



BLUE LAKE RANCHERIA

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ORDINANCE NO. 07-03

AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ESTABLISHING A SUMMARY TRIBAL COURT PROCEDURE FOR OBTAINING POSSESSION OF TRUST LANDS ON THE BLUE LAKE RANCHERIA

The Business Council of the Blue Lake Rancheria hereby ordains as follows:

Section 1. Findings and Declarations. The Business Council (“Council”) for the Blue Lake Rancheria (“Tribe”) finds and declares that:

1. The Tribe leases tribal land and otherwise allows individuals temporary possession of tribal land. The Tribe has refrained from using self-help methods to recover possession of tribal trust land or other tribal lands located on the Tribe’s Reservation, and requires a summary procedure for recovering immediate possession of such lands, when an individual’s permission to use trust land has been terminated or the persons otherwise lacks the legal authority to possess or remain in possession thereof.
2. The Tribe adopts this ordinance in order to provide its tribal court with authority to adjudicate its right to possession of tribal trust and tribally owned Reservation lands and to provide a summary procedure for recovering possession thereof.

Section 2. Adoption of New Chapter 2 of Title 11, Article 2 of the Blue Lake Rancheria Tribal Code Entitled “Summary Procedure for Obtaining Possession of Tribal Trust Lands.” A new Chapter 2 entitled “Summary Tribal Court Procedure for Obtaining Possession of Tribal Trust Lands” is hereby added to Title 11, Article 2 of the Blue Lake Rancheria Tribal Code and shall provide as follows:

TITLE 11 – TRIBAL COURT

ARTICLE 2 - JURISDICTION

CHAPTER 2

SUMMARY TRIBAL COURT PROCEDURE FOR OBTAINING POSSESSION OF TRUST LANDS ON THE BLUE LAKE RANCHERIA

Sections:

- 11.02.02.020 Definitions.
- 11.02.02.030 Forcible Entry; Party in Possession.
- 11.02.02.040 Forcible Detainer Defined.
- 11.02.02.045 Forcible Entry and Detainer Prohibited.
- 11.02.02.050 Unlawful Detainer Defined.
- 11.02.02.060 Notice; Methods of Service.
- 11.02.02.070 Necessary Party Tenants; Joinder; Judgment; Subtenants after Notice to Tenant; Persons Bound by Judgment.
- 11.02.02.080 Complaint; Verification; Summons.
- 11.02.02.090 Writ of Possession; Issuance and Directions; Grounds; Undertaking; Limitation on Defendant's Damage Action.
- 11.02.02.100 Summons; Form; Issuance; Service and Return.
- 11.02.02.110 Answer or Amendment; Time Allowed.
- 11.02.02.120 Motion to Quash Service or Stay or Dismiss Action Time.
- 11.02.02.130 Extension of Time; Consent of Adverse Party.
- 11.02.02.140 Entry of Default; Application for Relief.
- 11.02.02.150 Prima Facie Case; Defense.
- 11.02.02.160 Judgment; Restitution of Premises; Forfeiture of Lease; Treble Damages; Stay of Execution; Payment into Court; Enforcement; Disposition of Personal Property; Notice; Cost of Storage; Liability of Tribe/Sublessor.
- 11.02.02.170 Final Judgment.
- 11.02.02.180 Applicable Rules of Practice.
- 11.02.02.190 Priority of Actions.

11.02.02.020 Definitions. As used in this Chapter, the following terms shall have the following meanings:

A. "Lease" shall mean any permit or other written agreement approved by the Business Council or its authorized agent authorizing a person to occupy a premises on trust lands and/or tribal lands.

B. "Person" shall mean any individual, partnership, corporation, government, organization, or any group acting in combination as a unit. The term "Person" shall not mean the Blue Lake Rancheria or any officers or employees of the Tribe acting at the direction of the Business Council.

C. "Premises" shall mean a portion of trust lands or tribal lands that a person(s) is occupying.

D. **“Business Council”** or **“Council”** shall mean the Business Council of the Tribe or its duly authorized representative.

E. **“Tribe”** shall mean the Blue Lake Rancheria of California.

F. **“Trust Lands”** shall mean all lands the title to which are owned by the United States of America in trust for the Tribe.

G. **“Reservation”** shall mean all lands within the exterior boundaries of the Blue Lake Rancheria.

H. **“Tribal Lands”** shall mean all lands owned by the Tribe within the Reservation.

11.02.02.030 Forcible Entry, Party in Possession. Every person is guilty of a forcible entry who either: (1) by breaking open doors, windows, or other parts of a house on a premises of another or that of the Tribe or by any kind of violence or circumstance of terror enters upon or onto any premises of another or that of the Tribe; or (2) who, after entering peaceably upon the premises of another or that of the Tribe turns out by force, threats, or menacing conduct, the Tribe, its officers, agents or employees or any person in lawful possession of the premises. As used in this section, the phrase “person in lawful possession” means any person who has the authority to occupy the premises from the Council.

11.02.02.040 Forcible Detainer Defined. Every person is guilty of a forcible detainer who either: (1) by force or by menace and threats of violence, unlawfully holds and keeps the possession of any premises whether the same was acquired peaceably or otherwise; or (2) who during the absence of the occupant of any premises unlawfully enters upon said premises and who, after demand is made for the surrender thereof, for the period of one day, refuses to surrender the same to such former occupant or the Tribe. As used in this section, the terms “occupant of a premises” means any person who within one day preceding such unlawful entry, was in the peaceable and undisturbed possession of such premises with the consent or the permission of the Council.

11.02.02.045 Forcible Entry and Detainer Prohibited. Forcible entry and detainer are hereby prohibited. Any person guilty of a forcible detainer or entry shall be evicted and removed from the premises by an action in Tribal Court in accordance with the procedures set forth in this Chapter for unlawful detainer, provided, however, that the plaintiff shall not be required to give or serve the three or thirty day notices required by Sections 11.02.02.050 and 11.02.02.060 of this Chapter.

11.02.02.050 Unlawful Detainer Defined. A tenant of a premises is guilty of unlawful detainer:

A. when the tenant continues in possession of all or part of the premises, in person or by subtenant, after the expiration of the term for which it is let to the tenant, including a month-to-month tenancy terminated by notice of non-renewal. In the absence of a written lease specifying the term of the tenancy, the tenancy term is conclusively presumed to coincide with the payment of rent (e.g., if rent is paid once per month, the

tenancy is presumed to be a month-to-month tenancy). Except as provided in subsection F, notice that a month-to-month tenancy shall not renew shall be given not less than 30 days prior to the termination date; or

B. when the tenant continues in possession, in person or by subtenant, without the permission of the Council, after default in the payment of the rent required by the lease or rental agreement, and three days has past since the service of a written notice. The notice must demand payment or possession, and shall state the amount which is due. The notice shall declare a forfeiture of the lease, if the landlord seeks such forfeiture. The notice must be served on the tenant and any subtenant in actual occupation of the premises. Such notice may be served at any time within one year after the rent becomes due; or

C. when the tenant continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease under which the premises is held, including any covenant not to assign or sublet, and, in the case of a curable breach of the lease, three days has past since the service of a written notice. The notice shall require the performance of such conditions or covenants or possession. The notice shall declare a forfeiture of the lease, if the landlord seeks such forfeiture. The notice must be served on the tenant and any subtenant in actual occupation of the premises. Within three days after the service of the notice, the tenant or any subtenant in actual occupation of the premises, or any Person for whose benefit the leasehold interest is encumbered or other person interested in maintaining the tenancy may perform the conditions or covenants of the lease, and thereby save the lease from forfeiture. No three-day notice is required, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, or are otherwise incurable. In such event, the lease is automatically forfeited without notice to the tenant.

A tenant may initiate proceedings, similar to those described in this section, to take possession of a premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his/her unlawful detainer of the premises sublet to him/her or held by him/her; or

D. when any tenant or subtenant assigning or subletting or committing waste upon the premises, contrary to the conditions or covenants of the tenant's lease, or maintains, commits, or permits the maintenance or commission of a nuisance upon the premises or uses such premises for an unlawful purpose. The commission by the tenant or subtenant of any of the foregoing acts listed in this subsection D thereby terminates the lease, and the Tribe, and/or sublessor or his/her successor, shall, upon service of a three day notice to quit upon the person or persons in possession, be entitled to restitution or possession of such premises under the provisions of this Chapter. For purposes of this subdivision, a person who illegally sells a controlled substance upon the premises or uses the premises to further that purpose, shall be deemed to have committed a nuisance upon the premises.; or

E. when the tenant gives written notice of his or her intent to terminate the tenant's occupation of the premises, or makes a written offer to surrender which is accepted in writing by the Tribe or the sublessor, but fails to deliver up possession at the time specified in said written notice.

F. Special rules applicable to mobilehomes. This rule regarding notice applies to a space or lot leased to a tenant for a mobilehome, as defined in California Civil Code §798.3, which is not owned by the Tribe or a sublessor. (Hereafter, "mobilehome.") A copy of every 3-day notice or notice of termination permitted or required by this Chapter shall be sent to the legal owner, as defined in Section 18005.8 of the California Health and Safety Code (hereafter, "legal owner"), each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code (hereafter, "junior lienholder"), and the registered owner of the mobilehome, if other than the Tenant, by United States mail at the same time that it is served on the Tenant. Notices to terminate a month-to-month tenancy must be given not less than 60 days before the termination date.

11.02.02.060 Notice; Method of Service. The notices required by Section 11.02.02.050 may be served by either: (1) delivering a copy to the tenant personally; or (2) if the tenant be absent from his/her place of residence and from his/her usual place of business by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his/her place of residence; or (3) if such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the premises and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the premises is situated. Service upon a subtenant may be made in the same manner.

11.02.02.070 Necessary Party Tenants; Joinder; Judgment; Subtenants after Notice to Tenant; Persons Bound by Judgment. Except in the case of a mobilehome, no person, other than the tenant of the premises and the subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made party defendants in the proceeding, but when it appears that any of the parties served with process or appearing in the proceeding have committed forcible detainer or unlawful detainer, judgment shall be rendered against the tenant or subtenant. In case a defendant has become a subtenant of the premises in controversy, after the service of the notice upon the tenant of the premises provided for in Section 11.02.02.050 above, the fact that such notice was not served on each subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant after the commencement of the suit, shall be bound by the judgment, the same as if they had been made a party to the action. In the case of a mobilehome the legal and registered owners as well as any junior lienholder may, but need not, be named as defendants.

11.02.02.080 Complaint; Verification; Summons. The complaint shall be verified and set forth the facts establishing a violation of Sections 11.02.02.030, .040 or .050 and entitling the plaintiff to remedies, including a forfeiture of the lease, possession of the premises and damages, and shall set forth the remedies sought. If the unlawful detainer is based upon a default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons shall be issued by the Court Clerk. The summons shall include notice that an answer or other response to the complaint must be filed within five (5) days of service. Summons, the complaint, a blank answer form and notice of right to pre-judgment claim of right to possession shall be served on the defendants and any occupants on the premises in the manner prescribed for the service of summons in the Tribal Court's Rules of Pleadings, Practice and Procedures.

11.02.02.090 Writ of Possession; Issuance and Directions; Grounds; Undertaking; Limitation on Defendant's Damage Action. Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the premises by a writ of possession issued by the Tribal Court and directed to the Tribal Police; Bureau of Indian Affairs Police or the Sheriff of the County of Humboldt ("County"), and/or other authorized Tribal law enforcement official, for execution, where it appears to the satisfaction of the Tribal Court, after a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides off of the Reservation, has departed from the Reservation, cannot, after due diligence be found on the Reservation, or has concealed himself/herself to avoid the service of summons. Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the Tribal Court's Rules of Pleading, Practice, and Procedure, and shall inform the defendant that he/she may file affidavits on his/her behalf with the Tribal Court and may appear and present testimony on his/her behalf, and that, if he/she fails to appear, the plaintiff may apply to the Tribal Court for a writ of possession. The Tribal Court Judge may require the plaintiff to file an undertaking with good and sufficient sureties in a sum to be fixed and determined by the Tribal Court Judge to the effect that, if the plaintiff fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of possession. An action to recover such damages shall be commenced by the defendant in the Tribal Court within one year from the date of entry of dismissal or of final judgment in favor of the defendant. Notwithstanding the foregoing, the Tribe shall not be required to post bond or any other type of surety in order to obtain a writ of possession

11.02.02.100 Summons; Form; Issuance; Service and Return. The summons shall be in the form that conforms to the Tribal Court's Rules of Pleading, Practice and Procedure except that the defendant's time to respond to the complaint shall be five days after the summons is served upon him/her. In all other respects, the summons shall be issued, served, and returned in the same manner as a summons in a civil action specified under the Tribal Court's Rules of Pleading, Practice, and Procedure.

11.02.02.110 Answer or Amendment; Time Allowed. In any action under this Chapter, unless otherwise ordered by the Tribal Court for good cause shown, the time allowed the defendant to answer the complaint, answer the complaint, if amended, or amend the answer shall not exceed five days.

11.02.02.120 Motion to Quash Service or Stay or Dismiss Action, Time. Notwithstanding any other provision of law to the contrary, in any action under this Chapter; (a) where the defendant files a notice of motion to quash service, stay proceedings, or dismiss the complaint pursuant to the Court's Rules of Pleading, Practice, and Procedure, the time for filing the motion shall be the same as for the filing of an answer and the time for hearing the motion by the Tribal Court shall not be less than three days nor more than seven days after the filing of the notice; and (b) the service and filing of the notice of motion under subdivision (a) above, shall extend the defendant's time to plead until five days after service upon the defendant of the written notice of entry of an order denying the defendant's motion except that for good cause shown the Tribal Court may extend the defendant's time to plead for an additional period not exceeding fifteen days.

11.02.02.130 Extension of Time; Consent of Adverse Party. Unless otherwise ordered by the Tribal Court for good cause shown, no extension of time allowed in any action under this Chapter for the causes specified in this Chapter shall exceed ten days without the consent of the adverse party.

11.02.02.140 Entry of Default; Application for Relief. If a defendant fails to file an answer within the required time, the plaintiff may request the Court Clerk to enter that defendant's default. The plaintiff may make the same request and the Clerk shall enter a defendant's default, if he or she fails to appear for trial at the scheduled date, time and place. After default has been entered, the plaintiff may apply to the Court for a default judgment and for the remedies prayed for in the complaint. Evidence in support may be submitted by affidavit or through testimony at a hearing conducted by the Court.

11.02.02.150 Trials; Prima Facie Case; Defense. Whenever an issue of fact is presented by the pleadings, it must be tried by the Tribal Court Judge. No party shall have the right to a trial by jury. On the trial of any proceedings for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he/she was peaceably in the actual possession of the premises at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer. The defendant may show in his/her defense that he/she or those whose interests in such premises he/she claims, have been in the quiet possession thereof prior to the commencement of the proceedings and that his/her interest therein is not then ended or determined or does not violate any applicable provisions of tribal or federal law; and such showing is a bar to the proceedings.

11.02.02.160 Judgment; Restitution of Premises; Forfeiture of Lease; Treble Damages; Stay of Execution; Payment into Court; Enforcement; Disposition of Personal Property; Notice; Cost of Storage; Liability of Tribe/Sublessor.

(A) After conducting the trial, if the Court rules for the plaintiff, judgment shall be entered against the defendant or defendants for the restitution of the premises. If the notice required by Section 11.02.02.050 declared a forfeiture of the lease, the judgment shall also declare a forfeiture of the lease. If no notice is required by Section 11.02.02.050, the judgment shall declare a forfeiture of the lease.

(B) The Court shall also determine and include in the judgment damages to which the plaintiff is entitled which were caused by or recoverable on account of any forcible entry or any forcible or unlawful detainer proved at the trial and find and include in the judgment the amount of any rent due, including prejudgment interest at the prime rate then prevailing but not less than six percent (6%) simple annual interest. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer and malice is shown, the plaintiff may be awarded either damages and rent due or punitive damages in an amount which does not exceed three times the amount of damages and rent found due. The Court shall determine whether damages and rent found due or punitive damages shall be awarded and judgment shall be awarded accordingly. The prevailing party shall recover court costs, which may include a reasonable attorney's fee, if the lease contains a provision awarding attorney's fees to the prevailing party. Costs shall also include the cost of title reports or investigations required of the Tribe or a sublessor to comply with the notice requirements of this

Chapter.

(C) Any judgment entered pursuant to this section, may be certified by the Court Clerk and when so certified may be submitted to the Humboldt County Superior Court for entry as a state court judgment. The clerk and judge of the Tribal Court shall cooperate with the plaintiff and provide any information reasonably requested to aid the plaintiff in convincing the superior court to give comity and full faith and credit to the Tribal Court Judgment.

(D) If the Premises are leased as a space or location for a mobilehome and the mobilehome is not owned by the plaintiff, the defendant shall have sixty (60) days after entry of judgment to remove the mobilehome from the premises before a writ of possession may be issued on the judgment. If the mobilehome remains on the premises after that time period has expired, a writ of possession shall issue and may be enforced. The mobilehome and its contents shall be considered personal property and may be disposed of as in the case of any other personal property remaining on the premises, after possession has been restored to the plaintiff.

(E) A plaintiff, having obtained a writ of possession pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to it by officers charged by the Business Council with the enforcement of such writs. Promptly upon payment of any reasonable costs of service, the enforcing officer shall serve an occupant or post a copy of the writ on the premises as provided for in 11.02.02.050 of this Chapter. In addition, where the copy is posted on the premises, another copy of the writ shall be mailed to the defendant at his/her business or residence address last known to the plaintiff or the plaintiff's attorney or, if no such address is known, at the premises. The writ of possession shall include a statement that the personal property remaining on the premises at the time possession is restored to the plaintiff may be claimed and/or disposed of in accordance with a tribal abandoned property ordinance, or, in the absence of such an ordinance, California Civil Code Sections 1951.3 and 1981-1991.

11.02.02.170 Final Judgment. The decision of the Tribal Court Judge shall be final and non-appealable. Any party, to whom the Tribal Court has entered an adverse judgment against under this Chapter, may make application to the Tribal Court for reconsideration pursuant to the Court's Rules of Pleading, Practice, and Procedure.

11.02.02.180 Applicable Rules of Practice. Any proceedings before the Tribal Court under this Chapter not specified herein shall be governed by the Rules of Pleading, Practice, and Procedure of the Tribal Court.

11.02.02.190 Priority of Actions. In all proceeding brought before the Tribal Court to recover the possession of trust lands or tribal lands pursuant to the provisions of this Chapter, the Tribal Court shall give such actions precedence over all other civil actions therein, except actions governed by the Court's Juvenile Court Rules, in the matter of the setting of the hearing or trial in the case to the end that all such actions may be quickly heard and determined.

Section 3. Severability. In the event that any section or provision of this Ordinance is held or determined to be invalid by any court of competent jurisdiction, it is the intent of the Tribal Council that the remaining sections or provisions of this Ordinance, and any amendments of this Ordinance shall continue in full force and effect.

Section 5. Amendments. This Ordinance may be amended at any time by the Tribal Council, when such amendment is necessary to promote the general health, safety, and welfare of the Tribe or its members.

Section 6. Repeal of Prior Ordinances. All prior Ordinances previously enacted by the Tribal Council, which are inconsistent with the provisions of this Ordinance are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other Ordinance, the provisions of this Ordinance shall control.

Section 7. Effective Date. This Ordinance shall take effect immediately after its adoption by the Council.

CERTIFICATION

The foregoing Ordinance was adopted at a regular meeting of the Blue Lake Rancheria Business Council, with a quorum present, held on November 16, 2007, by the following vote:

AYES: 5
NOES: 0
ABSENT: 0
ABSTAIN: 0

Claudia Brundin

Claudia Brundin, Chairperson

ATTESTED:

Bonnie L. Mobbs

Bonnie L. Mobbs, Executive Secretary