (30) days to approve or disapprove the Lease. A Lease is approved by a majority vote of a quorum of the Executive Committee. The approved lease shall be executed on behalf of the Tribe by the Tribal Chairman or his properly authorized delegate, as provided in Section 2.1(j).

Section 3.3 Duration and Renewal.

- A. Unless otherwise provided in the Lease, no Lease shall be approved more than 12 months prior to the commencement of the term of the Business Site Lease. The term shall not be more than 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years.
- B. If the Lease provides for an option to renew, the Lease must specify:
 - (i) the time and manner in which the option must be exercised or is automatically effective;

- (ii) that confirmation of the renewal will be submitted to the BIA, unless the Lease provides for automatic renewal;
- (iii) that the Tribe's consent to the renewal is required;
- (iv) that the Lessee shall provide notice of the renewal to the Tribe and any sureties and mortgagees;
- (v) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and,
- (vi) any other conditions for renewal (*e.g.*, Lessee shall not be in violation of the Lease at the time of renewal).

Section 3.4 Obtaining a Business Site Lease. Information on obtaining a Business Site Lease shall be available from the Tribal administration office.

- A. All applicants for a Business Site Lease shall submit the following documents to the Tribe:
 - (i) financial statements which, in the Tribe's discretion, are sufficient to determine the applicant's credit history and ability to perform under the Lease, including, but not limited to, bank statements, tax records, financial audits, etc., unless the Tribe deems that the Lessee is financially capable of paying rent.
 - (ii) site survey and legal description, as required in this Ordinance
 - (iii) Environmental Review Process documents as required in this Ordinance
 - (iv) other documents as may be required by the Tribe.
- B. All Business Site Leases shall contain, at a minimum, the following provisions:
 - (i) the tract, location, or parcel of the land being leased, with a legal description sufficient to meet BIA Land Title and Records Office requirements;
 - (ii) the purpose of the lease and authorized uses of the leased premises;
 - (iii) the parties to the lease;
 - (iv) the term and effective date of the lease;

- (v) identification of the responsible party for constructing, owning, operating, maintaining, and removing any improvements to the leased premises;
- (vi) indemnification of United States and Lessor against any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises;
- (vii) payment requirements, including:
 - interest and additional late payment penalties;
 - acceptable form(s) of payment;
 - the dates on which all payments are due;
 - the Lessee shall make payments directly to the Tribe; and
 - unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.
- (viii) due diligence, insurance, and bonding requirements as provided in this Section;
- (ix) if the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in 25 C.F.R. part 171, the Lessee must pay all operation and maintenance charges that accrue during the lease term, to the appropriate office in charge of the irrigation project or drainage district; and,
- (x) the obligations of the Lessee and its sureties to the Lessor are also enforceable by the United States, so long as the land remains in Trust or Restricted Status.

C. The Tribe shall record Business Site Leases, Subleases, Assignments, amendments, Leasehold Mortgages, renewals, modifications, and cancellations with:

United States Department of the Interior
Bureau of Indian Affairs
Department of Real Estate Services
Southern California Agency
1451 Research Park Drive, Suite 100
Riverside, CA 92507

D. The Tribe is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Executive Committee Secretary, and any other Tribal Department specified by the Executive Committee.

- E. Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed, or received by the Secretary of the Interior are the property of the United States.
- F. Unless the Business Site Lease states otherwise, a Lease may include, consistent with Tribal law, a provision to give Indian preference in hiring for employment purposes, pursuant to the Tribe's Tribal Employment Rights Ordinance.

Section 3.5 Space Leases. Space Leases shall be reviewed and approved pursuant to this Ordinance.

Section 3.6 Land Descriptions. Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems sufficient for recordation with the LTRO. Space leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings, or other schematics to illustrate the location of the space.

Section 3.7 Appraisal; Local Studies.

- A. The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Tribe utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Tribe and deemed to be in the Best Interest of the Tribe. An appraisal log reporting the methods of appraisal and value of the Tribal Trust Land shall be attached to every Business Site Lease.
- B. The Tribe may use competitive bidding as a valuation method.
- C. Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.

Section 3.8 Fair Annual Lease Value.

- A. No lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:
 - (i) the lease is in the Development Period;

- (ii) the Tribe is providing an incentive for business to locate on Tribal Trust Land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
 - (iii) the Tribe determines such action is in the Best Interest of the Tribe.
- B. A lease may be structured at a flat lease rate.
- C. A lease may be structured at a flat lease rate plus a percentage of gross receipts.
- D. A lease may be structured based on a percentage of gross receipts or based on a market indicator.
- E. A lease must specify the dates on which all payments are due.
- F. The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- G. Leases may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.
- H. Leases may be amended to allow for lease rate adjustments.
- I. The Lessee and Lessor shall each act prudently and knowledgeably, and assume consummation of a lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:
 - (i) Lessee and Lessor are typically motivated;
 - (ii) both parties are well-informed or well-advised, and acting in what they consider their best interests; and
 - (iii) the rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

- J. The Tribe shall keep written records of the basis used in determining the Fair Annual Lease Value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any lease file.
- K. The Tribe may waive a Fair Market Value appraisal and/or analysis, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Tribe shall maintain written records of such waivers.

Section 3.9 Environmental Review Process. Unless exempted from this requirement under this Ordinance, the Tribe shall not approve a Business Site Lease until the proposed Business Site Lessee has completed the Environmental Review Process under Chapter Seven of this Ordinance. Leases approved and executed without complying with this Section shall be null and void.

Section 3.10 Insurance.

- A. Unless waived in writing by the Tribe in accordance with this Ordinance, the Lessee shall obtain and maintain throughout the term of the lease, insurance from a nationally accredited insurance company with a financial strength rating of “A” or equivalent and authorized to do business in the State of California. Such insurance shall:
 - (i) protect the interests of the Tribe and the United States and be in amounts sufficient to protect all insurable improvements on the premises.
 - (ii) include such insurance specified in the Business Site Lease, including, but not limited to, property, liability, or casualty insurance.
 - (iii) include, without limitation, property, liability, and casualty insurance, including, personal injury or death, business interruption coverage when required by the Tribe, and such other insurance as specified in the Business Site Lease.
 - (iv) Identify the Tribe and the United States as additional insured parties.
- B. The Tribe may waive this requirement if the Tribe determines it is in the Best Interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe. The Tribe shall maintain written records of waivers.

Section 3.11 Performance Bond.

- A. Unless waived in writing by the Tribe in accordance with this Ordinance, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the Business Site Lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease and shall guarantee:
 - (i) the annual lease payment;
 - (ii) the estimated development cost of improvements to the leased premises;
 - (iii) the restoration and reclamation of the leased premises, to their condition at the start of the lease term or some other specified condition; and
 - (iv) any additional amount necessary to ensure compliance with the lease.
- B. The Tribe may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Tribe shall maintain written records of waivers and reductions.
- C. The performance bond may be in one of the following forms:
 - (i) certificate of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - (ii) irrevocable letter of credit issued by a federally insured financial institution authorized to do business in the United States;
 - (iii) negotiable Treasury security; or
 - (iv) surety bond issued by a company approved by the U.S. Department of the Treasury.
- D. The Tribe may accept an alternative form of security that provides adequate protection for the Tribe, including without limitation an escrow agreement and assigned savings account.
- E. The performance bond must require the surety to provide at least sixty (60) days' notice to the Tribe before canceling a performance bond or other security. This will allow the Tribe to notify the Lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond before the cancellation occurs. Failure to provide a substitute performance bond or security is a violation of the Lease.

Section 3.12 Improvements. All Business Site Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Business Site Lease.

- A. Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease if the lease specifies, or provides for the development of:
 - (i) a plan that describes the type and location of any improvements to be built by the Lessee; and
 - (ii) a general schedule for construction of completion of the improvements.
- B. Lessee shall provide the Tribe written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.
- C. When requested by the Tribe or otherwise required in the Business Site Lease, Lessee shall further provide the Tribe, in writing, an updated schedule for construction.
- D. Failure of the Lessee to comply with these requirements will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site lease pursuant to Chapter 5 of this Ordinance.
- E. Improvements to the premises shall become the property of the Tribe unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease shall specify the maximum time allowed for such removal, the Lessee's responsibility for such removal, and the Lessee's obligations to restore and reclaim the property to conditions acceptable to the Tribe. These requirements may be waived by the Tribe in its sole and absolute discretion.
- F. A Lessee may develop equity value in the improvements and sell its interest in the Business Site Lease based on the equity value. The Tribe has a right of first refusal to purchase the interest.
- G. The Business Site Lease may provide that at expiration, cancellation, or termination of the Business Site Lease, the Lessor shall purchase improvements to the premises at fair market value.
- H. Improvements may be subject to taxation by the Tribe.

Section 3.13 Subleases, Assignments, Amendments, and Leasehold Mortgages.

- A. Subleases, Assignments, amendments, or Leasehold Mortgages of any Business Site Lease shall be by written consent of the Tribe and Lessee.

This Section 3.12(A) in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

- B. The lease may authorize mortgages of the leasehold interest for the purpose of financing to develop and improve the premises, subject to approval by the Tribe and execution from the Executing Official.
- C. If a sale or foreclosure of the Lessee's business or assets occurs and the Leasehold Mortgagee is also the purchaser, the Leasehold Mortgagee may assign the lease without approval of the Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is the Leasehold Mortgagee or a party other than the Leasehold Mortgagee, approval by the Tribe and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the lease.

**CHAPTER FOUR
BUSINESS LEASE MANAGEMENT**

Section 4.1 Management.

- A. Except where otherwise required by agreement or applicable law, the Tribe shall manage all Business Site Leases pursuant to this Ordinance.
- B. The Tribe may institute a business site leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies, consistent with the provisions of this Ordinance.

Section 4.2 Administrative Fees. The Tribe may charge administrative fees for costs associated with issuing a lease, Sublease, Assignment, amendment, Leasehold Mortgage, or other administrative transaction.

CHAPTER FIVE ENFORCEMENT

Section 5.1 Generally. The Tribe shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with this Ordinance. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments. The Tribe may, at its discretion, notify the BIA of any Lease violation and request the BIA initiate any remedies available to it including, but not limited to, entering the leased premises and enforcement of the Lease terms.

Section 5.2 Applicable Law. Except where otherwise required by agreement or applicable law, the Tribe shall manage all leases pursuant to this Ordinance. The law that will apply to all leases authorized under this Ordinance will be, in the following order: federal law, then Tribal law (including but not limited to this Ordinance), and applicable California law if agreed to by the parties.

Section 5.3 Defaults.

- A. If the Tribe determines the Lessee is in default, the Tribe shall send the Lessee a notice of default within five (5) business days of such determination. The notice of default shall be provided by certified mail, return receipt requested, or other trackable method of delivery.
- B. Within 10 days of the receipt of mailing, the Lessee shall:
 - (i) cure the default and notify the Tribe in writing that the default has been cured;
 - (ii) dispute the Tribe's determination that the lease is in default and explain why the lease should not be canceled; or
 - (iii) request additional time to cure the default.

Section 5.4 Remedies.

- A. If the Lessee fails to cure the default within the prescribed period, the Tribe may:
 - (i) cancel the lease pursuant to this Ordinance;
 - (ii) grant an extension of time to cure the default;
 - (iii) pursue other remedies, including execution on bonds, collection of insurance proceeds, or negotiated remedies;

- (iv) any combination of remedies listed above; or
 - (v) any other remedy that may be set forth in any business site lease management plan or policy.
- B. If the Tribe cancels a Business Site Lease, the Tribe shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall be sent to the Lessee by certified mail, return receipt requested, or other trackable method of delivery. The cancellation letter shall:
- (i) explain the grounds for cancellation;
 - (ii) notify the Lessee of unpaid amounts, interest charges, or late payment penalties due under the lease;
 - (iii) notify the Lessee of its right to appeal; and
 - (iv) order the Lessee to vacate the premises within 30 days of receipt of the cancellation letter, if an appeal is not timely filed in accordance with Section 6.1 of this Ordinance.
- C. Cancellation shall become effective 31 days after receipt of the cancellation letter. The filing of an appeal shall not change the effective date of cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the lease.
- D. If the Tribe decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period as specified in the extension.

Section 5.5 Penalties. The lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The lease shall identify additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Tribe, and the failure to pay such amount shall be treated as a breach of the lease.

Section 5.6 Harmful or Threatening Activities. Lessee must comply with all applicable laws, ordinances, rules, and regulations. If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes illegal activity thereon, the Tribe may take appropriate emergency action.

Section 5.7 Holdover. If a Lessee remains in possession after the expiration or cancellation of a lease, the Tribe shall treat such occupation as a trespass. The Tribe shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, the Tribe may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

Section 5.8 Trespass. If a person occupies the premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including the filing of a trespass action to regain possession under Tribal law.

CHAPTER SIX APPEALS

Section 6.1 Appeals. Unless an alternative appeals process is provided in the Lease, the Lessee or interested party may appeal a determination of the Tribe, within ten (10) days of the date of the determination. Appeals may be filed with the Executive Committee. Such appeals shall be effectuated by a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought. The appeal shall be considered filed on the date of received by the Executive Committee.

Section 6.2 Scope of Review. The Executive Committee or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with this Ordinance. The decision of the Executive Committee or other hearing body shall be final and not subject to further appeal.

CHAPTER SEVEN ENVIRONMENTAL REVIEW PROCESS

Section 7.1 Generally. Unless exempt under this Chapter, the Tribe shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to this Chapter and applicable law. Leases approved and executed without compliance with this Chapter shall be null and void.

Section 7.2 Threshold Determination.

- A. Lease Not Subject to Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision would not impact, alter, or otherwise have a Significant Effect on the Environment, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental law and regulations.
- B. Lease Subject to Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Effect on the Environment, the Lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resource, remains, or items shall immediately cease and the Lessee will contact the Tribe to determine how to proceed and appropriate disposition.
- C. Statutory Exemption for Certain Leases. Leasing decisions involving a Business Site Lease proposing the use of premises that are the subject of a completed National Environmental Policy Act (“NEPA”) process under federal law shall be exempt from the Environmental Review Process, and the Tribe shall not be required to prepare a TEIR under Section 7.4 of this Chapter.

Section 7.3 Action on Leasing Decision Subject to Completion of Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Tribe may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with this Ordinance.

Section 7.4 Environmental Review Process.

- A. Unless an exemption applies, then, before the approval of any Business Site Lease, the Tribe shall cause to be prepared a comprehensive and adequate tribal environmental impact report ("TEIR"), analyzing the potentially Significant Effect(s) on the Environment of the Business Site Lease; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:
- (i) a description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the commencement of the TEIR process;
 - (ii) all Significant Effects on the Environment of the proposed Lease;
 - (iii) in a separate section:
 - (1) any Significant Effect on the Environment that cannot be avoided if the Lease is executed;
 - (2) any Significant Effect on the Environment that would be irreversible if the Lease is executed; and,
 - (3) any mitigation measures proposed, recommended, or required in order to address any Significant Effect(s) on the Environment.
- B. In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

Section 7.5 Notice of Completion of Draft TEIR.

- A. Within no less than thirty (30) days following the completion of the draft TEIR, the Tribe shall post a Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:
- (i) a brief description of the Project;
 - (ii) the proposed location of the Project;
 - (iii) an address where copies of the draft TEIR are available; and
 - (iv) notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR.
- B. The Tribe will provide public notice by the procedures specified below:
- (i) publication of the Tribe's draft TEIR in a newspaper of general circulation in the area affected by the proposed Business Site Lease, with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the Project;
 - (ii) posting of the Tribe's draft TEIR in a publicly accessible area of the offices of the Tribe or with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the Project; or
 - (iii) posting on the Tribe's public website with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the Project.

Section 7.6 Response to Public Comments. After the thirty (30) day comment period has ended, the Tribe will review all comments received from the public. Prior to the approval and execution of the Business Site Lease, the Tribe will provide written responses to relevant and substantive public comments on any Significant Effect on the Environment arising as a result of the Project and proposed or recommended mitigation measures addressing any such impacts. Notice of availability of the Tribe's written responses will be provided to the public by the procedures specified in Section 7.5.B, above.

**CHAPTER EIGHT
SOVEREIGN IMMUNITY**

Section 8.1 Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees.

**CHAPTER NINE
EFFECTIVE DATE; AMENDMENT; SEVERABILITY**

Section 9.1 Effective Date. This Ordinance shall take effect upon its adoption by the General Council and approved by the Secretary of the Interior.

Section 9.2 Amendment. After its enactment by the General Council, whether before or after approval by the Secretary of the Interior, this Ordinance may be amended by a majority vote of the Executive Committee at a duly called Executive Committee meeting at which a quorum is present. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary of the Interior.

Section 9.3 Severability. If any provision of this Ordinance shall be held unconstitutional or invalid, only the invalid provision or language shall be severed, and the remaining provisions and language of this Ordinance shall remain in full force and effect.

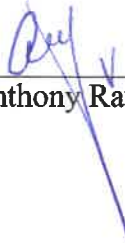
[CERTIFICATION PAGE FOLLOWS]

CERTIFICATION

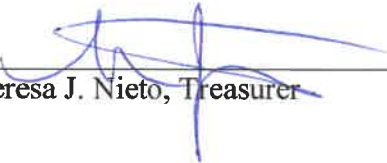
We, the undersigned duly elected members of the Executive Committee, do hereby certify that this foregoing Ordinance was adopted by a majority of the General Council by a vote of 47 in favor, 9 opposed, and 20 abstaining at a duly called meeting of the General Council call on this 10th day of July, 2019 We, the undersigned duly elected members of the Executive Committee, do hereby certify that the foregoing Ordinance was amended by a majority of the Executive Committee by a vote of 5 in favor, 0 opposed, and 0 abstaining at a duly called meeting of the Executive Committee on this 29th day of September, 2021



Robert H. Smith, Chairman



Anthony Ravago, Vice Chairman



Theresa J. Nieto, Treasurer



Theresa Villa, Secretary



Bradly Guachino, Committee Member



Sheila L. Smith, Committee Member

-Office of the Secretary-

