



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


APPROVAL OF

**CHEMEHUEVI INDIAN TRIBE OF THE
CHEMEHUEVI RESERVATION, CALIFORNIA**

BUSINESS SITE LEASING ORDINANCE

The attached Business Site Leasing Ordinance, submitted by the Chemehuevi Indian Tribe (listed in the Federal Register, 81 FR 26827 (May 4, 2016) as the Chemehuevi Indian Tribe of the Chemehuevi Reservation, California), 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 Chemehuevi Tribal Council on May 21, 2016, is hereby approved.

Dated: OCT 07 2016


Principal Deputy Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

ORDINANCE NO. 14 – 01-16-01

AN ORDINANCE OF THE TRIBAL COUNCIL OF THE CHEMEHUEVI INDIAN TRIBE ESTABLISHING LEASING STANDARDS AND PROCEDURES.

The Tribal Council of the Chemehuevi Indian Tribe ("Tribe") hereby ordains as follows:

Section 1. Findings and Declarations. The Tribal Council of the Tribe finds and declares that:

1. The Tribe is a federally recognized Indian Tribe organized under the provisions of the Indian Reorganization Act, 25 U.S.C. § 476, under a written constitution ("Constitution") which has been approved by the Secretary of the Interior and that establishes the Tribal Council as the governing body of the Tribe.
2. Pursuant to Article VI, Section 2(b) of the Constitution, the Tribal Council is vested with the authority to promote the general welfare of the members of the Tribe.
3. Pursuant to Article VI, Section 2(d) of the Constitution, the Tribal Council is vested with the authority to enact ordinances on any subjects as the activity of the Tribe may require.
4. Pursuant to Article VI, Section 2(f) of the Constitution, the Tribal Council is vested with the authority to manage tribal lands, which includes, but is not limited to, the power to lease tribal lands or property.
5. Pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act") amendments to the federal leasing statute for Restricted Indian Lands, 25 U.S.C. § 415, the Tribe may assume the power to directly approve, monitor, and enforce leases of Chemehuevi Lands in accordance with its own ordinances, provided that such ordinances are approved by the Secretary of the Interior.
6. The Tribal Council has determined that the adoption of the Tribe's own Leasing Ordinance, and obtaining the approval of the Secretary of the Interior of such Leasing Ordinance, will serve and promote the Tribe's interests of sovereignty, self-determination, and economic development.
7. Approval of the Leasing Ordinance, in itself, shall not prevent or otherwise impair the Tribe's right to negotiate, enter into, or renew contracts under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450f et seq., as amended ("ISDEAA"), pursuant to which the Tribe receives monies to plan, conduct, and administer Indian programs, services, and activities. Nor shall approval of the Leasing Ordinance, in itself, act to reduce or otherwise diminish the Tribe's right to monies available to the Tribe under the ISDEAA.

Section 2. Adoption of New Title 22 of the Chemehuevi Tribal Code Entitled “Leasing Ordinance.” A new title, Title 22 entitled “Leasing Ordinance”, is hereby added to the Chemehuevi Indian Tribe Tribal Code and shall provide as follows:

TITLE 22 – LEASING ORDINANCE

CHAPTER 1

BUSINESS SITE LEASING

Sections:

Introduction

- Section 22.01.01.010 Authority and Delegation
- Section 22.01.01.020 Scope
- Section 22.01.01.030 Purpose
- Section 22.01.01.040 Short Title

Definitions

- Section 22.01.01.050 Definitions

Business Site Lease Requirements

- Section 22.01.01.060 Terms and Conditions
- Section 22.01.01.070 Duration and Renewal
- Section 22.01.01.080 Obtaining a Business Site Lease
- Section 22.01.01.090 Space Leases
- Section 22.01.01.100 Land Descriptions
- Section 22.01.01.120 Appraisal; Local Studies
- Section 22.01.01.130 Fair Annual Lease Value
- Section 22.01.01.140 Environmental Review Process
- Section 22.01.01.150 Insurance
- Section 22.01.01.160 Performance Bond
- Section 22.01.01.170 Improvements
- Section 22.01.01.180 Subleases, Assignments, Amendments, and Mortgages.

Business Lease Management

- Section 22.01.01.190 Management
- Section 22.01.01.200 Administrative Fees

Enforcement

- Section 22.01.01.210 Generally
- Section 22.01.01.220 Defaults
- Section 22.01.01.230 Remedies
- Section 22.01.01.240 Penalties
- Section 22.01.01.250 Harmful or Threatening Activities
- Section 22.01.01.260 Holdover
- Section 22.01.01.270 Trespass

Appeals

- Section 22.01.01.280 Appeals
- Section 22.01.01.290 Scope of Review

Environmental Review Process

- Section 22.01.01.300 Generally
- Section 22.01.01.310 Threshold Determination
- Section 22.01.01.320 Action on Leasing Decision Subject to Completion of Environmental Review Process
- Section 22.01.01.330 Environmental Review Process
- Section 22.01.01.340 Notice of Completion of Draft TEIR
- Section 22.01.01.350 Response to Public Comments

Sovereign Immunity

- Section 22.01.01.360 Sovereign Immunity

Effective Date; Amendment

- Section 22.01.01.370 Effective Date
- Section 22.01.01.380 Amendment

INTRODUCTION

Section 22.01.01.010 Authority and Delegation. This Ordinance is enacted by the Tribal Council pursuant to the powers vested to it under Article VI, Sections 2(d) and 2(f) of the Constitution of Chemehuevi Indian Tribe, adopted January 9, 1993, as may be amended from time to time (the "Constitution"). Pursuant to Article VI, Section 4 of the Constitution, the Tribal Council hereby expressly authorizes and delegates to the Chemehuevi Indian Tribe Realty

Department (the “Department”) the power and authority to lease any real property of the Chemehuevi Indian Tribe of space within facilities on Tribal Trust Land that is not already leased (i.e., not subleases) in accordance with federal law, tribal law, and this Ordinance.

Section 22.01.01.020 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 Land, and to all actions and decisions taken in connection with those leases. As a leasing alternative, if the Tribe desires those services offered by the Bureau of Indian Affairs in conjunction with leasing under 25 C.F.R Part 162, it retains the option to submit an individual lease to the Bureau of Indian Affairs for review and Secretarial approval under Part 162. Leases submitted under Part 162 will be subject to all of Part 162’s terms, conditions, and processes, as implemented by the Bureau of Indian Affairs, and will not be considered a lease governed by this Ordinance. Nothing herein shall be construed to affect the terms and conditions of existing leases.

Section 22.01.01.030 Purpose. The purposes of this Ordinance are to:

- (a) Recognize the authority of the Chemehuevi Indian Tribe, by and through the Department, 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 lands of the Chemehuevi Indian Tribe; and
- (c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012), and this Statute.

Section 22.01.01.040 Short Title. This Ordinance shall be known and cited as the “Business Site Leasing Ordinance.”

DEFINITIONS

Section 22.01.01.050 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 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, to provide incentives to increase economic development, to preserve and enhance the value of Tribal Trust Land, to increase employment and jobs on the Tribal Trust Land, and to 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 a Lease that can be a lease of undeveloped land (ground lease) or land with permanent improvements thereon for uses including, but not limited to, commercial residential development, hotel, retail, office, manufacturing, storage, commercial, industrial biomass, waste-to-energy, or other business purposes and religious, education, cultural or other public purposes. A Business Site Lease may authorize the construction of a single-purpose or mixed-use project designed for the use by any number of lessees or occupants.
- (e) “*Business Site Lease Management Plan or Policy*” means that plan or policy adopted by the Tribal Council and carried out by the Department, consistent with this Ordinance, that employs real estate management practices, addresses accounting, collections, enforcement, relief and remedies.
- (f) “Cancellation” or “Cancel” means the termination of a lease in accordance with the procedure established by these regulations in Section 22.01.01.230.
- (g) “Department” means the Chemehuevi Indian Tribe Realty Department, which is the governmental entity, or its designee, overseen by the Vice Chairman of the Tribe, that has the statutory authority to perform the day-to-day duties and responsibilities of the Lessor on behalf of the Tribe. The Department shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants consistent with the Business Site Leasing Management Plan or Policy.
- (h) “*Development Period*” means the time period from when a lease is executed to when improvements are expected to be substantially completed.
- (i) “*Environmental Review Process*” means the process for conducting tribal environmental review to assess whether a proposed development or project as defined under applicable Tribal law, this Ordinance or other regulations will have a significant effect on the environment.
- (j) “*Environmental Reviewer*” means an official from the Tribe’s Environmental Department or as otherwise designated by the Tribal Council.
- (k) “*Executing Official*” means the Vice Chairman of the Tribe who shall execute, on behalf of the Tribe and with the authorization of the Tribal Council, all Business Site Leases of the Tribe.
- (l) “*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:

- (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;
 - (iii) A reasonable time is allowed for exposure in the open market;
 - (iv) 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 the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.
- (m) “*Gross Receipts*” means the total amounts an organization received from all sources during its accounting period, subtracting any costs or expenses. A statement of Gross Receipts must be certified by an accountant using generally accepted accounting principles (GAAP).
- (n) “*Holdover*” means circumstances in which a Lessee remains in possession of the leased premises after the lease term expires or is terminated and/or cancelled.
- (o) “*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.
- (p) “*Leasing Decision*” in the context of the Environmental Review Process means the following type of lease transactions that will be acted on by the Department: lease issuance, lease amendment, subleasing, or lease assignment.
- (q) “*Lessee*” means a person or entity who has acquired a legal right to use and occupy the Tribal Trust Land by a lease pursuant to this Ordinance.
- (r) “*Lessor*” means the Department, on behalf of the Tribe, who holds property title and conveys the right to use and occupy the property under a lease agreement.

- (s) “LTRO” means the Land Titles and Records Office of the Bureau of Indian Affairs, Department of the Interior.
- (t) “Mortgage” means a 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.
- (u) “Mortgagee” means the holder of a Mortgage.
- (v) “Plan for Restoration and Reclamation” means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.
- (w) “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.
- (x) “Space Lease” means a lease of space within facilities on Tribal Trust Land that is not already leased, but not including subleases.
- (y) “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.
- (z) “Tribe” means the Chemehuevi Indian Tribe.
- (aa) “Tribal Council” means the duly elected governing body of the Tribe pursuant to the Constitution. The Tribal Council has the statutory authority to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment, subleasing, lease assignment or transfer, tenant leases and lease terminations. The Tribal Council has the statutory authority to give final approval for all Business Site Leases and has authority to delegate some or all of its statutory authority to tribal agencies on behalf of the Tribe.
- (bb) “Tribal Trust Land” means all lands of the Tribe within the limits of the Tribe’s Reservation or land over which the Tribe exercises governmental power and that is held in trust by the United States for the benefit of the Tribe.

BUSINESS SITE LEASE REQUIREMENTS

Section 22.01.01.060 Terms and Conditions. Leases shall be governed by the particular terms and conditions set forth in the Business Site Lease agreement and any attachments thereto.

The terms and conditions may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding these terms and conditions. The Tribal Council approves the Lease and authorizes the Vice Chairman to execute the Lease and the Department oversees implementation of the Lease according to its terms and Tribal law.

Section 22.01.01.070 Duration and Renewal. No lease shall be approved more than 12 months prior to the commencement of the term of the Business Site Lease, unless the Tribal Council makes a finding that it would be in the Best Interest of the Tribe to negotiate a period that exceeds 12 months. 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. The Lessee shall notify the Department of the intent to renew at least one year before such lease is due to expire.

Section 22.01.01.080 Obtaining a Business Site Lease. Information on obtaining a Business Site Lease shall be available from the Department.

- (a) All applicants for a Business Site Lease shall submit the following documents to the Department:
 - (i) Financial statement;
 - (ii) Site survey and legal description, if applicable;
 - (iii) Tribal environmental review, where required; and
 - (v) Other documents as may be required by the Department and pursuant to the Department's Business Site Leasing Management Plan or Policy.
- (b) All Business Site Leases shall contain, at a minimum, the following provisions:
 - (i) The tract, location, or parcel of the land being leased;
 - (ii) The purpose of the lease and authorized uses of the leased premises;
 - (iii) The parties to the lease;
 - (iv) Effective date of lease;
 - (v) The term of the lease;
 - (vi) The dates upon which all payments are due;
 - (vii) Specification that the Lessee shall make payments directly to the Department;

- (viii) Identification of the responsible party for constructing, owning, operating, and maintaining, managing, and removing any permanent improvements to the leased premises, if applicable;
 - (ix) Indemnification of United States and Lessor;
 - (x) Payment requirements, including rent, fees for late payments, interest and/or other penalties – the form of which must be acceptable to the Tribe and be made by cash, money order, personal check, certified check or cashier's check;
 - (xi) Due diligence, insurance, and bonding requirements as provided in this Section;
 - (xii) 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 C.F.R. 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"*; and
 - (xiii) A process for restoring property (restoration and/or reclamation) at the end of a lease (which may include removal of improvements).
- (c) The Department shall submit all Business Site Leases and accompanying documents to the Tribal Council for its approval or disapproval. If approved by the Tribal Council, the Tribal Council shall, by resolution, authorize the Vice Chairman, i.e., the Executing Official, to execute the approved Business Site Lease(s) on behalf of the Tribe.
 - (d) The Department shall record Business Site Leases, subleases, assignments, amendments, mortgages, renewals, and cancellations with:
 - (i) The LTRO having jurisdiction over the Tribe's Tribal Trust Land.
 - (ii) The Department is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Tribal Council Secretary, the Tribal Environmental Department, and if required by the Tribal Council, to the Housing Department.
 - (iii) The Department shall send a copy of these leases and all amendments and renewals, for information purposes only, to the Superintendent, Colorado River Agency, Bureau of Indian Affairs, 12124 First Avenue, Parker,

Arizona 85344, or other Bureau of Indian Affairs office having jurisdiction of the Tribe's leasing activities.

- (iv) The Department shall send a copy of this Ordinance and any lease that allows for lease payments directly to the Tribe to the Superintendent, Colorado River Agency, Bureau of Indian Affairs, 12124 First Avenue, Parker, Arizona 85344, or other Bureau of Indian Affairs office having jurisdiction of the Tribe's leasing activities.
- (e) Records of activities taken pursuant to this Ordinance are the property of the Department and the Tribe. Records compiled, developed, or received by the Secretary 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.
- (g) Leases approved under this Ordinance are subject to tribal law, including but not limited to the Tribe's Uniform Building Code, Zoning Ordinance, and Subdivision Ordinance.

Section 22.01.01.090 Space Leases. To the extent these leases require approval pursuant to federal laws and policies, space leases shall be reviewed and approved pursuant to this Ordinance.

Section 22.01.01.100 Land Descriptions. Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems. 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 22.01.01.120 Appraisal; Local Studies

- (a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Department 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 Department and deemed to be in the best interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Site Lease.
- (b) 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 trust and shall be attached to every

Business Site Lease.

Section 22.01.01.130 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 Department is providing an incentive for business to locate on Tribal Trust Lands, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
 - (iii) The Department 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, if the Lessee is a business located in a shopping center or mall, or the lessee generates over \$1,000,000.00 annually in Gross Receipts.
- (d) A lease may be structured based on a percentage of Gross Receipts, or based on a market indicator, as determined by the Tribal Council.
- (e) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.
- (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 Department 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.

Section 22.01.01.140 Environmental Review Process. Unless exempted from this requirement under this Ordinance, the Tribal Council shall not approve a Business Site Lease

until the proposed business site Lessee has completed the Environmental Review Process under Sections 22.01.01.300 - 22.01.01.350 of this Ordinance. Leases approved and executed without complying with this section shall be null and void.

Section 22.01.01.150 Insurance.

- (a) A Lessee shall provide insurance necessary to protect the interests of the Tribe or sublessee in amounts sufficient to protect all insurable improvements on the premises.
- (b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Site Lease.
- (c) The Tribe and the United States must be identified as additional insured parties.
- (d) The Department may waive this requirement if the waiver is in the best interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Tribe's best interest.

Section 22.01.01.160 Performance Bond.

- (a) Unless waived in writing by the Department in accordance with this Ordinance, the lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease and may guarantee:
 - (i) The annual lease payment;
 - (ii) The estimated development cost of improvements and removal, if applicable; and
 - (iii) Any additional amount necessary to ensure compliance with the lease.
- (b) The Department may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Department shall maintain written records of waivers and reductions.
- (c) The performance bond may be in one of the following forms:
 - (1) certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
 - (2) irrevocable letters of credit issued by a federally insured financial

institution authorized to do business in the United States;

- (3) negotiable Treasury securities; or
- (4) surety bond issued by a company approved by the U.S. Department of the Treasury.

Section 22.01.01.170 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;
 - (ii) a general schedule for construction of the improvements; and
 - (iii) a Plan for Restoration and Reclamation of the site associated with the removal of permanent improvements, if applicable.
- (b) Lessee shall provide the Department 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 Department or otherwise required in the Business Site Lease, Lessee shall further provide the Department, 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 this Ordinance.
- (e) Improvements to the premises shall become the property of the Department 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.
- (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 Department 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 22.01.01.180 Subleases, Assignments, Amendments, and Mortgages..

- (a) Unless otherwise provided herein, subleases, assignments, amendments, or Mortgages of any Business Site Lease shall be submitted to the Tribal Council for approval or disapproval. If approved by the Tribal Council, the Tribal Council shall, by resolution, authorize the Vice Chairman, i.e., the Executing Official, to provide written consent to the approved subleases, assignments, amendments, or Mortgages on behalf of the Tribe.
- (b) The Business Site Leases may authorize subleases and assignments, in whole or in part, without approval from the Tribal Council and execution by the Executing Official, provided a copy of the sublease or assignment is provided to the Department and the following conditions, where applicable, are met and stated in the Business Site Lease:
 - (i) There is no event of default under the Business Site Lease or this Ordinance;
 - (ii) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;
 - (iii) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
 - (iv) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.

This Section 22.01.01.180 in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

- (c) The lease may authorize Mortgages to the leasehold interest for the purpose of financing to develop and improve the premises subject to approval by the Tribal Council and execution by the Vice Chairman.
- (d) If a sale or foreclosure of the Lessee's business or assets occurs and the Mortgagee is also the purchaser, the Mortgagee may assign the lease without approval of the Tribal Council 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 Mortgagee approval by the Tribal Council and execution by the Vice Chairman is

required, provided the purchaser agrees in writing to be bound by all terms and conditions of the lease.

BUSINESS LEASE MANAGEMENT

Section 22.01.01.190 Management.

- (a) Except where required otherwise by agreement or applicable law, the Department shall manage all Business Site Leases pursuant to this Ordinance.
- (b) The Department shall adopt a Business Site Leasing Management Plan or Policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies. The Business Site Leasing Management Plan or Policy adopted by the Department shall comply with the minimum requirements of the HEARTH Act, and shall not conflict with this Ordinance. The Department shall carry out the Business Site Leasing Management Plan or Policy.

Section 22.01.01.200 Administrative Fees. The Department may charge administrative fees for costs associated with issuing or reviewing a lease, sublease, assignment, amendment, mortgage, or other administrative transaction.

ENFORCEMENT

Section 22.01.01.210 Generally. The Department shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants consistent with the Business Site Leasing Management Plan or Policy. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments.

Section 22.01.01.220 Defaults.

- (a) If the Department determines the Lessee is in default, the Department shall send the Lessee a notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested.
- (b) Within 15 days of the mailing, the Lessee shall:
 - (i) Cure the default and notify the Department in writing that the default has been cured.

- (ii) Dispute the Department'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 22.01.01.230 Remedies.

- (a) If the Lessee fails to cure the default within the prescribed period, the Department may:
 - (i) Cancel the lease pursuant to this Ordinance;
 - (ii) Grant an extension of time to cure the default;
 - (iii) Pursue other remedies, including negotiated remedies, execution on bonds, or collection of insurance proceeds;
 - (iv) Any combination of remedies listed above; or
 - (v) Any other remedy set forth in the Business Site Lease Management Plan or Policy.
- (b) If the Department cancels a Business Site Lease, the Department shall send the Lessee cancellation letter within a reasonable time period. The cancellation letter shall be served on the Lessee personally or by certified mail, return receipt requested. 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 mailing of receipt of the cancellation letter, if an appeal is not filed by that time.
- (c) A cancellation shall become effective 31 days after mailing. The filing of an appeal shall stay 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.
- (d) If the Department 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.

- (e) The BIA may, upon reasonable notice from the Tribe and at the BIA's discretion, enforce the provisions of, or cancel, a Business Site Lease.

Section 22.01.01.240 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 Department, and the failure to pay such amount shall be treated as a breach of the lease.

Section 22.01.01.250 Harmful or Threatening Activities. If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Department may take appropriate emergency action.

Section 22.01.01.260 Holdover. If a Lessee remains in possession after the expiration or cancellation of a lease, the Department shall treat such occupation as a trespass. The Department shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, the Department may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

Section 22.01.01.270 Trespass. If a person occupies the premises without the Department's approval, the Department may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law.

APPEALS

Section 22.01.01.280 Appeals. The Lessee or interested party may appeal a determination of the Department, within ten (10) days of the determination. Appeals may be filed with the Tribal Council or other hearing body as set forth in the Business Site Lease Management Plan or Policy. 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.

Section 22.01.01.290 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.

ENVIRONMENTAL REVIEW PROCESS

Section 22.01.01.300 Generally. Unless exempt under Sections 22.01.01.300-22.01.01.350, the Tribal Council shall not approve a Business Site Lease until the proposed Business Site Lease has completed the Environmental Review Process pursuant to Sections 22.01.01.300-22.01.01.350 and applicable Tribal law. Leases approved and executed without compliance with Sections 22.01.01.300-22.01.01.350 shall be null and void.

Section 22.01.01.310 Threshold Determination.

- (a) Lessee Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological, natural and cultural resources of the Tribe, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental law.
- (b) 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, natural or cultural 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.

Section 22.01.01.320 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 Department may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal environmental law.

Section 22.01.01.330 Environmental Review Process.

- (a) Unless an exemption applies under this Ordinance, then, before the execution of any Business Site Lease, the Department shall cause to be prepared a comprehensive and adequate tribal environmental impact report ("TEIR"), analyzing the potentially significant effects of the proposed action on the environment; 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 time the notice of preparation is issued;
- (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; and
 - (2) Any Significant Effect on the Environment that would be irreversible if the lease is executed.
 - (3) Any mitigation measures proposed, recommended, or required.
- (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 22.01.01.340 Notice of Completion of Draft TEIR.

- (a) Within no less than thirty (30) days following the completion of the draft TEIR, the Department shall file a copy of the draft TEIR and a Notice of Completion with the Tribe. The Department 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:
 - (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) To satisfy the requirement for public notice and opportunity to comment under 25 U.S.C. § 415, as amended by the HEARTH Act of 2012, the Department will

provide public notice by at least one of the procedures specified below:

- (i) Publication of the Department'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 proposed action.
- (ii) Posting of the Tribe's draft TEIR in the offices of the Tribe and the Department with notice to the public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

Section 22.01.01.350 Response to Public Comments. After the thirty (30) day comment period has ended, the Department will review all comments received from the public. Prior to the approval and execution of the Business Site Lease, the Department 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. The Department's responses to public comments shall be posted in the offices of the Tribe and the Department for viewing by the public.

SOVEREIGN IMMUNITY

Section 22.01.01.360 Sovereign Immunity. 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.

EFFECTIVE DATE; AMENDMENT

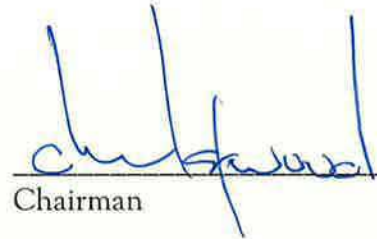
Section 22.01.01.370 Effective Date. This Ordinance shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior.

Section 22.01.01.380 Amendment. 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.

CERTIFICATION

The foregoing Title was adopted at a regular meeting of the Chemehuevi Tribal Council with a quorum present held on the 21st of May 2016, by the following vote:

AYES: 9
NOES: 0
ABSTAIN: 0
ABSENT: 0


Chairman

ATTESTED:


Secretary-Treasurer