



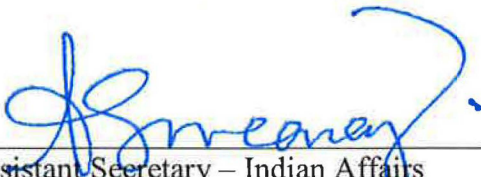
**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

APPROVAL OF

**PRAIRIE BAND POTAWATOMI NATION
BUSINESS SITE ORDINANCE**

The attached Business Site Ordinance, submitted by the Prairie Band Potawatomi Nation (listed in the Federal Register, 83 FR 4238 (January 20, 2018) as the Prairie Band Potawatomi Nation), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 17 pages and adopted by the Prairie Band Potawatomi Nation Tribal Council on November 29, 2017, is hereby approved.

Dated: **SEP 18 2018**


Assistant Secretary – Indian Affairs
Pursuant to the authority delegated by 209 DM 8

POTAWATOMI LAW AND ORDER CODE

TITLE 31 BUSINESS SITE LEASING ORDINANCE

CHAPTER 31-1 INTRODUCTION

Section 31-1-1. Authority and Delegation.

This Ordinance is enacted by the Tribal Council pursuant to the powers vested to it under Article V of the Constitution of the Prairie Band Potawatomi Nation, approved December 6, 2007, as may be amended from time to time ("Constitution").

Section 31-1-2. Scope.

The scope of application of this Ordinance shall be limited to all Business Site Leases approved pursuant to this Ordinance, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of leases existing or in effect on or prior to the Effective Date of this Ordinance.

Section 31-1-3. Purpose.

The purposes of this Ordinance are to:

- (A) Recognize the authority of the Prairie Band Potawatomi Nation ("Nation") to issue, review, approve, and enforce Business Site Leases and establish streamlined procedures for environmental review; and
- (B) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Prairie Band Potawatomi Nation; and
- (C) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012) ("HEARTH Act").

Section 31-1-4. Short Title.

This Ordinance shall be known and cited as the "Business Site Leasing Ordinance."

CHAPTER 31-2 DEFINITIONS

Section 31-2-1. Definitions.

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

- (A) **Assignment.** 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 Nation.** The balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Nation's Trust Land, increase employment and jobs on the Nation's Trust Land, and preserve the sovereignty of the Nation as determined by, and in the sole discretion of, the Tribal Council.
- (C) **BIA.** The Bureau of Indian Affairs, United States Department of the Interior.
- (D) **Business Site Lease(s).** Any "Lease" for a business purpose issued upon Tribal Trust Land under the authority of this ordinance.
- (E) **Business Site Leasing Procedures.** Procedures promulgated under this Ordinance by the Tribal Council, or such other tribal agency properly delegated the responsibility by the Tribal Council to implement this Ordinance and execute the duties contained therein.
- (F) **Change in Land Use.** The change from one use to another that significantly differs from the former use.
- (G) **Development Period.** The time period from when a lease is executed to when improvements are expected to be substantially completed.
- (H) **Environmental Review Process.** The process for conducting tribal environmental review to assess whether a proposed development or project as defined under applicable Tribal law or regulations will have a Significant Effect on the Environment.
- (I) **Environmental Reviewer.** The Prairie Band Potawatomi Nation Planning and Environmental Protection Department (PEPD) which is the entity that conducts, coordinates, and oversees the Environmental Review Process.
- (J) **Executing Official.** The Chairperson of the Nation (or such other official) properly delegated the responsibility by the Tribal Council, to execute all Business Site Leases of the Nation and take all necessary and proper action on leases and subleases including amendments, assignments, and cancellations of leases and subleases.
- (K) **Fair Market Lease Value.** The amount of rental income that a leased tract of land would most probably command in an open and competitive market, or as determined by competitive bidding.
- (L) **Holdover.** Circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
- (M) **Lease.** 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.

- (N) **Leasehold Mortgage.** A mortgage, deed of trust, or other instrument in which a Lessee pledges the Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- (O) **Leasing Decision.** The following type of lease transactions that will be acted on by the Tribal Council: lease issuance, lease amendment, subleasing, lease assignment, lease renewal and any other action taken involving a Business Site Lease under this ordinance.
- (P) **Lessee.** A person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Ordinance.
- (Q) **Lessor.** The Nation whose rights are exercised by the Tribal Council, or such other Nation agency properly delegated the responsibility by the Tribal Council.
- (R) **LTRO.** The Land Titles and Records Office of the BIA.
- (S) **Nation.** The Prairie Band Potawatomi Nation
- (T) **Permanent Improvements.** Buildings, other structures, and associated infrastructure attached to the land described in the lease that is now an integral part of the property.
- (U) **Project.** Any economic development activity occurring on Tribal Trust Land except in reference to "Indian irrigation projects" in Section 31-3-3 (B)(13) of this Ordinance.
- (V) **Public.** For purposes of the Environmental Review Process, Public means (1) tribal members; and (2) residents or entities who are located on or near the Nation's lands.
- (W) **Secretary.** The Secretary of the Department of the Interior.
- (X) **Significant Effect on the Environment.** A substantial, or potentially substantial, impact on the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- (Y) **Space Lease.** A lease of space within existing facilities on tribal land that is not already leased.
- (Z) **Sublease.** 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.
- (AB) **Tribal Council.** The duly elected governing body of the Nation pursuant to the Constitution, and as such is vested with the authority to perform the duties and responsibilities of the Lessor, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, bond, lease amendment, subleasing, lease assignment, 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 Nation.
- (AC) **Nation's Trust Land.** Any tract of land in which the surface estate is owned by the Nation and held in trust or restricted status by the United States for the benefit of the Nation, or a federally chartered corporation of the Nation under section 17 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. §§ 461 et seq.
- (AD) **Tribe.** The Prairie Band Potawatomi Nation.
- (AE) **Trust or Restricted Status.** Land (1) that the United States holds title to the tract in trust for the benefit of the Nation; or (2) that the Nation 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 instrument under federal law or limitations in federal law.

CHAPTER 31-3 BUSINESS SITE LEASE REQUIREMENTS

Section 31-3-1. Terms and Conditions.

Leases shall be governed by the terms and conditions set forth in the Business Site Lease subject to the provisions of this Ordinance. The terms and conditions of a lease may be modified only with the approval of the Tribal Council. The Lessee is responsible for understanding these terms and conditions within the Lease.

Section 31-3-2. Duration and Renewal.

Unless otherwise stated 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. The Tribal Council will not make an approval determination regarding a lease renewal, unless the Lessee notifies the Tribal Council of the intent to renew, no later than one year before such lease is due to expire.

Section 31-3-3. Obtaining a Business Site Lease.

Information on obtaining a Business Site Lease shall be available from the Tribal Council, the Tribal Land Office or such other Tribal department properly delegated the responsibility by the Tribal Council.

- (A) All applicants for a Business Site Lease shall submit the following documents to the Tribal Council, the Tribal Land Office or such other Tribal department properly delegated the responsibility by the Tribal Council:
 - (1) financial statement that is sufficient to determine the lessee's ability to carry out the lease;
 - (2) site survey and legal description, as required under Section 31-3-5;
 - (3) tribal environmental review as required pursuant to Chapter 31-7; and
 - (4) other documents as may be required by the Tribal Council and pursuant to the Business Site Leasing Procedures.
- (B) All Business Site Leases shall contain, at a minimum, the following provisions:
 - (1) The legal description of the tract, location, or parcel of the land being leased as provided in Section 31-3-5;
 - (2) The purpose of the lease and authorized uses of the leased premises;
 - (3) The parties to the lease;
 - (4) The term of the lease;
 - (5) The effective date of the lease;
 - (6) The ownership of Permanent Improvements and identification of the responsible party for constructing, owning, operating, maintaining, and removing any improvements to the leased premises;
 - (7) Indemnification of United States and the Nation;

- (8) Payment requirements, including provisions regarding acceptable forms of payment, late payments, penalties, and interest, among others;
 - (9) The dates on which all payments are due.
 - (10) Language specifying that the Lessee shall make payments directly to the Tribal Council.
 - (11) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.
 - (12) Due diligence, insurance, and bonding requirements as provided in this Section.
 - (13) If the leased premises are within an Indian irrigation project or drainage district, 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."
- (C) The Tribal Council or the Tribal Land Office or other Tribal department, if delegated to the said office or department by the Tribal Council, shall ensure that a copy of all Leases, Subleases, Assignments, amendments, and renewal notices related to a Lease, Leasehold Mortgages, and Terminations shall be provided to the Secretary of the Interior, or such other office delegated authority by the Secretary, as required by 25 U.S.C. § 415(h)(6)(A) and for purposes of recording with the LTRO. The Tribal Council shall endeavor to provide such notices within thirty (30) days of the effective date of the instrument or action. Additionally, proof of Lease payment(s) made directly to the Nation shall also be provided to the Secretary pursuant to 25 U.S.C. § 415(h)(6)(B).
- (D) The Tribal Land Office is responsible for maintaining all records of all Business Site Leases and for disseminating recorded Lease documents to the Tribal Council Secretary and any other Tribal department as deemed necessary by the Tribal Council. In carrying out the responsibility to maintain all records of Business Site Leases, the Tribal Land Office shall:
 - (1) record each Lease in a log which shall contain, at a minimum, the following information:
 - (a) The name(s) of the Lessee of each lease, identified as such;
 - (b) The date and time of the receipt;
 - (c) The filing number to be assigned by the Tribal Land Office, which shall be a unique number for each Lease and accompanying document; and
 - (d) The name of the Tribal Land Office staff receiving the Lease.
 - (2) endorse the following information from the log upon any Lease received for recording:

- (a) The date and time of receipt of the Lease;
- (b) The filing number assigned by the Tribal Land Office; and
- (c) The name of the Tribal Land Office staff receiving the Lease.

(3) The Tribal Land Office shall make a true and correct copy of the Lease and shall certify it as follows:

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(Signature)

(Date)

- (4) The Tribal Land Office shall maintain an index where copies of all certified Leases and their accompanying documents are located and may be retrieved by a search based on the legal description of the leased premises.
- (E) Records of activities taken pursuant to this Ordinance are the property of the Nation. 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 tribal preference in hiring for employment purposes.

Section 31-3-4. Space Leases.

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

Section 31-3-5. 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 to permit the LTRO to identify the particular leased site and record the Lease. Space leases shall contain adequate descriptions of the Tribal Trust Land, location and square footage of the space being leased sufficient to permit the LTRO to identify the particular leased site and record the Lease, and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

Section 31-3-6. Appraisal; Local Studies.

- (A) The Fair Market Lease Value shall be determined by an appraisal or equivalent procedure performed by the Tribal Land Office and approved by the Tribal Council 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 Tribal Council and deemed to be in the Best Interest of the Nation. An appraisal log reporting the methods of appraisal and value of the Tribal Trust Land shall be attached to every Business Site Lease.

- (B) Alternatively, the Fair Market Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice, or other commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of the Tribal Trust Land and shall be attached to every Business Site Lease.

Section 31-3-7. Fair Market Lease Value.

- (A) No lease shall be approved for less than the present Fair Market Lease Value as set forth in the appraisal, except as follows:
 - (1) The Lease is in the Development Period;
 - (2) The Tribal Council is providing an incentive for business to locate on Tribal Trust Lands, and desires to provide lease concessions, lease improvement credits and/or lease abatements to attract such businesses; or
 - (3) The Tribal Council determines such action is in the Best Interest of the Nation.
- (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 may provide for periodic review for lease rate adjustments 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.
- (F) A Lease 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.
- (G) The Tribal Land Office shall keep written records of the basis used in determining the Fair Market 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 31-3-8. Environmental Review Process.

Unless exempted pursuant to Chapter 31-7, the Tribal Council shall not approve a Business Site Lease until the proposed business site Lessee has completed the Environmental Review Process herein. Any lease approved and executed without complying with this section shall be null and void.

Section 31-3-9. Insurance.

- (A) A Lessee shall provide insurance necessary to protect the interests of the Lessor and 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 Lessor and the United States must be identified as additional insured parties.
- (D) The Tribal Council may waive this requirement if the waiver is in the Best Interest of the Nation or the best interest of the Lessor. The waiver may be revoked at any time if the waiver ceases to be in the Nation's or Lessor's best interest.

Section 31-3-10. Performance Bond.

- (A) 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:
 - (1) The annual Lease payment;
 - (2) The estimated development cost of improvements; and
 - (3) Any additional amount necessary to ensure compliance with the Lease.
- (B) The Tribal Council may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Nation. The Tribal Council, or the Tribal Land Office or other Tribal department, if delegated to the said office or department by the Tribal Council, 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.
- (D) The Tribal Council may impose additional requirements for performance bonds beyond those listed in this Ordinance; including, but not limited to, requiring performance bonds to be irrevocable, or requiring notification to the Nation in the event the performance bond is cancelled.

Section 31-3-11. 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:
 - (1) a plan that describes the type and location of any improvements to be built by the Lessee; and
 - (2) a general schedule for construction of the improvements.
- (B) Lessee shall provide the Tribal Council, or the Tribal Land Office or other Tribal department, if delegated to the said office or department by the Tribal Council, 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. The Tribal Land Office or other Tribal department shall report such information to the Tribal Council.
- (C) When requested by the Tribal Council, or Tribal Land Office or other Tribal department, if delegated to said office or department by the Tribal Council, or otherwise required in the Business Site Lease, Lessee shall further provide the Tribal Council, Tribal Land Office or other Tribal department, in writing, an updated schedule for construction. The Tribal Land Office or other Tribal department shall report such information to the Tribal Council.
- (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 31-5 of this Ordinance.
- (E) Improvements to the premises shall become the property of the Nation 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.
- (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 Tribal Council, on behalf of the Nation, has a right of first refusal to purchase the interest.
- (G) The Business Site Lease may provide that at expiration of the Business Site Lease, the Lessor may purchase improvements to the premises at fair market value.
- (H) If the Business Site Lease provides that at expiration of the Business Site Lease any reclamation, restoration, remediation is required due to the nature of the improvements a plan for such action shall be included that sets forth the obligations of the Lessor and the Lessee.
- (I) Unless allowed by applicable federal law, no fee, tax, assessment, levy, or charge imposed by a state or political subdivision shall apply to Permanent Improvements, activities under Business Site Leases, or the leasehold or possessory interest on Tribal Trust Land. The Nation may impose its own taxes or other charges on the same.

Section 31-3-12. Subleases, Assignments, Amendments and Leasehold Mortgage.

- (A) Subleases, Assignments, amendments, or Leasehold Mortgages of any Business Site Lease shall be by written consent of the Tribal Council and Lessee, unless otherwise provided herein.
- (B) The Business Site Lease may authorize Subleases and Assignments, in whole or in part, without approval from the Tribal Council and execution from the Executing Official, provided a copy of the Sublease or Assignment is provided to the Tribal Council through the Tribal Land Office or other Tribal department designated by the Tribal Council, and the following conditions, where applicable, are met and stated in the Business Site Lease:
 - (1) There is no event of default under the Business Site Lease or violation of this Ordinance;
 - (2) Any restrictions and use limitations on the use of the premises shall continue to apply to any sublessee or assignee;
 - (3) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and
 - (4) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease, except as otherwise expressly authorized therein.

Section 31-3-12(B) in no way relieves the Lessee or the sublessee from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

- (C) The Lease may authorize a Leasehold Mortgage for the purpose of financing to develop and improve the premises subject to approval by the Tribal Council and execution from the Executing Official.
- (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 from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

Section 31-3-13. Applicable Law.

The Lease shall state that it is governed by Tribal and Federal law. The parties to the Lease may further provide for the application of any other body of law, such as the laws of a specified state and the order of application. The Lease shall further mandate compliance with all applicable laws, ordinances, rules, and regulations, and the Business Site Leasing Procedures.

Section 31-3-14. Lease Approval and Issuance.

The Tribal Council has the authority to give final approval for all Business Site Leases and may delegate some or all of its authority to tribal agencies on behalf of the Nation.

- (A) Unless otherwise provided pursuant to Section 31-3-12, a Lease that meets the requirements of this Ordinance shall be submitted to the Tribal Council, or Tribal Land Office or other Tribal department designated by the Tribal Council for consideration. Final determination of whether the Lease shall be approved or not rests with the Tribal Council. After review, if an approval is given, the Executing Official shall be authorized to sign the Lease on behalf of the Nation.
- (B) Notice of Decision. The Executing Official or other such person designated by the Tribal Council shall provide written notice of all final Tribal Council decisions to the prospective Lessee, by personal delivery, facsimile transmission, e-mail, or United States First Class mail to the mailing address as set forth in the Lease documents. Failure to give or receive such notice shall not affect the validity of any determination, recommendation, or action.

**CHAPTER 31-4
BUSINESS LEASE MANAGEMENT**

Section 31-4-1. Management.

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

Section 31-4-2. Administrative Fees.

The Tribal Council may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, Leasehold Mortgage, amendment, or other administrative transaction.

**CHAPTER 31-5
ENFORCEMENT**

Section 31-5-1. Generally.

The Tribal Council 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 Procedures. This includes the power to enter the premises for reasonable cause at a

reasonable time, with or without notice, assess late payment interest and penalties, and assess late payments.

Section 31-5-2. Defaults.

- (A) If the Tribal Council determines the Lessee is in default, the Tribal Council shall send the Lessee a notice of default within a reasonable time of the determination. Such time period for notice shall be expressly provided for either in the Business Site Leasing Procedures or in the Lease itself. The notice of default may be provided by certified mail, return receipt requested.
- (B) Within ten (10) business days of receipt of the mailing, the Lessee shall:
 - (1) Cure the default and notify the Tribal Council in writing that the default has been cured;
 - (2) Dispute the Tribal Council's determination that the Lease is in default and explain why the Lease should not be canceled; or
 - (3) Request additional time to cure the default.

Section 31-5-3. Remedies.

- (A) If the Lessee fails to cure the default within the prescribed period, the Tribal Council may:
 - (1) Cancel the Lease pursuant to the Lease or this Ordinance;
 - (2) Grant an extension of time to cure the default;
 - (3) Pursue other negotiated remedies, including execution on bonds or collection of insurance proceeds;
 - (4) Any combination of remedies listed above; or
 - (5) Any other remedy set forth in the Business Site Lease Procedures.
- (B) If the Tribal Council cancels a Business Site Lease, the Tribal Council shall send the Lessee 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:
 - (1) Explain the grounds for cancellation;
 - (2) Notify the Lessee of unpaid amounts, interest charges, or late payment penalties due under the Lease;
 - (3) Notify the Lessee of its right to appeal; and
 - (4) Order the Lessee to vacate the premises within thirty (30) business days of receipt of mailing of the cancellation letter, if an appeal is not filed by that time.
- (C) A cancellation shall become immediately effective thirty-one (31) business days after receipt of mailing of the order to vacate. The filing of an appeal shall not change the effective date of the cancellation. If the Lessee submits a request in writing to the Tribal Council and the request is received within seven (7) business days of the mailing date of the order to vacate, the Tribal Council in its discretion may grant the Lessee permission to occupy the premises beyond the cancellation

effective date during the pendency of an appeal. If permission is granted, the Lessee shall be required to make Lease payments during the pendency of the appeal. Pending the outcome of an appeal, the Lessee shall comply with the terms of the Lease.

- (D) If the Tribal Council 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) At the Nation's request, the BIA may, upon reasonable notice from the Nation and at the BIA's discretion, enforce the provisions of, or cancel, a Lease document.

Section 31-5-4. 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 are not subject to notice and shall apply automatically, and the failure to pay such amount shall be treated as a breach of the Lease.

Section 31-5-5. Harmful or Threatening Activities.

If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises under the Lease, or undertakes criminal activity thereon, the Tribal Council may take appropriate emergency action.

Section 31-5-6. Holdover.

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

Section 31-5-7. Trespass.

If a person occupies the premises without the Tribal Council's approval, the Tribal Council may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law. Alternatively, the Tribal Council may make a written request sent by certified mail to the BIA for resolution under any applicable federal laws.

CHAPTER 31-6 APPEALS

Section 31-6-1. Appeals

Appeals may be filed with the Tribal Council or other official as designated in the Business Site Leasing Procedures. Such appeals shall be initiated 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. An appeal must be filed within ten (10) business days of a final determination made pursuant to this ordinance.

Section 31-6-2. Scope of Review.

The Tribal Council or other official as designated in the Business Site Leasing Procedures 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 aforementioned other official shall be final.

**CHAPTER 31-7
ENVIRONMENTAL REVIEW PROCESS**

Section 31-7-1 Generally.

Unless exempt under this Chapter, the Tribal Council shall not approve a Business Site Lease until the proposed Business Site Lease applicant 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.

Section 31-7-2. Threshold Determination.

- (A) **Lessee Exempt from Environmental Review Process:** If the Environmental Reviewer determines as a threshold matter that the Leasing Decision would not have a Significant Effect on the Environment, the Leasing Decision is exempt from the Environmental Review Process herein, subject to any other applicable tribal environmental regulations. As a threshold matter the Leasing Decision is exempt from the Environmental Review Process if the Environmental Reviewer determines that: (i) there is no significant Change in Land Use resulting from the proposed Business Site Lease; (ii) the Environmental Reviewer confirms that the site was the subject of an Environmental Review Process within the last twenty-four (24) months for a substantially similar Business Site Lease; (iii) the site is within the footprint of an existing site for which an Environmental Review Process was already conducted (for example, a Space Lease); or (iv) the nature of and the actions under the Leasing Decision would not have a Significant Effect on the Environment.
- (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, (iv) cause physical disturbances to the biological or natural resources of the Nation, or (v) otherwise create 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.

Section 31-7-3. 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 Tribal Council may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with this chapter and other applicable tribal environmental regulations.

Section 31-7-4. Environmental Review Process.

- (A) Unless an exemption applies or a Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Site Lease, the Tribal Council 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:
 - (1) A description of the physical environmental conditions in the vicinity of the Project (such as the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
 - (2) All Significant Effects on the Environment of the proposed Lease;
 - (3) In a separate section:
 - (a) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;
 - (b) Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and
 - (c) Any mitigation measures proposed, recommended, or required.
- (B) In addition to the information required pursuant to Section 31-7-4 (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 Effect on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

Section 31-7-5. Notice of Completion of Draft TEIR.

- (A) Within thirty (30) business days following the completion of the draft TEIR, the Tribal Council shall file a copy of the draft TEIR and a Notice of Completion with the Secretary of the Tribal Council. The Tribal Council shall also post the Notice of Completion and a copy of the draft TEIR at the government offices of the Nation and on the Nation's Tribal Member website. The Notice of Completion shall include all of the following information:
- (1) A brief description of the Project;
 - (2) The proposed location of the Project;
 - (3) An address where copies of the draft TEIR are available; and
 - (4) Notice of a period of thirty (30) business days during which the Nation 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(h), the Tribal Council will provide public notice by at least one of the procedures specified below:
- (1) Posting of the Nation's draft TEIR in the government offices of the Nation and the Tribal Council with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
 - (2) Posting of the Nation's draft TEIR on the Nation's Tribal Member website with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
 - (3) Posting the Nation's draft TEIR at the Mayetta, Kansas, United States Post Office with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

Section 31-7-6. Response to Public Comments.

After the thirty (30) day comment period has ended, the Tribal Council will review all comments received from the Public. Prior to the approval and execution of the Business Site Lease, the Tribal Council will provide responses, using the same notification process as provided above in Section 31-7-5 (B), 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.

CHAPTER 31-8 SOVEREIGN IMMUNITY

Section 31-8-1. Sovereign Immunity.

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

CHAPTER 31-9
EFFECTIVE DATE; AMENDMENT

Section 31-9-1. Effective Date.

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

Section 31-9-2. 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.

LEGISLATIVE HISTORY

(Enacted by PBP TC No. 2017-358)