



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

**APPROVAL OF**

**PUEBLO OF LAGUNA  
BUSINESS LEASING ORDINANCE**

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The attached Business Leasing Ordinance, submitted by the Pueblo of Laguna (listed in the Federal Register, Vol. 87, No. 19 FR 4639 (January 28, 2022) as the Pueblo of Laguna, New Mexico), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 42 pages and adopted by the Pueblo of Laguna Council on October 22, 2021, is hereby approved.

Dated: SEP - 7 2022

A handwritten signature in blue ink, appearing to read "B. T. ...".

Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8



# **PUEBLO OF LAGUNA BUSINESS PURPOSE LEASING CODE**

October 22, 2021

As modified by U.S Dept. of Interior, August 3, 2022

## **Abstract**

Establishes Pueblo law governing the lease of Pueblo land for Business Purposes (as defined by this chapter) on Pueblo of Laguna land in accordance with the “Helping Expedite and Advance Responsible Tribal Homeownership Act” of 2012, P.L. 112-151, July 30, 2012 (HEARTH Act), codified as 25 U.S.C. § 415(h).

Pueblo of Laguna Government Affairs Office

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**TITLE XIII - BUSINESS**

**CHAPTER 3. – BUSINESS PURPOSE LEASING CODE**

**Part 1-General Provisions**

**Section 13-3-1. - Short title.**

This Chapter may be referred as the "Business Purpose Leasing Code."

**Section 13-3-2. – Findings.**

The Pueblo Council finds that:

- A. Pursuant to Article IX of the Pueblo of Laguna Constitution, the lawful occupancy of Pueblo Land must be by License or Land Use Agreement approved by Pueblo Council, or a Pueblo Land Assignment under Title II, Chapter 2, or a Grazing Permit under Title X, Chapter 1, or by lease for residential purposes under Title VIII, Chapter 2, or by lease for Business Purposes under this chapter.
- B. Pueblo Land is available for Business Purposes allowed by federal law, and Article IX, Section 7, of the Constitution (2012) requires a written lease approved by Pueblo Council to use Pueblo Land “strictly for business purposes;”
- C. Congress amended the Indian Long-Term Leasing Act, 25 U.S.C. Sec. 415, to allow federally recognized Indian tribes to assume the responsibility for reviewing and approving leases of tribal lands;
- D. There is a need for a leasing and review process that accords with Pueblo Law, responds to the market opportunities, and promotes the Pueblo’s economic development objectives; and
- E. It is in the best interest of the Pueblo to undertake the sole responsibility for reviewing and approving Business Purpose leases of Pueblo Land.

**Section 13-3-3. – Authority.**

- A. Pueblo Council enacts this chapter as new law, to be codified in Section 13-3-1 sequentially through Section 13-3-47, governing the leasing of Pueblo Land for Business Purposes (as defined in Section 13-3-5, and herein) pursuant to and in accordance with Article IV, Sections 2(b), 2(e), and 2(g), and Article IX, Sections 7, 8, and 9 of the Pueblo of Laguna Constitution (2012).
- B. Pueblo Council enacts this chapter governing the leasing of Pueblo Land for Business Purposes (as defined in Section 13-3-5, and herein), pursuant to and in accordance with “Helping Expedite and Advance Responsible Tribal Homeownership Act” of 2012, P.L. 112-151, July 30, 2021 (“HEARTH Act”), codified as 25 U.S.C. § 415(h), upon approval of the Secretary of the Interior.

**Section 13-3-4. – Purpose.**

- A. The purpose of this chapter is to:
  - (1) simplify the Business Purpose leasing process for Pueblo Land;
  - (2) provide for consistent Business Purpose leasing rules; and
  - (3) promote economic development on the Pueblo.
- B. This chapter shall be liberally interpreted to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), amending 25 U.S.C. § 415, to permit establishment of the Pueblo’s process to lease Pueblo Land for Business Purposes, without the necessity of approval by the Secretary of the Interior.

**Section 13-3-5. Definitions**

For the purpose of this chapter, the following capitalized terms shall be defined as:

***Pueblo of Laguna – Business Purpose Leasing Code – October 22, 2021, modified August 3, 2022***

- A. “Agricultural Land” means Pueblo Land suited or used for the production of crops, livestock or other agricultural products or Pueblo Land suited or used for a business that supports the surrounding agricultural community.
- B. "Applicant" means a person requesting to obtain a Lease of Pueblo Land, to convert his or her Pueblo Land Assignment to a Lease, or to have a leased parcel reinstated as or converted to a Pueblo Land Assignment upon expiration of a Lease, and who has filed an Application with the Department.
- C. "Application" means a written request to the Department to convert a Pueblo Land Assignment to a Lease, or request to a relevant Village Official to have a leased parcel reinstated as or converted to a Pueblo Land Assignment.
- D. “Assignee” means the person that acquires all or some of the Lessee's rights and assumes all or some of the Lessee's obligations under a Business Lease.
- E. "Assignment" means an agreement that transfers all or some of the rights or obligations of a Business Lease from the Lessee to another person referred to as Assignee and the term does not mean a parcel of Pueblo Land granted for Pueblo member use under Title II, Chapter 2 of Pueblo of Laguna Code (which is defined in Section 5.JJ and known as “Pueblo Land Assignment”).
- F. “Best Interest” means the balancing of interests to attain economic income from Pueblo Land, provide incentive to increase economic development, preserve or enhance the value of Pueblo Land, increase employment and jobs on Pueblo Land, and preserve the sovereignty of the Pueblo.
- G. "BIA" means the Bureau of Indian Affairs, U.S. Department of the Interior.
- H. “Business Lease” means a Lease issued for a Business Purpose.
- I. “Business License" means a permit to conduct business activities on Pueblo Land pursuant to Pueblo Law.

- J. “Business Purpose” means: (1) commercial or industrial use, including but not limited to any single-use or multi-purpose uses for retail, office, manufacturing, storage, energy production (including solar, wind, bio-mass and waste-to-energy); (2) a Mixed-use Development;(3) religious, educational, recreational, cultural, and other public use; and (4) use of Pueblo Land as Agricultural Land that is not otherwise assigned under Title II, Chapter 2 (“Pueblo Land Assignment”), or permitted under Title X, Chapter 1 (Rangeland Code).
- K. "Department" means the Pueblo of Laguna Environmental and Natural Resources Department (ENRD), or successor.
- L. “Development Period” means the time period beginning when a Lease is approved under Section 11.G and lasting until construction of a Permanent Improvement reaches substantial completion.
- M. "Environment" means the Pueblo land, air, water, minerals, flora, fauna, ambient sound levels, areas of critical habitat, and objects or areas of historic, religious, or cultural significance to the Pueblo.
- N. "Environmental Decision" means, in the context of the Environmental Review Process, a decision of the Department resulting from a review of Leasing Documents.
- O. "Environmental Review Process" means the process for conducting an environmental review to assess whether and to what extent a proposed development or Project under a Lease will have a positive or negative Significant Effect on the Environment.
- P. "Fair Market Rental" means the amount of rental income that a leased parcel of Pueblo Land would likely command in an open and competitive market, or as determined by competitive bidding, and reflecting all of the conditions and restrictions of the particular leasing agreement, as well as all the revenues likely to be generated for the Pueblo.
- Q. “Hazardous Substances” means any chemical, or mixture of chemicals, that meets hazardous classification criteria, which include explosiveness, flammability, toxicity to



people, ability to cause cancer, toxicity to the environment and a chemical’s ability to generate a different hazardous substance on contact with air or water.

- R. “Home-based Business” means any enterprise for which the principal administrative and managerial activities take place within an individual’s personal residence located on a Pueblo Land Assignment or Residential Lease, provided the business employs no more than five (5) employees that work on-site in the conduct of such business and the work does not: (1) involve the storage, use, production or disposal of Hazardous Substances in quantities that pose a significant threat to public health or safety or (2) create a nuisance.
- S. "Individually-Owned Land" means any tract or fractionated interest therein for which the surface estate is owned by a natural person.
- T. "Lease" means a written agreement between the Pueblo and Lessee by which Lessee is granted the right to occupy and use a parcel of Pueblo Land for a specified purpose and duration, and under specified conditions, and includes any amendments, exhibits, or attachments (such as plats, property descriptions, access documents, etc.).
- U. “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a Lessee’s or Sublessee’s leasehold interest as security for a debt or other obligation owed by Lessee or Sublessee to a lender or other mortgagee.
- V. “Leasing Documents” mean Leases, Subleases, Space Leases, Assignments, and Leasehold Mortgages, and amendments and modifications thereto, including termination, cancellation, renewal, collateralization or encumbrance thereof; and any supporting documentation required by the Department during the application process under Section 11 or analyzed during the Environmental Review Process under Part 4.
- W. "Lessee" means a person or entity who has acquired a Lease and certain occupancy and use rights pursuant to this chapter.
- X. "Lessor" means the Pueblo as a grantor of rights to possess and use Pueblo Land under a Lease.
- Y. “LTRO” means the Land Titles and Records Office of the Bureau of Indian Affairs.

- Z. "Mineral Resources" means oil, gas, uranium, coal, geothermal, or other energy or non-energy minerals on Indian lands regulated by federal law, including sand and gravel.
- AA. "Mixed-use Development" means a real estate development with planned integration of some combination of residential use with retail, office, hotel, commercial, recreation or other Business Purpose functions.
- BB. "Mortgagee" means the lender under any Leasehold Mortgage, including any successor thereof.
- CC. "Negotiator" means the committee or individual identified by the Governor or Pueblo Council to lead the Pueblo's negotiation of terms and conditions for a Business Purpose Lease.
- DD. "Permanent Improvement" means a building, other structure, and associated infrastructure attached to the leased premises.
- EE. "Project" means any economic development activity occurring on Pueblo Land.
- FF. "Public" means, for purposes of Environmental Review under Part 4, any person who can demonstrate that they will be directly and substantially affected by a proposed Lease or the lease activity.
- GG. "Pueblo" means Pueblo of Laguna, New Mexico, a federally recognized Indian tribe.
- HH. "Pueblo Council" means the governing body of the Pueblo of Laguna, pursuant to Articles III and IV of the Pueblo of Laguna Constitution (2012).
- II. "Pueblo Land" means any tract of land, *except* Individually Owned Land, in which the Pueblo owns the surface estate in Trust or Restricted Status, and includes such land reserved for BIA administrative purposes; and includes the surface estate of land held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; codified as 25 U.S.C. § 5124).
- JJ. "Pueblo Land Assignment" means a tract of Pueblo Land within the jurisdiction of a village of the Pueblo, or other area, that has been assigned to, and for the residential or

farming use of, a Pueblo member under Pueblo Law or a tract of Pueblo Land that has been assigned to any person or entity by Pueblo Council.

- KK. “Pueblo Law” means the body of law of the Pueblo, consist of its Constitution, codes, ordinances, regulations, and customs.
- LL. “Pueblo Secretary” means the Office of the Secretary for the Pueblo of Laguna.
- MM. "Secretary" means the Secretary of the U.S. Department of the Interior or his designee, including the Bureau of Indian Affairs (BIA).
- NN. "Significant Effect on the Environment" means a substantial and demonstrable change or impact on the Environment.
- OO. “Single-family Residence” means a habitable building with one to four dwelling units on a tract of land under a single Lease.
- PP. “Single-family Residential Development” means two or more Single-family Residences owned, managed, or developed by a single entity.
- QQ. "Space Lease" means a rental of space within an existing facility on Pueblo Land that is subject to a Lease.
- RR. "Sublease" means a written agreement by which a Lessee grants to an individual or entity the right to possession and use of property covered by a Lease, which right may be no greater than that held by the Lessee.
- SS. “Sublessee” means an individual or entity who holds a right to occupy and use all or any part of a property that was leased by the Pueblo to another person.
- TT. “Treasurer” means the Office of the Treasurer for the Pueblo of Laguna.
- UU. “Trespass” means any unauthorized occupancy, use of, or action on Pueblo Land.
- VV. "Trust or Restricted Status" means that (1) the United States holds title to the tract in trust for the benefit of the Pueblo; or (2) the Pueblo holds legal 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 or limitations in federal law.

- WW. “Use Rights” means the rights related to possession and use of Pueblo Land conveyed by a Pueblo Land Assignment under Article IX of the Constitution (2012) or other Pueblo Law.
- XX. “Village” means any one (1) of the six (6) villages located on the Laguna Reservation.
- YY. “Village Official” means a Mayordomo and/or Staff Officer of a Village, including a designee of either, where land subject to this chapter is located.

**Section 13-3-6. Scope**

- A. **Application.** This chapter shall apply only to:
  - (1) The application, negotiation, administration, management, enforcement, renewal, or termination of any Lease of Pueblo Land for a Business Purpose (as defined in this chapter) reviewed and authorized pursuant to this Ordinance, and to any Leasing Document, Environmental Decision or action regarding such activity.
  - (2) The administration, management, enforcement, renewal, or termination of any Business Lease (or Sublease thereof) existing at the time of adoption.
- B. **Exceptions.** This chapter does **not**:
  - (1) Apply to the leasing of Individually Owned Land;
  - (2) Apply to the leasing of land that is not held in Trust or Restricted Status for the Pueblo as an unfractionated owner;
  - (3) Apply to the leasing of Pueblo Land for extraction, severance, or development of Mineral Resources;

- (4) Apply to the leasing of Pueblo Land for a Single-family Residence or Single-family Residential Development, which are covered under Title VIII, Chapter 2 of Pueblo of Laguna Code;
- (5) Apply to the use of a Pueblo Land Assignment or Residential Lease as a site for a Home-based Business;
- (6) Affect the validity or substantive terms and conditions of a Lease or Sublease for a Business Purpose approved by the Secretary under 25 U.S.C. Section 415 and in force prior to the adoption of this Ordinance; or
- (7) Affect the validity or substantive terms and conditions of a Lease or Sublease for a Business Purpose approved by the Secretary under 25 U.S.C. Section 415 subsequent to the effective date of this Ordinance.

**Section 13-3-7. Applicable Law**

- A. **Leases.** Every Leasing Document covered under this chapter shall be subject to and governed by Pueblo Law and applicable federal law exclusively, unless the Leasing Document contains a provision stating that the Leasing Document is subject to or governed by other law. State law shall not apply to a Lease unless expressly required by federal statute or expressly authorized by Pueblo Council.
- B. **Pueblo Land.** Pueblo Law applies to Pueblo Land, except to the extent that Pueblo Law is inconsistent with applicable federal law.
- C. **Lessees.** All parties to a Leasing Document, including non-members, approved under authority of the Pueblo Council pursuant to or covered under this chapter, are deemed to have consented to the regulatory and adjudicatory jurisdiction of the Pueblo, unless the Leasing Document expressly states otherwise.

**Section 13-3-8. Use of Pueblo Land Assignment, Prohibition, Conversion to Business Lease**

- A. Unless an exception under subsection B applies, a Pueblo Land Assignment or Residential Lease shall not be used strictly for any Business Purpose.
- B. The following activities are not subject to the prohibition in subsection A or conversion under subsection C:
  - (1) A Home-based Business as defined by this chapter conducted on a Pueblo Land Assignment or a Residential Lease, provided the specific activity of said Home-based Business conforms with the land use plan of the Pueblo or the village in which it is located;
  - (2) A Pueblo Land Assignment granted by Pueblo Council to a Pueblo-owned entity for a business purpose; or
  - (3) A Pueblo Land Assignment used for traditional household and subsistence farming activities.
- C. Six months from the effective date of this chapter by federal approval action and thereafter, any Pueblo Land Assignment or Residential Lease being used strictly for a Business Purpose or not conforming to an exception under subsection B must be converted to a Business Lease under this chapter or shall be in violation of this chapter and be subject to remedial action under Part 6.
- D. The holder of a Pueblo Land Assignment or the lessee of a Residential Lease (or any successor to either) may apply to the Department to obtain Council approval to convert said Pueblo Land Assignment or Residential Lease to a Business Lease in accordance with this chapter.
- E. Upon Pueblo Council approval under this chapter to convert a Pueblo Land Assignment (or part thereof) to a Business Lease , the Pueblo Land Assignment shall terminate and along with such termination the occupancy and Use Rights under Pueblo Law for the Pueblo Land Assignment (or portion thereof covered by a Lease) shall be extinguished, and the Lessee, including any successor in interest, shall hold occupancy and the right to

use only under terms of the Lease as governed by this chapter for the duration of the Lease, subject to possible reinstatement under Section 9.

**Section 13-3-9. Lease Reinstatement as Pueblo Land Assignment**

- A. The Lessee, or successor in interest, of a Business Lease of Pueblo Land that was a Pueblo Land Assignment prior to conversion to a Business Lease, shall be entitled, upon Application to the Department, to have the leased parcel reinstated as a Pueblo Land Assignment upon expiration of that Lease, or upon termination of that Lease in accordance with the terms of the Lease and not due to default upon the part of Lessee, provided said Lessee or successor in interest is then eligible for a Pueblo Land Assignment under applicable Pueblo Law.
- B. Upon approval by the Village Official of an Application for reinstatement of an expiring, expired, or properly terminated Business Lease as a Pueblo Land Assignment, and recordation of such approval with the Pueblo Secretary, the Lessee or successor in interest acquires the Use Rights for the formerly leased parcel as a Pueblo Land Assignment under Pueblo Law.

**Section 13-3-10. Taxation.**

- A. No fee, tax, assessment, levy or charge imposed by the state, or a political subdivision, of New Mexico shall apply to a Permanent Improvement, leasehold or possessory interest, or business activity (including business use, privilege, public utility, excise, or gross revenue tax) under a Business Lease of Pueblo Land.
- B. The Pueblo may levy any fee, tax, assessment, or charge against a Permanent Improvement, leasehold or possessory interest, or business activity under a Business Lease in accordance with Pueblo law, unless otherwise provided in the Business Lease.

**Part 2 - Leasing Process and Requirements**

**Section 13-3-11. Obtaining Approval for a Business Lease, Amendment, Sublease, or Assignment**

- A. **Application.** The prospective Lessee may request a Lease for a Business Purpose by submitting an Application to the Department in accordance with this Section. A current Lessee must make application for approval to amend the Lease, enter into Sublease, or make a Lease Assignment under this Section. The Application must identify:
- (1) the applicant;
  - (2) the location of the Pueblo Land proposed for the Business Lease;
  - (3) the proposed duration for the Lease;
  - (4) the planned access to the Pueblo Land proposed for the Lease;
  - (5) the anticipated use of the Pueblo Land proposed for the Lease;
  - (6) any planned or current use of existing or proposed Permanent Improvement on the Pueblo Land proposed for the Lease; and
  - (7) any other information deemed necessary by the Department.
- B. **Access Permit.** Upon submittal of a complete Application of any prospective Lessee and concurrence by the Department of the necessity of access to the proposed site, the Pueblo Secretary shall, upon receipt of an access permit application, issue an access permit to allow the prospective Lessee and Lessee's lender or contractors access to the Pueblo Land proposed for the Lease to conduct due diligence or prepare the documentation required by Subsection C.
- C. **Documentation.** In furtherance of an application for Lease, the Department may request that the prospective Lessee provide any of the following documentation:
- (1) an appraisal;
  - (2) a land survey and legal description;
  - (3) the type and location (site plan) of any existing and proposed Permanent Improvements including utilities and road access;



- (4) a development plan and construction schedule for proposed Permanent Improvements;
- (5) for Agricultural Land, an agricultural resource management or conservation plan in accordance with Pueblo land management policy, if applicable;
- (6) an environmental review, including a cultural clearance and/or archeological survey;
- (7) conforming use under a land use plan of the Pueblo or relevant village or permission of a Village Official to conduct the proposed Business Purpose activity within a Village, if applicable;
- (8) a Pueblo Business License for the proposed activity, if applicable; and
- (9) other information deemed relevant by the Department to the proposed Business Lease.

D. **Additional Information.** Where an Applicant seeks to convert a Pueblo Land Assignment to a Business Lease, the prospective Lessee shall, in addition to a completed Application, provide to the Department:

- (1) proof of a Pueblo Land Assignment that relates to the Pueblo Land proposed for the Lease;
- (2) proof that the proposed activity conforms to a village land use plan or proof of Village Official approval of the use of land for the proposed Business Purpose; and/or
- (3) a Pueblo Business License for the proposed activity.

E. **Lease Negotiation and Provisions.**

- (1) Upon the Department's receipt of an Application containing requested information to permit Lease negotiations, the Department shall forward the documentation to the Governor, who may:

- (a) direct the Application to a Negotiator for the negotiation process, provided either that the proposed Business Lease represents no change in present land use or the proposed Business Lease will be located on Pueblo Land having prior approval of Pueblo Council for such purpose; or
  - (b) place the Application on Pueblo Council agenda to obtain approval of the proposed land use and identification of a Negotiator for the negotiation process where the Application proposes a new use for Pueblo Land not previously approved by Pueblo Council.
- (2) The Department will continue to provide administrative support to the Negotiator and conduct necessary due diligence and environmental review during the negotiation process.
- (3) A Lease must address the following provisions:
  - (a) a legally sufficient description for LTRO recordation of the parcel, the purpose of the Lease, and the authorized uses of the Pueblo Land proposed for the Lease;
  - (b) the names of the parties to the Lease and an address to which written notices may be sent to the parties;
  - (c) the duration of the Lease and any option to renew, including time and manner for exercise, additional consideration, notice to lenders, whether default restricts exercise of option, and recording;
  - (d) the effective date of the Lease;
  - (e) the rent and payment requirements, including payment due dates, payee, place of payment; and if applicable any adjustment, including how and when the adjustment will be done, when the adjustment will be effective, and how disputes regarding the adjustment or rental payment will be resolved, and form of payment;

- (f) any late payment charges, interest, or special fees;
  - (g) any due diligence requirements, if applicable;
  - (h) any required bond or other form of financial security;
  - (i) any insurance requirements, if applicable;
  - (j) ownership, construction, maintenance, and management of any Permanent Improvements, including description of location and type and general schedule of completion;
  - (k) any other terms and conditions negotiated by the parties or required by this chapter.
- (4) The following provision must be included in every Lease:
- The obligations of the Lessee and its Mortgagee to the Pueblo are also enforceable by the United States so long as the leased premises remain in Trust or Restricted Status.
- (5) Unless the Lessee would be prohibited by law from doing so, the Lease must also contain the following provisions:
- (a) The Lessee holds the United States and the Pueblo harmless from any loss, liability, or damages arising out of the Lessee's use or occupation of the leased premises; and
  - (b) The Lessee Indemnifies the United States and Pueblo against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the Lease term, regardless of fault, except that the Lessee is not required to Indemnify the Pueblo for liability or cost arising from the negligence or willful misconduct of the Pueblo or the United States.

- (6) The Lease or Sublease must contain a statement that the Lessee or Sublessee consents to the regulatory and adjudicatory jurisdiction of the Pueblo for any matter arising under the Lease or from using Pueblo Land.
  - (7) The Lease or Sublease must contain a statement that if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items must cease and the lessee must contact the Department to determine how to proceed and appropriate disposition.
- F. **Environmental Review Process.** Upon receipt of a completed Application under subsection A, required or requested documentation under subsection C, any additional information under subsection D, and notification from the Negotiator that negotiations under subsection E have progressed sufficiently, the Department shall cause the commencement of the Environmental Review Process in accordance with Part 4.
- G. **Approval of Lease.**
- (1) At the conclusion of the Application process under this Section, which includes submittal of complete Application, any requested additional information or documentation, environmental review under Part 4, and Lease negotiation in accordance with subsection E, the Negotiator shall report to the Executive Committee and notify the Department within thirty (30) days that a Business Lease under this chapter is available for Pueblo Council consideration, and may recommend approval of the Lease on terms as negotiated with the Lessee.
  - (2) A Business Lease must be consented to, by the Pueblo Council, in accordance with Article IX of the Pueblo of Laguna Constitution (2012), upon determination that such is in the Pueblo’s Best Interest under the absolute and unreviewable discretion of Pueblo Council. The Pueblo Court has no jurisdiction to review Council’s approval or rejection of a proposed Business Lease.

- (3) Any document purported to be a Lease that was not approved by Pueblo Council is void and unenforceable under this chapter.
  - (4) Pueblo Council’s approval of Leasing Documents shall be by resolution.
  - (5) Any Leasing Documents approved by Pueblo Council resolution under this chapter shall be signed by the Governor, or his authorized designee, on behalf of the Pueblo.
- H. **Effect.** Approval of Leasing Documents under this chapter constitutes Pueblo Council’s consent to use the premises in accordance therewith, establishes the jurisdiction of the Pueblo Court over such Lessee and other persons and activities occurring on the premises under Article V, Section 3 of the Pueblo of Laguna Constitution (as amended), and, if applicable, Council’s consent to reside under Article I, Section 3 of the Pueblo of Laguna Constitution (2012).

**Section 13-3-12. Lease Duration**

- A. The Pueblo Council may approve a Lease for a Business Purpose under this chapter for any duration that:
  - (1) For wind energy evaluation, does not exceed three (3) years for an initial term, and one renewal period not to exceed three (3) years;
  - (2) For wind or solar resource development, does not exceed twenty-five (25) years for an initial term, and one renewal period not to exceed twenty-five (25) years;
  - (3) For public, religious, educational, or recreational uses, does not exceed an initial term of seventy-five (75) years and has no option to renew; and
  - (4) For Agricultural Land uses and any other Business Purpose not covered by paragraphs 1 through 3 above (including but not limited to commercial, industrial, retail, office, manufacturing, storage, non-wind or non-solar energy generation, and Mixed-use Development, does not exceed twenty-five (25) years, and may

include an option to renew for up to two (2) additional terms of no more than 25 years each (a total maximum lease term of 75 years).

- B. Unless an express provision of the Lease makes renewal automatic or states otherwise, renewal of a Lease for an additional term shall not be automatic, but only by a written notice by Lessee of its intent to exercise its option to renew, delivered to the Department not less than six (6) months before such Lease is due to expire.

**Section 13-3-13. Consideration; Fair Market Rental**

- A. **Rent Determination.** The Negotiator (under Section 11.E) shall determine and propose for Council acceptance the recommended Fair Market Rental for a Business Lease through a market analysis, appraisal, or other valuation method, or by negotiation, or in accordance with Subsection B.
- B. **Nominal Rent.** The Negotiator (under Section 11.E) may propose and Pueblo Council may accept nominal rent, less than Fair Market Rental, and/or in-kind consideration for a Business Lease of Pueblo Land under the following circumstances:
  - (1) The Lessee is any entity created by the Pueblo;
  - (2) The Business Lease is for a religious, educational, recreational, cultural, or other public purpose;
  - (3) The reduction of Fair Market Rental during the Development Period of a Business Lease; or
  - (4) The acceptance of rent at less than Fair Market Rental is determined in the Best Interest of the Pueblo.
- C. **Use Rights.** Partial consideration for the conversion of a Pueblo Land Assignment to a Business Lease is Lessee’s agreement to extinguish the Use Rights associated with that Pueblo Land Assignment in exchange for occupancy rights under the Lease for the duration of the Business Lease.

- D. **Payment.** Monetary rent shall be payable to the Pueblo and remitted to the Pueblo Treasurer by check or bank draft payable in United States dollars or other method acceptable to the Treasurer, who shall account to the Department for rent received under a Business Lease.
- E. If the leased premises are within an Indian irrigation project or drainage district for which the Secretary assesses and collects a fee to administer, operate, maintain, or rehabilitate as provided by 25 C.F.R. Part 171, the Lease must state that the Lessee shall pay all operation and maintenance charges that accrue during the Lease term, unless an exception in 25 C.F.R. Part 171 applies. The Lessee shall pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

**Section 13-3-14. Land Description**

- A. A Business Lease shall describe the leased premises by reference to a land survey prepared by a professional surveyor licensed by the New Mexico state board of licensure for professional engineers and professional surveyors or by other means reasonably calculated to indicate the size and location of the premises being leased, and that is sufficient for LTRO recordation.
- B. A Space Lease shall contain adequate descriptions of the underlying Lease, location and square footage of the space within the leased premises being leased, and may include renderings, architectural drawings, or other schematics to illustrate the location of the space.

**Section 13-3-15. Bond**

- A. The Negotiator under Section 11.E may require prospective Lessee to file a bond or provide other security, which is payable to the Treasurer, to ensure or guarantee:
  - (1) Rent payment for an amount to be negotiated or determined by the Council;
  - (2) Construction of any Permanent Improvement; or
  - (3) Performance of any other obligation under the Lease.

- B. **Notice of Cancellation.** Lessee shall provide the Department with 30 days' written notice of cancellation of any bond required under Subsection A, and the Department shall immediately notify the Treasurer.

**Section 13-3-16. Insurance**

- A. The Negotiator under Section 11.E may require the prospective Lessee to secure, maintain, and provide proof to the Department of liability and/or casualty insurance, and to require that the Pueblo and the United States are additional named insured parties, in amounts sufficient to cover any Permanent Improvement, personal injury or death, or any other risk to which the Pueblo and the United States may be exposed.
- B. **Notice of Cancellation.** Lessee shall provide the Department with 30 days' written notice of cancellation of any insurance required under Subsection A, and the Department shall immediately notify the Treasurer.

**Section 13-3-17. Interest; Late Fee**

- A. Provided that Lease compensation is greater than nominal or in-kind, a Lease shall specify the rate of interest to be charged if the Lessee fails to make Lease payments on time, and identify additional late payment fees.
- B. Unless the Lease provides otherwise, interest charges and late payment fees will apply in the absence of any notice to the Lessee from the Department, and the Lessee's failure to pay such amounts constitutes a breach of the Lease.

**Section 13-3-18. Effective Date of Lease and Lease Documents.** A Lease and any Leasing Document, including any amendment, Assignment, Sublease, or Leasehold Mortgage, must state an effective date to be valid and enforceable. The effective date of any Leasing Document is within the negotiating discretion of the parties and may be different from the date Leasing Documents are signed or approved by Council.



**Part 3 – Improvements, Sublease, and Leasehold Mortgage**

**Section 13-3-19. Permanent Improvements**

- A. **Requirement for Approval.** Unless otherwise provided in the Business Lease or unless existing prior to a Business Lease, Lessee shall be responsible for placing or constructing, as well as maintaining and operating, at Lessee’s expense, any Permanent Improvement located on Pueblo Land under Lease, and prior to such activity the Lessee or Sublessee of a Lease shall obtain any necessary governmental permit, approval, or authorization, including approval by a Village Official where the leased premise is located within a Village that requires such approval.
  
- B. **Ownership of Permanent Improvement.**
  - (1) Any Permanent Improvement to the leased premises placed or constructed at the expense of Lessee shall be owned by Lessee for the duration of the Lease, subject to any security interest created by a Leasehold Mortgage or Lease Assignment.
  
  - (2) If specified in a Business Lease, a Lessee may develop equity value in owned Permanent Improvements and sell its interest in said improvements to a third party, provided that the Pueblo is given a 90-day right of first refusal to decide to purchase such interest.
  
- C. **Right of Removal.** Unless otherwise provided in the Lease or by law, the following govern the disposition, upon the expiration, termination, or cancellation of a Lease, of a Permanent Improvement that is placed or constructed at Lessee’s expense on the leased premises:
  - (1) Lessee shall, at its expense, remove every Permanent Improvement from Pueblo Land at expiration of the Lease and shall restore Pueblo Land to its original condition, so far as is reasonably possible.
  
  - (2) No Permanent Improvement may be removed without the Department’s approval, if a Lessee owes rent or any other sums under the Lease, is in breach of any Lease

obligation, has created a Lease Assignment, or is in default on a Leasehold Mortgage.

- (3) Within sixty (60) days after expiration, or termination of the Lease not caused by default of Lessee or Sublessee, the Lessee or Sublessee shall be entitled to remove the Permanent Improvement placed or constructed by Lessee or Sublessee from the leased premises and relocate such improvements to an alternative site, not located on the leased premises.
- (4) Any Lessee who exercises the right of removal in Subsection C(3) must pay costs related to the relocation of Permanent Improvement and shall restore Pueblo Land to its original condition, so far as is reasonably possible.
- (5) Any Permanent Improvement or other property abandoned on Pueblo Land at expiration or termination of Lease, or after the expiration of the removal period under Subsection C(3), shall automatically become the property of the Pueblo, unless prior to ninety (90) days after expiration or termination of the Lease the Pueblo notifies Lessee in writing of its election to declare such abandoned property a nuisance.
- (6) Lessee's obligation to remove Permanent Improvements from Pueblo Land and to restore Pueblo Land survives the expiration or termination of the Lease.

D. For a wind energy evaluation lease the following provisions shall also apply:

- (1) The Lease shall require the Lessee to install testing and monitoring facilities within 12 months after the effective date of the Lease and require Lessee to provide an explanation of good cause if such installation does not timely occur.
- (2) The Lease shall specify the ownership of any energy resource information the Lessee obtains during the Lease term.

E. For a wind or solar energy resource development lease the following provisions shall also apply:

- (1) The Lease shall indicate which party is responsible for evaluating the Leased premises for suitability and the purchasing, installing, operating, and maintaining the wind or solar energy resource facilities.
- (2) The Lease shall require the installation of energy resource facilities within:
  - (a) two (2) years after the effective date of the Lease; or
  - (b) a timeframe stated in the resource development plan.
- (3) The Lease shall require Lessee to provide an explanation of good cause if such installation does not timely occur.
- (4) The Lease shall require Lessee to maintain all on-site electrical generation equipment and related infrastructure.
- (5) The Lessee shall repair, place into service, or remove from the site within a time period specified in the Lease, any idle, improperly functioning, or abandoned equipment.

**Section 13-3-20. Amendment, Sublease, or Lease Assignment**

- A. **Approval Required.** Pueblo Council must approve any amendment to a Business Lease and may approve a provision in a Business Lease allowing Sublease or Assignment without further approval of Council. Unless otherwise provided in a Business Lease, the following govern an amendment, Sublease, or Assignment:
  - (1) An amendment, Sublease, or Lease Assignment shall be void without Pueblo Council’s approval.
  - (2) Pueblo Council may condition its approval of an amendment, Sublease, or Lease Assignment upon any terms or conditions deemed to be in the Pueblo’s Best Interest, including approval by a Village Official.
  - (3) Pueblo Council’s approval of an amendment, Sublease, or Lease Assignment does not relieve the Lessee from any liability that may have arisen prior to an amendment, Sublease, or Lease Assignment.

- (4) Approval of an amendment, Sublease, or Lease Assignment does not release the Lessee from its continuing and primary liability for performance of all terms, duties, and obligations under the Business Lease.
  - (5) Pueblo Council’s approval of an amendment, Sublease, or Lease Assignment does not constitute approval of any subsequent amendment, Sublease, or Lease Assignment.
- B. **Application.** The Lessee shall file an Application with the Department, in accordance with Section 11, for any proposed amendment, Sublease, or Lease Assignment.
  - C. **No Extension of Lease; Notice.** No amendment, Sublease, or Lease Assignment will extend the term of the Business Lease, and the Lessee shall notify its Sublessee or assignee of the terms and conditions of the Lease.
  - D. **Effect of Lease Expiration.** The expiration of the Business Lease automatically, and without notice, terminates any amendment, Sublease, or Lease Assignment, unless otherwise agreed to in writing by the Pueblo Council.

**Section 13-3-21. Leasehold Mortgage.**

**Conditions.**

- A. Unless the Lease provides otherwise, Pueblo Council must consent to a Leasehold Mortgage of a Business Lease.
- B. A Leasehold Mortgage of a Business Lease shall be subject to the provisions of applicable Pueblo of Laguna mortgage, foreclosure and eviction law, unless Lease terms approved by Pueblo Council provide otherwise.
- C. A Leasehold Mortgage vests no right, title, interest, claim or privilege in the Mortgagee against the reversionary interest of the Pueblo in the Pueblo Land under Lease, except in accordance with applicable Pueblo of Laguna mortgage, foreclosure and eviction law.

- D. Except as otherwise provided in Subsection E, Lessee or Sublessee shall not assign rights or duties of a Business Lease, and such attempt shall be void, without the prior written consent of the:
  - (1) Pueblo Council; and,
  - (2) The lender, Mortgagee, or guarantor (including a guaranteeing government agency) where the Lease and/or any Permanent Improvements on the premises are subject to a Leasehold Mortgage.
- E. Lessee or Sublessee may assign the Business Lease and/or deliver possession of the leased premises, including any Permanent Improvements thereon, without Pueblo Council approval to the Mortgagee, or its successor in interest, in lieu of foreclosure where there is default of the Leasehold Mortgage.
- F. **Application.** When required by this chapter or under the terms of a Business Lease, a Lessee or Sublessee shall apply in writing to the Department and receive necessary consent in writing to assign as collateral or mortgage the Lessee's or Sublessee's interest in the Lease, Sublease, or any Permanent Improvement on the leased premises.
- G. **Recording.** Within five (5) days of the closing, the Lessee or Mortgagee shall provide to the Department and the Pueblo Secretary a copy of any Leasehold Mortgage, and the Department shall expeditiously provide a copy to the LTRO for recording.

**Section 13-3-22. Notice of Breach of Leasehold Mortgage; Cure.**

- A. The Mortgagee shall provide the Department written notice of a breach or default of the Leasehold Mortgage, Lease, or Sublease at the following address:

Pueblo of Laguna  
Environment and Natural Resources Department  
P.O. Box 194  
Laguna, NM 87026

- B. The Lessee, Sublessee, assignee, or Mortgagee may cure the Lessee's or Sublessee's breach or default within the time period provided under the Lease or Leasehold Mortgage.
- C. The Business Lease, Sublease, or Leasehold Mortgage may provide that the Pueblo, assignee, or Mortgagee may succeed to the rights and duties of the Lessee or Sublessee in accordance with applicable Pueblo of Laguna mortgage, foreclosure and eviction law, or under the conditions provided in the Lease or Sublease.

**Part 4 - Pueblo Environmental Review**

**Section 13-3-23. Preparation of Environmental Review Statement**

- A. **Requirement.** Except as provided in subsections B or C, the Department shall prepare or obtain from the applicant an environmental review statement in accordance with this Part 4 that identifies and evaluates any Significant Effects of the proposed Lease on the Environment.
  - (1) The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., does not apply to any Lease or approval of any Lease under this chapter.
  - (2) The Department shall not be bound by NEPA or its implementing regulations in administering the provisions of this Part 4.
- B. **Categorical Exclusions.** The Department is responsible for determining that the following actions are categorically excluded from requirements for an Environmental Review Statement and the procedures set forth in Sections 13-3-24 through 13-3-27:
  - (1) A Business Lease for the reuse of existing Permanent Improvements for the same or similar Business Purpose as previously used, provided that there has been no instance of a Significant Effect on the Environment that has not been mitigated to the Pueblo's satisfaction; and

- (2) A Business Lease for the proposed placement, erection, or development of any new Permanent Improvement in support of a Business Purpose on a parcel of contiguous Pueblo Land encompassing **five (5) acres** or less, provided that:
  - (a) upon cultural resource review such site and associated improvements do not adversely affect any Pueblo cultural resource or historic property;
  - (b) the Business Purpose is primarily related to retail, office, religious, educational, recreational, cultural, public, communication, or computing; and
  - (c) proposed activities do not involve the storage, use, production, or disposal of Hazardous Substances as defined by Pueblo Law in quantities that threaten the public health or safety.
  
- C. **Exceptions to Environmental Review by Department.** Provided a previously prepared environmental review meets or exceeds the requirements under this chapter and there has been no change of use or interceding development on the site, the Department need not prepare an environmental review statement required by Subsection A for a Business Lease of Pueblo Land based on the use of the following as a substitute:
  - (1) An environmental and cultural resource review conducted or obtained by the Department in accordance with this chapter within preceding ten (10) years; or
  - (2) An environmental and cultural resource review conducted by any federal agency in accordance with NEPA or other applicable law within the preceding ten (10) years.
  
- D. **Report.** The Department shall issue a written report to Pueblo Council documenting its decision not to prepare or obtain an environmental review statement based on any of the provisions in Subsection B or C.
  
- E. In the event that the Department determines that a Categorical Exclusion under Subsection B applies, then public participation under Section 24 shall not be required.

**Section 13-3-24. Public Participation**

- A. **Public Notice.** The Department shall notify the Public of the availability for review its environmental review statement by the following methods:
  - (1) publishing the notice in a newspaper or newsletter of general circulation in the Pueblo community for at least 15 calendar days; and
  - (2) posting the notice on the Pueblo’s official public website and at Pueblo administration buildings and other places with public access within the Pueblo for at least fifteen (15) calendar days; and
  - (3) disseminating the notice in any other manner reasonably determined to reach the Public for at least fifteen (15) calendar days.
  
- B. **Notice Contents.** The notice of environmental review statement must contain the following information:
  - (1) a summary of the proposed Lease;
  - (2) a summary of the need for the proposed Lease;
  - (3) a summary of the environmental review statement;
  - (4) the location where the Public can, without charge, obtain a copy;
  - (5) the Department's recommendation on the proposed Lease; and
  - (6) an invitation to the Public to submit written comments to the Department regarding the environmental review statement during a comment period not to exceed twenty (20) calendar days from the date the notice is published.
  
- C. **Public Comments; Response.**
  - (1) The Department shall consider written comments received from the Public and provide a written response to relevant and substantive comments within twenty



- (20) calendar days of the closing of the comment period and prior to forwarding a Lease to Pueblo Council for action.
- (2) The Department's written response will identify any recommended mitigation or conditions of approval on the proposed Lease.
  - (3) Based on comments received and without need of initiating another comment period, the Department may revise the environmental review statement, or suggest the imposition of restrictions as a condition of approval of the proposed Lease.
  - (4) The Department shall notify the Public of its response to comments and recommendation to Pueblo Council by the same means used to notify the Public in accordance with Section 13-3-24.A.

**Section 13-3-25. Environmental Review Statement**

- A. **Contents.** The environmental review statement need only consider the substantive features of the proposed Lease and does not need to consider alternative actions or transactions, including a no-action alternative, but shall consider Significant Effects.
- B. **Minimum Review Requirements.** The level of detail and depth of the analysis conducted by the Department is limited to the minimum needed to determine whether there would be Significant Effects of the proposed Lease on the Environment.

**Section 13-3-26. Environmental Review Statement Documentation.**

An environmental review statement may be prepared in any format to facilitate identification and evaluation of any Significant Effects of the proposed Lease on the Environment.

**Section 13-3-27. Environmental Review Prepared by Another Entity**

The Department may rely on and publish the environmental review statement of a federal agency to fulfill the Department’s requirements for environmental review process under this Part 4.

**Section 13-3-28. Conclusion of Environmental Review Statement Process.**

- A. **Consideration Requirements.** The Pueblo Council may approve or disapprove the proposed Lease only after the Department:
  - (1) identifies and evaluates any Significant Effects of a proposed Lease on the Environment;
  - (2) publishes notice of environmental review statement;
  - (3) receives and reviews Public comments;
  - (4) provides written responses to any Public comments; and
  - (5) determines any restrictions or conditions to Lease approval; or
  - (6) determines, in accordance with Section 13-3-23.B (categorical exclusion), that no environmental review statement is required.
  
- B. **Appeal.** The Public or the proposed Lessee may appeal the Department's determination related to its environmental review statement to the Pueblo Court in accordance with Part 7.
  
- C. A timely appeal of the Department's environmental review statement determination suspends Pueblo Council approval action until resolution of the appeal by Pueblo Court.

**Part 5 - Lease Administration**

**Section 13-3-29. Administration**

- A. **Administration under Ordinance and Federal Law.** The Department shall act as agent of the Pueblo as Lessor to administer any Lease approved under this chapter and any Lease approved prior to enactment of this chapter, including any approved Leasing Documents.
  
- B. **Management Practices.** The Department shall employ sound real estate management practices, including collections, monitoring, enforcement, relief, and remedies.

- C. **Inspection of Leased Premises.** The Department, or an authorized representative, as well as the relevant Mortgagee or guaranteeing government agency, has the right at any reasonable times during the term of a Lease and upon reasonable notice to Lessee or Sublessee to enter upon leased premises within the Pueblo to inspect the same and any Permanent Improvement erected or placed thereon.

**Section 13-3-30. Notice.** The Department, Lessee, and interested parties to a Lease shall provide notice to each other in accordance with this Section.

- A. For a notice to be valid, it must be in writing and delivered by any of the following methods:
  - (1) personal delivery by Department staff to any occupant of the leased premises;
  - (2) posting such document by Department staff on all exterior entrances to all structures located on the leased premises;
  - (3) electronic mail to the address provided to the Department by the Lessee or Sublessee or provided to the Lessee or Sublessee by the Department, with a message receipt of having been read;
  - (4) a national courier to the physical address of the leased premises or Department, with all fees prepaid; or
  - (5) registered or certified mail to the postal address on file with the Department or Lessee, return receipt requested and postage prepaid.
- B. A notice will be effective when received by the recipient, and will be deemed to have been received as follows:
  - (1) if it is delivered by personal delivery, delivered by a national courier, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, then upon receipt as indicated by the date on the signed receipt;  
or

- (2) if by posting or electronic mail, or if the recipient rejects or otherwise refuses to accept notice, then upon the date of that posting, electronic mailing, rejection, or refusal; or
- (3) if notice cannot be delivered because of a change in address for which no notice was given or due to mistake of address, then a second attempt by a different method in Subsection A must be made by the sender and shall be deemed effective notice.

**Section 13-3-31. Accounting**

The Pueblo's Office of the Treasurer shall implement and maintain an accounting system to ensure proper accounting of rent payments of leases in accordance with generally accepted accounting principles.

**Section 13-3-32. Administrative Fees**

The Department may charge Lessee a reasonable administrative fee to cover the expense of processing a Lease, Sublease, Assignment, Leasehold Mortgage, amendment, or other transaction under this chapter.

**Section 13-3-33. Documentation**

- A. **Recording.** The Department shall provide copies of the following to the Secretary for filing with the Land Titles and Records Office of the Bureau of Indian Affairs (LTRO):
  - (1) Leases, including any amendment or renewal thereof, approved under this chapter; and
  - (2) Other documents related to a Business Lease, including any Lease Assignment, Sublease, Leasehold Mortgage and release, plats, and amendments thereof, required for LTRO filing under federal law.
- B. The Department shall provide copies of the following to the Pueblo Secretary for filing:
  - (1) Leases, including any amendment or renewal thereof, approved under this chapter;

- (2) Leasing Documents, including any Lease Assignment, Sublease, Leasehold Mortgage and release, plats, and amendments thereof, including Land Use Agreements and Licenses; and
  - (3) Court orders or administrative decisions affecting an interest in Pueblo Land.
- C. The Treasurer shall provide documentation showing rental payments to the Pueblo sufficient to enable the Secretary to discharge the trust responsibility of the United States under 25 U.S.C. § 415(h)(7) and shall provide rental payment documentation to the Department sufficient to enable the discharge of its administrative and enforcement responsibilities under this Code.

## **Part 6 - Enforcement**

### **Section 13-3-34. Enforcement**

- A. The Department shall enforce the covenants, terms and conditions of any Lease approved in accordance with this chapter, as well as any Lease for Business Purposes approved prior to enactment of this chapter.
- B. Nothing in this chapter prohibits the Department from requesting, or limits the authority of, the Secretary to enforce the terms and conditions of, or cancel, any Lease.

### **Section 13-3-35. Violation, Cancellation, and Remedies**

- A. **Violation; Cure.** A violation of a Lease includes a failure to pay any rent or other monetary obligation due under the Lease, violation of any term, condition, or covenant of the Lease, or failure to perform or observe any other obligation under the Lease by any party. Unless otherwise stated in a Lease, a party to a Lease shall be in default under a Lease if a violation of the Lease is not cured within 30 days after a party to the Lease gives notice of the violation to the violating party.
- B. **Cancellation.** A violation of a Lease by the Lessee may result in Lessor's cancellation of the Lease.
- C. **Remedies.**

- (1) On the violation of a Lease term, condition or covenant, a party to the Lease, as well as the Secretary, Mortgagee, or government guaranteeing agency, shall have the relevant remedies available, at law or in equity, in Pueblo Court and as provided in the Lease, including negotiated remedies, cancellation of the Lease, a proceeding to recover any damages from Lessee, Sublessee or Mortgagee, a proceeding to seek eviction of Lessee, or a proceeding to seek injunction or writ of mandamus against the Department or Pueblo official to perform covenants, terms, or conditions of the Lease.
- (2) If the Lessee does not cure a violation of a Lease within the required cure period, the Department may seek to cancel the Lease upon notice to the other party and any surety or Mortgagee, in addition to any other remedies.
- (3) A notice of Lease cancellation by the Department must:
  - (a) explain the grounds for cancellation;
  - (b) notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease, if applicable;
  - (c) notify the Lessee of the Lessee's right to appeal under Part 7, including the possibility that Pueblo Court may require the Lessee to post an appeal bond;
  - (d) order the Lessee to vacate the property within thirty (30) days of the date of receipt of the termination letter, if an appeal is not filed by that time; and
  - (e) order the Lessee to take any other action the Department deems necessary to protect the Pueblo, if applicable.

D. **Compliance with Lease.** Pending resolution of any dispute, the Lessee shall continue to pay all rent and comply with the terms of the Lease, including any requirements for environmental or hazardous waste remediation and reclamation of the leased premises.

**Section 13-3-36. Nuisance; Harmful or Threatening Activity**

- A. **Abatement of Nuisance.** The Department may take any necessary action to abate a nuisance created by Lease occupancy or activities, including unauthorized or abandoned Permanent Improvements, and other abandoned property. For purposes of this section “nuisance” shall mean the maintenance on the leased premises of a condition that:
- (1) Unreasonably threatens the health or safety of a resident of the community, the leased property, or neighboring land users; or
  - (2) Unreasonably and substantially interferes with the ability of one or more neighboring real property users to enjoy the reasonable use and occupancy of their property.
- B. **Harmful or Threatening Activity.** If a Lessee or other party or person causes or threatens to cause immediate and significant harm to the leased premises, public health, or public safety, or engages in illegal or criminal activity on the leased premises, the Department may take emergency action in accordance with Pueblo Law, including cancelling the Lease, commencing eviction proceedings in Pueblo Court, seeking forcible entry and detainer, or taking any other action deemed appropriate to protect the public interest, the leased premises, or the Environment.
- C. Expenses, costs, and fees incurred by the Department to remove unauthorized Permanent Improvements, or to mitigate damage or waste to Pueblo Land arising from use or occupancy under a Lease shall remain the sole liability of the Lessee and are deemed additional rent due by Lessee at the time incurred.

**Section 13-3-37. Holdover and Trespass**

Except as provided in Sections 13-3-9, a Lessee or successor in interest to a Lease remaining in possession of the leased premises after expiration or cancellation of any Lease constitutes trespass on Pueblo Land and is subject to any remedy available under Pueblo Law or federal law.

**Part 7 - Court Review**

**Section 13-3-38. Jurisdiction**

- A. The Pueblo Court has jurisdiction over any action to enforce the covenants, terms and conditions of a Lease approved by Pueblo Council.
- B. The Pueblo Court has jurisdiction over an action that seeks to compel action under Section 13-3-11.G(1) of this chapter or to challenge the Department’s determination under Sections 13-3-28, 13-3-34, 13-3-35, 13-3-36, or 13-3-37.
- C. The Pueblo Court does not have jurisdiction over Pueblo Council to compel approval or disapproval of any Lease.

**Section 13-3-39. Action by Department**

An action by the Department to enforce any covenant, term or condition of a Lease may be commenced without a filing fee in the Pueblo Court, and shall be styled as: “Pueblo of Laguna, ex rel. Environmental and Natural Resources Department, Petitioner vs.     (Lessee’s name)    , Respondent.”

**Section 13-3-40. Appeal of Department Action**

- A. **Notice of Appeal; Contents; Service.**
  - (1) The Lessee or interested party may appeal the Negotiator’s or Department's inaction under Section 13-3-11.G(1) or any final determination of the Department under Sections 13-3-28, 13-3-34, 13-3-35, 13-3-36, or 13-3-37 to the Pueblo Court by filing a notice of appeal with the proper filing fee in the Pueblo Court within **fourteen (14) calendar days** of the:
    - (a) Department's written determination; or
    - (b) Date upon which the action of Negotiator or Department was required to be complete.



- (2) Pueblo Court has no jurisdiction to consider an appeal filed beyond the appeal period in Subsection A(1), and the determination or action becomes final for all purposes.
- (3) The notice to initiate an appeal must be styled as “     (Lessee’s or interested party’s name)    , Petitioner vs. Pueblo of Laguna, ex rel. Environmental and Natural Resources Department, Respondent,” and state the following:
  - (a) Lessee's or interested party's interest in the Lease;
  - (b) The facts necessary to understand circumstances giving rise to the appeal;
  - (c) The question or issue to be resolved; and
  - (d) Relief sought.
- (4) The Lessee or interested party shall provide Notice in accordance with Section 13-3-30 or by service of process under applicable Pueblo Rules of Civil Procedure to the director of the Department and the Governor of the Pueblo promptly after the filing of the notice of appeal in the Pueblo Court, and the Department’s time period to respond under Pueblo Court procedures does not begin until Notice is provided as required by Section 13-3-30 or by service of process under such Rules of Civil Procedure.

**B. Scope of Review.** Pueblo Court shall only review the administrative record and pleadings, and shall uphold the final determination or action unless it finds that the action:

- (1) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law;
- (2) exceeded the actor’s jurisdiction, authority, or limitations; or
- (3) is unsupported by evidence.

**Section 13-3-41. Appeal Bond.**

Upon the Pueblo's motion, Pueblo Court may require the Lessee or interested party to file a bond or provide other security in any form and amount necessary to protect the Pueblo from financial losses during the course an appeal.

**Section 13-3-42. Procedures.**

Any action under this Part 7 shall be:

- A. Conducted in accordance with the applicable Pueblo laws and procedures for the Pueblo Court;
- B. Decided only by a Pueblo Court judge, rather than a jury; and
- C. Determined based on a preponderance of the evidence.

**Section 13-3-43. Sovereign Immunity**

- A. The Pueblo retains sovereign immunity from suit, except that such immunity is waived for the Pueblo and Department solely for the purpose of resolving an appeal in Pueblo Court as provided in Section 13-3-40 or for enforcement of any Lease covenant, term, or condition by a party to a Lease or Leasehold Mortgage under this chapter.
- B. The waiver of immunity in Subsection A is limited to injunctive relief and direct compensatory damages, if any, occasioned by an act or omission of a Pueblo employee, agent, or official, including Village Official, in violation of a Lease covenant, term, or condition or provision of this chapter.
- C. Pueblo immunity is not waived for indirect, punitive, or exemplary damages or damages under any theory of tort or for civil rights violation arising under or related to a Lease.
- D. Unless a term of the Lease expresses otherwise, the Pueblo does not waive its immunity or the Department's immunity before any tribunal other than the Pueblo Court and in the Pueblo Court only to the extent expressed in this section.

**Part 8 – Miscellaneous Provisions**

**Section 13-3-44. Regulations**

The Department or any other relevant Pueblo department or office may issue regulations and operating procedures to implement this chapter.

**Section 13-3-45. Amendments**

- A. **Substantive Amendments.** Pueblo Council may propose and approve amendments to this chapter concerning matters specifically governed by 25 U.S.C. § 415 and its implementing regulations, subject to approval of the Secretary.
  
- B. **Technical Amendments.** Pueblo Council may approve and enact any amendment to this chapter without approval of the Secretary, provided the amendment is for clarification or administrative convenience, is consistent with federal and Pueblo law, and shall provide notice of such enacted amendment to the Secretary.

**Section 13-3-46. Severability**

If any court of competent jurisdiction determines any provision in this chapter is invalid, void, or unenforceable, the remaining provisions of this chapter remain in full force and effect without regard to the invalid, void, or unenforceable provision.

**Section 13-3-47. Effective Date**

The Business Purpose Leasing Code shall take effect upon approval by the Secretary or by the Secretary’s authorized designee pursuant to 209 Department Manuals, Chapter 8: Assistant Secretary – Indian Affairs, 8.1 Delegation.