



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

APPROVAL OF

**TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA
BUSINESS SITE LEASING ORDINANCE**

The attached Business Site Leasing Ordinance, submitted by the Twenty-Nine Palms Band of Mission Indians of California, as listed in the Federal Register, 81 FR 5023 (Jan. 29, 2016), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 19 pages and adopted by the Twenty-Nine Palms Band of Mission Indians of California's Tribal Council on May 6, 2015, is hereby approved.

Dated: JUN 14 2016

Acting Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA
BUSINESS SITE LEASING ORDINANCE

1. INTRODUCTION

- 1.1. Authority and Delegation.** This Ordinance is enacted by the Tribal Council pursuant to the Twenty-Nine Palms Band of Mission Indians of California's ("Tribe") inherent powers as a sovereign, federally recognized Indian tribe, and the powers vested to it under Article 6, Sections a)1. and b) of the Tribe's Articles of Association, duly adopted and approved March 1, 1972, as amended November 20, 2012 and approved by the Bureau of Indian Affairs on November 20, 2012, as may be further amended from time to time ("the Articles"). Pursuant to the Articles, and consistent with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, 25 U.S.C. § 415, Public Law 112-151 (2012) (the "HEARTH Act"), the Tribal Council hereby expressly acknowledges its power and authority to lease any real property of the Tribe or lease of space within existing facilities on Tribal Trust Land that is not already leased (i.e., not subleases) in accordance with federal law and this Ordinance.
- 1.1. Scope.** The scope of application of this Ordinance shall be limited to all Business Site Leases approved pursuant to the HEARTH Act governing leases on Tribal Trust Lands, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases.
- 1.2. Purpose.** The purposes of this Ordinance are to:
- (a) Recognize the authority of the Tribe to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review pursuant to and in accordance with this Ordinance;
 - (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Twenty-Nine Palms Band of Mission Indians; and
 - (c) Implement the HEARTH Act and this Ordinance.
- 1.3. Short Title.** This Ordinance shall be known and cited as the "**Twenty-Nine Palms Business Site Leasing Ordinance.**"

2. DEFINITIONS

As used in this Ordinance, the capitalized terms set forth below shall have the following meanings:

- 2.1. **“Applicable Laws”** means all applicable Tribal and federal laws affecting Tribal Trust Lands and any Business Site Leases issued hereunder, including with particularity this Ordinance.
- 2.2. **“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.
- 2.3. **“Approving Authority”** means the Tribal Council, which possesses the regulatory authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, including without limitation, lease issuance, lease amendment, subleasing, lease assignment, and lease terminations. The Tribal Council has the sole regulatory authority to give final approval for all Business Site Leases and the authority to delegate some or all of its regulatory authority to tribal agencies on behalf of the Tribe, including without limitation the Corporation, final Lease approval authority excepted.
- 2.4. **“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.
- 2.5. **“BIA”** means the Bureau of Indian Affairs, United States Department of the Interior.
- 2.6. **“Business Site Lease”** or **“Lease”** means a written agreement between the Lessor and a Lessee whereby the Lessee is granted a right to possess that portion of Tribal Trust Land specified in the Business Site Lease for a specified purpose and duration. Such Leases shall in all cases be limited to business and commercial purposes only. 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.
- 2.7. **“Business Site Leasing Management Plans”** means those mechanisms developed and employed by the Approving Authority or its delegate for completing the additional planning, analysis, and decision-making that may be necessary for the issuance of Leases with respect to discrete areas identified in the master plan of the Tribe’s Tribal Trust Lands developed or to be developed for the Tribe, in all events not inconsistent with 25 CFR Part 162, and ensuring that such Leases meet any criteria developed and listed in such plans.

- 2.8. **“Change in Land Use”** means the change from residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.
- 2.9. **“Corporation”** means the Twenty-Nine Palms Economic Development Corporation, to which the Tribe has delegated authority to perform some or all of its regulatory authority to analyze, negotiate and recommend to the Tribal Council approval of Business Site Leases, and to manage all Business Site Leases, in accordance with an approved business site leasing management plan and this Ordinance.
- 2.10. **“Development Period”** means the time period from when a Lease is executed to when improvements are expected to be substantially completed.
- 2.11. **“Environmental Review Process”** means the process for conducting Tribal environmental review to assess the environmental impacts of a proposed development or project as defined under applicable Tribal law or regulations.
- 2.12. **“Environmental Reviewer”** means an official from the Tribal EPA or as otherwise designated by the Tribal Council.
- 2.13. **“Executing Official”** means the Tribal Chairman, or the President of the Corporation Board, if properly delegated in a Tribal Council resolution approving a Lease and delegating such authority, who shall execute all Business Site Leases on the Twenty-Nine Palms Reservation and take all necessary and proper action on Leases and Subleases, including amendments, assignments and cancellations of Leases and Subleases.
- 2.14. **“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; the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby:
- 2.14.1. Lessee and lessor are typically motivated;
 - 2.14.2. Both parties are well-informed or well-advised, and acting in what they consider their best interests;
 - 2.14.3. A reasonable time is allowed for exposure in the open market;
 - 2.14.4. 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; and
 - 2.14.5. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

Fair Annual Lease Value may take into consideration all revenues (such as taxes, fees and other benefits of value) that the Lease is likely to generate for the benefit of the Tribe, including increased business opportunities for related industries.

- 2.15. “Gross Receipts”** means the total amounts an organization received from all sources during its annual accounting period, without subtracting any costs or expenses.
- 2.16. “Holdover”** means circumstances in which a Lessee remains in possession of the leased premises after the lease term expires.
- 2.17. “Lease”** means a written agreement or contract between the Lessor and a Lessee made pursuant to this Ordinance, whereby the Lessee is granted a right to possess that portion of Tribal Trust Land specified in the Lease for a specified purpose and duration in return for a specified rent. 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.
- 2.18. “Leasehold Mortgage”** means a written instrument that pledges a Lessee’s leasehold interest in, and creates a lien on, the real property interest that is created under a Business Site Lease as security for the repayment of a specified debt or other obligation owed by the Lessee to a lender or other mortgagee.
- 2.19. “Leasing Decision”** means the following type of lease transactions that will be acted upon by the Approving Authority: lease issuance, lease amendment, subleasing, lease assignment, and tenant leases.
- 2.20. “Lessee”** means a person or entity to whom a Lease is granted; one who is given the legal right to possess, use and occupy a portion of Tribal Trust Land under a Lease.
- 2.21. “Lessor”** means the Tribe, which holds beneficial title in and to Tribal Trust Land and conveys the right to possess, use and occupy a portion of Tribal Trust Land under a Lease.
- 2.22. “LTRO”** means the Land Titles and Records Office of the BIA.
- 2.23. “Project”** means any economic development activity occurring on Tribal Trust Lands.
- 2.24. “Public”** means the adult members of the Tribe.
- 2.25. “Restoration and Reclamation Plan”** means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for a leased site, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
- 2.26. “Significant Effect on the Environment”** means a substantial, or potentially 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.
- 2.27. “Space Lease”** means a Lease of space within improvements on Tribal Trust Land that is not otherwise subject to a Lease (i.e., not a Sublease).

2.28. "Sublease" means a written agreement by which a Lessee grants to an individual or entity a right to possession in and to leased premises that is no greater than that held by the Lessee under a Lease.

2.29. "Tribe" means the Twenty-Nine Palms Band of Mission Indians of California.

2.30. "Tribal Council" means the duly elected governing body of the Tribe in accordance with its Articles of Association.

2.31. "Tribal EPA" means the Tribe's Environmental Protection Agency.

2.32. "Tribal Trust Land" means lands held in trust by the United States for the benefit of the Tribe.

3. BUSINESS SITE LEASE REQUIREMENTS

3.1. Terms and Conditions

Leases shall be governed by the terms and conditions set forth in the Business Site Lease or equivalent document. The standard terms and conditions may be modified only with the approval of the Approving Authority. The Lessee is responsible for understanding these terms and conditions.

3.2. Duration and Renewal

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 exceed 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. The Lessee shall notify the Corporation in writing of its intent to renew at least one year before the Lease is due to expire.

3.3. Information

Information on obtaining Business Site Leases shall be available from the Tribal CFO's office located in Tribal headquarters.

3.4. Supporting Documents

All applicants for Business Site Leases shall submit the following documents to the Approving Authority:

3.4.1. Financial Statements;

3.4.2. Site survey and legal description, if applicable;

3.4.3. Tribal environmental review where required; and

3.4.4. Other documents as may be required by the Approving Authority and pursuant to the Approving Authority's business site leasing procedures.

3.5. Minimum Provisions

All Business Site Leases shall contain, at a minimum, the following provisions:

- 3.5.1. The tract, location, or parcel of the land being leased, in sufficient detail to meet recording requirements for the LTRO;
- 3.5.2. The purpose of the Lease and authorized uses of the leased premises;
- 3.5.3. The parties to the Lease;
- 3.5.4. The effective date and term of the Lease;
- 3.5.5. Identification of the responsible party for constructing, owning, operating, maintaining and removing any improvements of the leased premises;
- 3.5.6. Indemnification of the United States and Lessor;
- 3.5.7. Payment requirements, including payee, due date, and amount due; late payments, interest amounts, and dates after which applied; and acceptable forms of payment;
- 3.5.8. Due diligence, insurance and bonding requirements as provided in this Ordinance; and
- 3.5.9. If the leased premises are within an Indian irrigation project or drainage district, the Lease must state the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the Lessee must pay all operation and maintenance charges that accrue during the lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."

3.6. Records

The Corporation shall provide a copy of all Business Site Leases, Subleases, assignments, amendments, Leasehold Mortgages, renewals, and cancellations to:

Superintendent
Southern California Agency [or the BIA office having jurisdiction over the Tribe's leasing activities]
Bureau of Indian Affairs
1451 Research Park Drive, Suite 100
Riverside, CA 92507

for encoding into the Trust Asset and Accounting Management System and subsequent recording into the Land Title and Records Office.

- 3.6.1. The Corporation is responsible for maintaining a copy of all recorded Business Site Leases, Subleases, assignments, amendments, Leasehold Mortgages, renewals, and cancellations, and for disseminating copies of same to the Tribal Council Secretary, the Tribal EPA, and if applicable, the Tribal Housing Department.

3.7. Ownership of Records

Records of activities taken pursuant to this Ordinance are the property of the Tribe and its subordinate governmental entities. Records compiled, developed, or received by the Approving Authority in the course of business with the Secretary are the property of the Tribe.

3.8. Tribal Preference

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.

3.9. Space Leases

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

3.10. Land Descriptions

Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems in sufficient detail to meet recording requirements for the LTRO.

3.11. Appraisal; Local Studies

- 3.11.1. The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by or at the direction of the Approving Authority utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease date of comparable sites or by similar methodology as determined by the Approving Authority in its sole discretion and deemed to be in the Best Interest of the Tribe. An appraisal log reporting the methods of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.
- 3.11.2. 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* and one of the commonly accepted methods of appraisal, as

determined by the Approving Authority in its sole discretion and deemed to be in the Best Interest of the Tribe. An appraisal log reporting the methods of appraisal and value of Tribal Trust Land shall be attached to every Business Site Lease.

3.12. Fair Annual Lease Value

3.12.1. No Lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:

- a. The Lease is in the Development Period;
- b. The Approving Authority is providing an incentive for business to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, or lease abatements to attract such businesses; or
- c. The Approving Authority determines such action is in the Best Interest of the Tribe.

3.12.2. A Lease may be structured at a flat lease rate.

3.12.3. A Lease may be structured at a flat lease rate plus a percentage of Gross Receipts, if the Lessee is a business located in a shopping center or mall, or the Lessee generates over \$1,000,000 in gross receipts.

3.12.4. A Lease may be structured based on a percentage of gross receipts, or based on a market indicator.

3.12.5. A Lease must specify the dates on which all payments are due.

3.12.6. A Lease must specify that the Lessee shall make payments directly to the Approving Authority.

3.12.7. Unless otherwise provided in the Lease, payments may not be made or accepted more than one year in advance of the due date.

3.12.8. 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 Lease or the contribution value of such improvements.

3.12.9. 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.

3.12.10. The Approving Authority 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.

3.13. Environmental Review Process

Unless exempted from this requirement under this Ordinance, the Approving Authority shall not approve a Business Site Lease until the proposed business site Lessee has completed the Environmental Review Process under Chapter 7 of this Ordinance. Leases approved and executed without complying with this Section shall be null and void.

3.14. Performance Bond

3.14.1. Subject to paragraph 3.14.2 of this Section 3.14, the Lessee shall obtain a performance bond, satisfactory to the Approving Authority, in an amount sufficient to secure the contractual obligations of the Lease and guarantee the following:

- a. The annual lease payment;
- b. The estimated development cost of improvements to the leased premises; and
- c. Any additional amount necessary to ensure compliance with the Lease.

3.14.2. The Approving Authority may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Approving Authority shall maintain written records of waivers and reductions.

3.14.3. The performance bond may be in one of the following forms:

- a. Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- b. Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- c. Negotiable Treasury securities; or
- d. Surety bonds issued by a company approved by the U.S. Department of the Treasury.

3.14.4. The Approving Authority may accept an alternative form of security that provides adequate protection for the Tribe, including without limitation an escrow agreement and assigned savings account.

3.15. Insurance

3.15.1. Subject to paragraph 3.15.2 of this Section 3.15, 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:

- a. Protect the interests of the Lessor and the United States, and be in amounts sufficient to protect all insurable improvements on the leased premises;
- b. Include, without limitation, property, liability and casualty insurance, including, personal injury or death, business interruption coverage when required by the Approving Authority, and such other insurance as specified in the Business Site Lease; and
- c. Expressly identify the Lessor and the United States as additional insureds.

3.15.2. The Approving Authority may waive the requirement for insurance if such waiver is determined to be in the Best Interest of the Tribe. The waiver may be revoked at any time if it is later determined to no longer be in the Best Interest of the Tribe.

3.16. Improvements

3.16.1. Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease, may construct improvements under a Business Site Lease under the following circumstances:

- a. All Business Site Leases shall specify, or provide 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 the improvements.
- b. All Business Site Leases shall require the Lessee to exercise diligence and use its best efforts in prosecuting the work to completion of any improvements within the schedule specified in the Business Site Lease.
- c. Lessee shall provide the Approving Authority written justification as to the nature of any delay, the anticipated(s) date of construction of the improvements, and evidence of progress toward completion of construction.
- d. When requested by the Approving Authority or otherwise required in the Business Site Lease, Lessee shall further provide the Approving Authority, in writing, an updated schedule of construction.

- e. Failure of Lessee to comply with these requirements will be deemed a breach of the Business Site Lease and may lead to termination of the Lease pursuant to Chapter 5 of this Ordinance.
 - f. All Business Site Leases shall require the Lessee to furnish and comply with a Restoration and Reclamation Plan to be implemented at the expiration or termination of the Lease term.
- 3.16.2. Improvements to the premises shall become the property of the Approving Authority unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease may specify the maximum time allowed for such removal.
- 3.16.3. A Lessee may develop equity value in the improvements and sell its interest in the Business Site Lease base on the equity value. The Approving Authority has a right of first refusal to purchase such interest.
- 3.16.4. The Business Site Lease may provide that at the time of expiration, cancellation or termination of the Lease, the Lessor shall purchase improvements to the premises at the fair market value at such time.
- 3.16.5. Improvements may be subject to taxation by the Tribe.

3.17. Subleases, Assignments, Amendments and Leasehold Mortgages

- 3.17.1. Subleases, assignments, amendments and leasehold mortgages of any Business Site Lease that does not authorize by its terms any such subleases, assignments, amendments and leasehold mortgages shall be by written consent of the Approving Authority and Lessee, unless otherwise provided in Section 3.17.2 hereof.
- 3.17.2. Business Site Leases may authorize by its terms subleases and assignments, in whole or in part, without approval from the Approving Authority and execution from the Executing Official, provided that a copy of the executed sublease or assignment is provided to the Approving Authority within 30 days after execution and the following conditions, where applicable, have been stated in the Business Site Lease and are met:
- a. There is no event of default under the Business Site Lease or violation of this Ordinance;
 - b. Any restrictions and use limitations respecting the use of the leased premises shall continue to apply to any sublessee or assignee;
 - c. The proposed sublessee or assignee submits a current financial statement showing financial adequacy;

- d. The assignee agrees in writing to assume all of the obligations and conditions of the Lease; and
- e. The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease, provided that this requirement may be waived with respect to assignments whenever the Approving Authority determines such waiver to be in the best interest of the Tribe.

Nothing in this Section 3.17.2 shall relieve the parties from carrying out their respective obligations under the Business Site Lease, which may contain additional restrictions and conditions.

3.17.3. The Lease may authorize Leasehold Mortgages of the leasehold interest for the purpose of financing the development and improvement of the leased premises, subject to written approval by the Approving Authority.

3.17.4. If a sale or foreclosure of the Lessee's business or assets occurs and the leasehold mortgagor is also the purchaser, the leasehold mortgagor may assign the Lease without approval of the Approving Authority or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the leasehold mortgagor, approval by the Approving Authority and execution by the Executing Official is required, provided that the purchaser must in all events agree in writing to be bound by all the terms and conditions of the Lease.

4. BUSINESS LEASE MANAGEMENT

4.1. Management

4.1.1. Except where required otherwise by agreement or applicable law, the Corporation shall manage all Business Site Leases pursuant to these regulations.

4.1.2. The Corporation may institute a business site leasing management plan or policy that employs real estate management practices and addresses accounting, collections, monitoring, enforcement, relief and remedies.

4.2. Accounting

4.2.1. The Corporation shall implement an accounting system that generates invoices in advance of the due dates, accounts for payments, and establishes dates for when rate adjustments should be made.

4.2.2. The accounting system shall include the following information: name of Lessee, Business Site Lease number, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments and cumulative balance due.

4.2.3. The Corporation shall provide an annual accounting to the Tribal Council.

4.3. Administrative Fees

The Corporation may charge administrative fees for costs associated with issuing a Lease, sublease, assignment, amendment, leasehold mortgage or other administrative transactions.

5. ENFORCEMENT

5.1. General

The Corporation shall have all powers necessary and proper to enforce on behalf of the Tribe the lease terms, applicable laws, ordinances, regulations, rules, policies, and covenants consistent with the business site leasing management plans, including the power to enter the leased premises at any time in the case of emergency and otherwise at reasonable time after reasonable notice for the purpose of inspecting the condition of the premises and for verifying compliance by the Lessee with the Lease, and to assess penalties and late payments.

5.2. Defaults

5.2.1. If the Corporation determines the Lessee is in default, the Corporation shall send the Lessee, with a copy to the Tribal Council, a notice of default within five business days of such determination. The notice of default may be provided by certified mail, return receipt requested.

5.2.2. Within 10 days after the mailing of a notice of default, the Lessee shall:

- a. Cure the default and notify the Corporation in writing that the default has been cured;
- b. Dispute the Corporation's determination that the Lease is in default and explain why the Lease should not be canceled; or
- c. Request additional time to cure the default.

5.3. Remedies

5.3.1. If the Lessee fails to cure a default within the prescribed period, the Corporation may:

- a. Cancel the Lease pursuant to these regulations;
- b. Grant an extension of time to cure the default;
- c. Pursue other remedies, including execution on bonds or collection of insurance proceeds;

- d. Any combination of remedies listed above; or
- e. Any other remedy set forth in the business site leasing management plan or policy.

5.3.2. If the Corporation cancels a Business Site Lease, the Corporation shall send the Lessee, with a copy to the Tribal Council, a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:

- a. Explain the grounds for cancellation;
- b. Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Lease;
- c. Notify the Lessee of its right to appeal; and
- d. Order the Lessee to vacate the premises within 30 days after mailing of the receipt of the cancellation letter, if an appeal is not filed by that time.

5.3.3. A cancellation shall become effective 31 days after mailing of a cancellation letter. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.

5.3.4. If the Corporation 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.

5.4. 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 Corporation, and the failure to pay such amount shall be treated as a breach of the Lease.

5.5. Harmful or Threatening Activities

If a Lessee or other party causes or threatens to cause immediate and significant harm to the leased premises, or undertakes criminal activity thereon, the Corporation may take appropriate emergency action, including securing judicial relief.

5.6. Holdover

If a Lessee remains in possession of the leased premises after the expiration or cancellation of a Lease, the Corporation shall treat such occupation as a trespass. The Corporation shall take action to recover possession and pursue additional remedies. Filing of any action shall be made pursuant to Tribal laws.

5.7. Trespass

If a person occupies the leased premises without the Corporation's approval, the Corporation may pursue appropriate remedies, including the filing of a trespass action under Tribal laws to regain possession.

6. APPEALS

6.1. Appeals

Within 10 days after an adverse determination is made by the Corporation, the Lessee or interested party may appeal such determination. An appeal may be brought by filing the following information with the Tribal Council or other hearing body as set forth in the business site leasing management plan or policy: 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.

6.2. Appeal Bond

If a stay of enforcement is sought, an appeal bond must be posted in an amount sufficient to protect the party whose remedy has been stayed from all financial losses that may occur as a result of the appeal. Appeal bond requirements shall not be separately appealed, but may be contested during the cancellation appeal.

6.3. Scope of Review

The Tribal Council 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 the law. The decision of the Tribal Council or other hearing body shall be final.

7. ENVIRONMENTAL REVIEW PROCESS

7.1. General

Unless exempt under this Chapter, the Approving Authority 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 Tribal regulations. Leases approved and executed without compliance with this Chapter shall be null and void.

7.2. Threshold Determination

1. Lessee Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not have a Significant Effect on the Environment, the Leasing Decision is exempt from additional requirement of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.
2. Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to: (i) impact, (ii) alter, (iii) disturb, or (iv) otherwise cause physical disturbances to the biological or natural resources of the Tribe, 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.

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 Approving Authority may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal environmental regulations.

7.4. Environmental Review Process

7.4.1. Unless an exemption applies under this Ordinance, then, before the execution of any Business Site Lease, the Approving Authority 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 proposed action; provided that information or data that 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 that the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

- a. 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 time the notice of preparation is issued;
- b. All Significant Effects on the Environment of the proposed Lease;

c. In a separate section:

- i. Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;
- ii. Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and
- iii. Any mitigation measures proposed, recommended, or required.

7.4.2. In addition to the information required pursuant to Section 7.4.1 of this Chapter 7, 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.

7.5. Notice of Completion of Draft TEIR

7.5.1. Within not less than 30 days following the completion of the draft TEIR, the Approving Authority shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Approving Authority shall also post the Notice of Completion and a copy of the draft TEIR on its website. The Notice of Completion shall include all of the following information:

- a. A brief description of the Project;
- b. The proposed location of the Project;
- c. An address where copies of the draft TEIR are available; and
- d. Notice of a period of 30 days during which the Approving Authority will receive comments on the draft TEIR.

7.5.2. To satisfy the requirement for public notice and opportunity to comment under the HEARTH Act, the Approving Authority will provide public notice by at least one of the procedures specified below:

- a. Publication of the Approving Authority'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 Effects on the Environment arising as a result of the proposed Project, and proposed or recommended mitigation measures addressing any such impacts; or
- b. Posting of the Tribe's draft TEIR in the offices of the Tribe and the Approving Authority with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

7.6. Response to Public Comments; Conclusion of Environmental Review Process

- a. After the 30-day comment period has ended, the Approving Authority will review all comments received from the public. Prior to the approval and execution of the Lease, the Approving Authority will provide responses to relevant and substantive public comments on any Significant Effect on the Environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing any such impacts, which responses will be posted in the offices of the Tribe with notice to the public.
- b. Upon review of the Significant Effects on the Environment by the Approving Authority, publication of the draft TEIR, acceptance of the public comment, and consideration of the proposed or recommended mitigation measures addressing any identified impacts, the Environmental Review Process concludes and the Approving Authority may approve or disapprove of the proposed Lease, subject to appeal as provided in this Ordinance.

8. MISCELLANEOUS PROVISIONS

8.1. Severability

The provisions of this Ordinance are severable. Should any section or provision of this Ordinance be declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such determination shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the specific part declared to be unconstitutional or invalid.

8.2. Effective Date

- 8.2.1. Effective upon Enactment of Tribal Council. This Ordinance shall be effective upon enactment by the Tribal Council and approval of the Secretary of the Interior.
- 8.2.2. Amendments. This Ordinance may be amended by a majority vote of the Tribal Council at a duly called Tribal Council 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.

8.3. Approval

The Tribe may issue a Business Site Lease, which is subject to approval from the Approving Authority and execution by the Executing Official, so long as the Lease complies with these regulations, and is in the Best Interest of the Tribe.

8.4. Sovereign Immunity Preserved

Nothing in this Ordinance shall be deemed as a waiver of the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents, or employees authorizing suit against any of them in any court, nor shall it be deemed as authorizing a suit for damages against the Tribe or any of its enterprises, authorities, officers, agents, or employees in any action arising under this Ordinance, unless the Twenty-Nine Palms Band Tribal Council by specific, express, and unequivocal action should authorize such an action for damages.

CERTIFICATION

The undersigned, Chairman and Secretary of the Twenty-Nine Palms Band of Mission Indians, do hereby certify that the foregoing Ordinance was passed and adopted by the Tribal Council at a duly called meeting at which a quorum was present by a vote of 4 "for" and 0 "opposed" and 1 "abstaining" on May 6, 2015, and has not been rescinded or amended in any way.



Darrell Mike, Chairman



Michelle Mike, Secretary