

**BEAR RIVER BAND
OF THE ROHNERVILLE RANCHERIA
EVICTON ORDINANCE**



SECTION 2.40.01 PURPOSE

The Eviction Ordinance (“Ordinance”) of the Bear River Band of the Rohnerville Rancheria (“Tribe”) governs disputes over rights of occupancy of all housing units on tribal lands owned and administered by the Bear River Development Commission (“Commission”).

SECTION 2.40.02 REGULATORY AUTHORITY

The Tribal Council for the Bear River Band of the Rohnerville delegated by Resolution 18-30 (approved August 21, 2018) its regulatory authority over tribal housing to the Commission.

All former housing and eviction ordinances, including the Unlawful Detainer Ordinance (approved on October 24, 2017) and Housing Ordinance (approved on August 28, 2018) is repealed in its entirety. The Tribal Council approved this Eviction Ordinance to define the adjudicatory process for hearing eviction matters in the Tribal Court, consistent with the Commission’s recommendation to delegate eviction proceedings to the Tribal Court (Commission Motion # 3, dated May 19, 2021).

Tribal housing matters are regulated by the Commission, and respective tribal law and policies may be found at, including but not limited to: Tribal Council Resolution 18-30, Bear River Development Commission Ordinance No. 12-03, and the Bear River Band of the Rohnerville Rancheria Housing Policy.

SECTION 2.40.03 JURISDICTION

1. Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:
 - a) The exterior boundaries of the Tribal Rancheria;
 - b) Lands owned by, held in trust for, financed by, leased or used by the Tribe, its members, the Commission, or any other entity of the Tribe wherever located; or
 - c) The Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or the United States.
2. Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupation, or residence and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Tribe, Indian, or non-Indian. Any act within the Rancheria dealing with subject matter of this Ordinance shall be subject to the jurisdiction of the Tribe.

3. Jurisdiction under this Ordinance shall be exercised by the Bear River Band Tribal Court (“Tribal Court”) pursuant to its authority under the "Act Establishing the Judiciary" Section 5.0 (a) - (c).

SECTION 2.40.04

RELATION TO OTHER LAWS

1. Unless affected or displaced by this Ordinance, principals of law and equity in the common law of the Tribe and Tribal customs and traditions are applicable and may be used as guidance to supplement and interpret this Ordinance.
2. Conflicts with Other Laws:
 - a) Tribal Laws
Where a conflict may appear between this Ordinance and other Bear River Tribal laws, this Ordinance shall supersede or serve as a substitute for any other Bear River tribal law. This Ordinance shall be liberally construed, and in conjunction with other Bear River Tribal law provisions.
 - b) Federal Laws
Where a conflict may appear between this Ordinance and any federal statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Ordinance.
 - c) State Laws
California courts do not have concurrent jurisdiction over eviction proceedings under this Ordinance. The Tribal Court has exclusive jurisdiction over eviction proceedings under this Ordinance. To the extent that the laws of any state may be applicable to the subject matter of this Ordinance, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

SECTION 2.40.05

DEFINITIONS

1. *Abandonment* refers to circumstances where the Resident 1) left the dwelling unit for a successive period of fifteen (15) days without written approval from the Commission, 2) resided less than nine (9) months of the year in the dwelling unit, or 3) Resident expressed intent to not return including but not limited to removal of possessions, nonpayment of Monthly Fee, and/or disconnected utilities.
2. *Resident Occupancy Agreement* (“ROA”) refers to the contract executed by a Resident and the Commission allowing the Resident to reside in a dwelling unit or other housing unit owned and managed by the Tribe and which states the responsibilities and obligations of both parties.
3. *Monthly Fee* means the monthly fee amount owed by the Resident residing in a dwelling unit administered by the Commission and is determined through program requirements, income eligibility, and re-examinations. The term rent shall be synonymous with a Resident’s monthly fee.
4. *Non-Payment Obligation* refers to any obligations set forth in adopted policies of the Commission and/or the Resident’s ROA which the Resident must abide by for continued occupancy in the housing unit.

5. *Nuisance* refers to the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property. Serious nuisance refers to inflicting bodily harm upon another person or threatening to inflict such harm with the present ability to effect the harm and under circumstances which would lead a reasonable person to believe that such threat will be carried out; substantial and willful destruction of part of the dwelling unit or premises; conduct which presents an immediate and serious danger to the safety of other persons; using the premises for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other persons; or any drug related criminal activity on the premises, engaged in by a Resident, his or her guest, or any other person under the Resident's control.
6. *Notice of Termination and Quit* refers to the notice stating a Resident has breached his/her ROA and the Commission is terminating his/her tenancy and that the Resident has a right to a termination hearing before the Commission.
7. *Payment Obligation* refers to any money owed to the Commission by the Resident such as monthly fees or money owed through reasonable arrearages for Resident damage or necessary repairs due to Resident's negligence.
8. *Resident* means the person who signed a ROA with the Commission and who, with their immediate family and/or guests reside in the dwelling unit/home and receives services from the Tribe or Commission. Residents are prohibited from subleasing his/her interest under ROA.
9. *Termination Hearing* refers to the meeting between a Resident and the Commission in which the Resident or his/her representative presents evidence and/or testimony on the issue of whether or not the Resident's tenancy should be terminated.

SECTION 2.40.06 NO SELF-HELP EVICTION

Except by mutual consent of the parties, the Commission may not compel a Resident to vacate any premises in a forceful fashion or in a way which causes a breach of the peace without exhausting its administrative termination of the ROA and obtaining a Court Order as provided in this Ordinance.

SECTION 2.40.07 GROUNDS FOR EVICTION

Under this Ordinance, a Resident may be evicted if such person continues in occupancy of a Tribal dwelling unit under any of the following situations:

1. Grounds for Eviction:
 - a) Breach of the terms of the ROA;
 - b) In all other cases, for any arrearage in fees, costs, or damages which have been due and owing for thirty (30) calendar days or more;
 - c) Nuisance, property damage, or destruction, injuries to the property, person, or peace of other residents, or injuries or damage to common areas and property;
 - d) Serious or repeated violations of the ROA, any reasonable rules or policies adopted by the Commission, this Ordinance, U.S. Department of Housing and Urban Development regulations, or any applicable Tribal Law;

- e) Occupation of any premises without permission or agreement, following any reasonable demand by the Commission to leave;
 - f) Threatening the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the Commission or other persons residing in the immediate vicinity of the premises; and/or
 - g) Engaging in serious criminal activity on or off the premises, including drug-related criminal activity.
2. Notice of Termination and Quit
- a) The Notice of Termination and Quit may consist of:
 - i. For cause:
 - 1) 3-day notice
 - 2) 10-day notice
 - 3) Without cause: 30-day notice
 - b) Any Notice of Termination and Quit shall be in writing substantially in the following form:
 - i. “You are hereby given notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (insert the address or other reasonable description of the location of the dwelling unit), on or before the (insert the date) for the following reason (insert the legally cognizable reason or reasons for the notice to quit possession using the Ordinance language or words of similar import).” Signed, (insert the signature, name and address of the Commission, as well as the date and place of signing).
 - ii. The Notice of Termination and Quit shall be addressed to the Resident of the dwelling unit and shall state the legally cognizable reasons(s) for termination of the tenancy and the date by which the Resident is required to quit possession of the dwelling unit.

SECTION 2.40.08 EVICTION NOT NECESSARY IN CASES OF ABANDONMENT

1. In cases of abandonment, a Petition for Eviction is not necessary to gain possession of the dwelling unit.
2. Under such circumstances, the Commission without further notice to the Resident, may take immediate possession of a dwelling unit including but not limited to changing door locks, shutting off utilities or boarding up a dwelling unit that looks to be abandoned or poses a health or safety risk to neighbors or the community.
3. The Commission may post a notice on the dwelling unit stating that it intends to take possession and that the Resident's possessions will be inventoried and removed within ten (10) calendar days from the posting. If the Resident's possessions are not claimed within twenty (20) calendar days from their removal from the abandoned dwelling, the Commission may dispose of the possessions.

SECTION 2.40.09 PETITION FOR EVICTION

After the Commission has made its final decision to terminate the Resident’s tenancy after a hearing with the Resident or if no hearing was requested said written decision shall be served on

the Resident giving his or her date to vacate. If the Resident has not vacated by the said date, the Commission may file a Petition with the Tribal Court for eviction and such other relief as may be deemed just and proper.

The Petition for Eviction shall state:

1. The name(s) of the adult Resident(s) against whom the suit is brought;
2. A copy of the ROA, if any;
3. The address or reasonable description of the location of the premises;
4. The grounds for eviction;
5. A statement showing that the Resident was served with a Notice of Termination and Quit and a written decision terminating the Resident's tenancy which demanded the Resident vacate the unit by a specified date;
6. A statement of the relief demanded, including any claim(s) for possession of the unit, damages (i.e., monthly fees owing), fees, costs, or other special relief;
7. A statement that the Commission complied with all required regulatory processes prior to filing the eviction action; and
8. A statement for matters involving serious nuisance or health and safety requested on an emergency hearing.

SECTION 2.40.10 SUMMONS

A Summons must be attached to the front of the Petition for Eviction and state:

1. The name and address of the Court.
2. A brief description of why the Petition for Eviction is being filed against the Resident.
3. A description of what the Resident must do to protect the Resident's rights. This description shall include, but not be limited to, stating that the Resident has five (5) days from the date the Resident is served with the Petition for Eviction to file a written Answer with the Court. If the Resident fails to file a timely Answer, the Commission may be awarded the relief it is requesting in the Petition for Eviction.
4. The Summons shall also inform the Resident that he or she should contact the Court regarding any filing fees Resident may be required to pay to file an Answer to the Commission's Petition for Eviction.

SECTION 2.40.11 SERVING THE SUMMONS AND PETITION

1. Service of the Summons and Petition for Eviction shall be on the Resident by a person 18 (eighteen) or older, who is not a party to the case in the following manner:
 - a) Personally delivered to the Resident with a copy sent by mail;
 - b) Personally delivered to a person 18 (eighteen) or older living in the premises with a copy sent by mail; or
 - c) Personally delivered at the Resident's place of business or work with a copy sent by mail; or
2. If the Summons and Petition cannot be given by means of personal delivery, or Resident cannot be found, the Summons and Petition may be delivered by means of:
 - a) Certified mail, return receipt requested, at the last known address of Resident; or

- b) Securely fixing a copy in a conspicuous place such as the main entry door of the premises and also posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by mailing a copy first class mail, postage prepaid, addressed to the Resident at the premises.
3. Following service, the person who served the Resident shall complete a Proof of Service form and return it to the Commission or its legal representative who will file it with the Court.
4. The Commission or its legal representative giving notice must keep a copy of the Summons, Petition for Eviction, and Proof of Service.
5. The Commission or its legal representative shall be responsible for arranging a process server to effect service of the Summons and Petition.
6. Service on persons, guests, and/or other occupants found to be residing at the unit may be made in the same manner as on the Resident.

SECTION 2.40.12 ANSWER TO THE PETITION FOR EVICTION

1. A Resident served with a Summons and Petition for Eviction shall file a written Answer with the Court stating why the Resident should not be evicted and his/her defenses to the Petition for Eviction within five (5) calendar days of service.
2. If the Commission requested an emergency hearing for matters involving serious nuisance or health or safety, the Resident shall file a written Answer with the Court stating why the Resident should not be evicted and his/her defenses to the Petition for Eviction within three (3) calendar days of service.
3. The Resident shall file his/her Answer with the Court prior to serving a copy of the Answer on the Commission (to the Commission's legal counsel if represented). A Proof of Service that the Answer was served on the Commission shall be filed with the Court after such service.

SECTION 2.40.13 COMMENCEMENT OF PROCEEDINGS

1. Hearing Date
 - a) The Tribal Court shall set a hearing date which is no more than fifteen (15) calendar days following the date the Resident was served with Petition, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Tribal Court day following that date.
2. Extensions
 - a) A Resident may, for good cause shown, obtain an extension of the hearing date by Order of the Court. If applicable, Resident may be ordered to make payment of a reasonable sum for the fair rental value of the premises between the date on which a Petition for Eviction was filed and the date of hearing. The Tribal Court may refuse to extend the date of hearing where the Petition for Eviction is based upon nuisance or potential injuries or risks which may constitutes a danger to public health, safety, or peace.
3. If applicable, the Tribal Court may on its own motion, or upon motion by the Commission, order the Resident to pay into the Court a Monthly Fee for the use and occupancy of the dwelling unit during the pendency of the eviction action.

SECTION 2.40.14

DEFENSES

The Court shall grant the remedies allowed under this Ordinance, unless it appears by the evidence that:

1. The unit is untenable, uninhabitable, or constitutes a situation where there is a constructive eviction of the Resident, in that the unit is in such a condition, due to the fault of the Commission, that the unit constitutes a real and serious hazard to human health and safety and not a mere inconvenience.
2. The Commission failed or refused, without good cause, to make repairs which are its responsibility after a reasonable demand by a Resident to do so, and the repairs were then made by the Resident and deducted from the Monthly Fee. Repairs must have been necessary for the reasonable enjoyment of the premises.
3. That due to the conduct of the Commission, there is injury to the Resident in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
4. That there are such serious and material breaches of applicable housing law on the part of the Commission that it would be unjust to grant it a remedy.
5. The Commission is evicting the Resident because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the Resident is disabled.
6. Any other material or relevant facts the Resident may present explaining why his/her eviction is unjust or unfair.

SECTION 2.40.15

DISCOVERY AND PRE-HEARING PROCEEDINGS

Extensive, prolonged, or time consuming discovery and pre-hearing proceedings should not be permitted except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Tribal Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

SECTION 2.40.16

EVIDENCE

Evidence in proceedings under this Ordinance shall be informal and may include relevant and reliable hearsay evidence if such evidence is not the sole basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the Commission with respect to the ROA of the parties will be received in evidence upon their presentation to the Tribal Court; provided, however, that a Resident may examine the custodian of such records as to their contents. All hearings will be conducted to receive evidence in a fair and just manner.

All documents and transcripts (if applicable) from the Termination Hearing will be admitted into evidence.

SECTION 2.40.17 BURDEN OF PROOF

The burden of proof in eviction proceedings shall be a preponderance of the evidence.

SECTION 2.40.18 JUDGMENT

1. Within five (5) calendar days of the date of the eviction hearing, the Court shall enter judgment and grant all relief that the parties are entitled to as of the date of the judgment.
2. At the hearing where the eviction is ordered, the Tribal Court shall inform the Resident that if he or she does not vacate the premises voluntarily by the effective date, the Resident and other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in Section 2.40.21 Forcible Eviction and Resident's Unclaimed Property.
3. The judgment may:
 - a) Order the immediate eviction of a Resident and other occupants and delivery of the premises to the Commission;
 - b) Grant actual damages as provided in the ROA of the parties or this Eviction Ordinance, including interest;
 - c) Order the parties to carry out any obligations required by Commission policy or tribal law;
 - d) Establish a payment plan for the Resident;
 - e) Order actual damages or Monthly Fee out of per capita payment or through garnishment of resources under the control of the Tribe;
 - f) Remediate the action in part or in whole through appropriate recalculation of Monthly Fee;
 - g) Order the Resident to perform work for the Commission to pay off back Monthly Fee due and/or damages;
 - h) Order the payment of attorneys' fees and, costs and expenses of litigation; and/or
 - i) Grant any relief provided in this Eviction Ordinance or allowed in law or equity.
4. If the Resident fails to appear in person or in writing on or before the date of hearing, the Court shall enter judgment on behalf of the Commission following a hearing to determine whether the relief requested should be granted.
5. The judgment shall be served on the parties in the same manner as outlined in Section 2.40.11 Serving Summons and Petition.

SECTION 2.40.19 FORM OF JUDGMENT

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. If a hearing is held, the Court Judge should, whenever possible, render his/her decision immediately after the parties have rested their case and award relief as appropriate.

SECTION 2.40.20 EXECUTION OF JUDGMENT

A judgment may be executed by a Bear River Band Tribal Police Officer, duly authorized law enforcement officer, or officer of the Tribal Court appointed by the Court for such purpose. Upon

receipt of the Tribal Court's judgment or order, the officer shall enforce the judgement or order within five (5) calendar days of its receipt and file a report to the Tribal Court within seven (7) calendar days on what was done to enforce said judgment or order.

To execute the judgment or order, the officer shall:

1. Provide a copy of the judgment or order to all adult persons in the dwelling unit;
2. Post copies of the judgment or order on the doors of the premises if there is not any Resident or adult person present at the time of execution;
3. Return on the final day for vacating the dwelling unit as stated in the judgment or order to remove all of the evicted person(s) and his/her possessions from the dwelling unit consistent with Section 2.40.21 Forcible Eviction and Resident's Unclaimed Property.

SECTION 2.40.21 FORCIBLE EVICTION AND RESIDENT'S UNCLAIMED PROPERTY

1. Where the Tribal Court orders an eviction, and the Resident or any other occupant(s) of the dwelling unit refuses to vacate voluntarily by the effective date of the judgement, the Resident or other occupant(s) may be forcibly removed from the premises by a Bear River Band Police Officer or other law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the Resident that if she/he does not vacate the premises voluntarily by the effective date, she/he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in sub-section 3 below.
2. Following eviction, the Tribal Court may allow the Commission to access the property for purposes of preserving and securing it.
3. Following forcible eviction of the Resident and any other occupants, personal property of the Resident located within dwelling unit may be stored for up to twenty (20) calendar days either on the premises or at another suitable location as determined by the Commission. To reclaim the property, the Resident shall pay the reasonable costs of its removal and storage. If such costs are not paid after the maximum twenty (20) calendar day storage period, the Commission is authorized to sell the property to recover these costs of removal and storage.
4. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former Resident and occupants. Nothing in this section shall be construed to prevent the Resident from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the Commission.
5. If the personal property of the Resident or occupant(s) to be removed is of cultural, religious, or ceremonial significance, the Commission shall have an affirmative duty to locate the next of kin or give the items to the appropriate Tribal Department for management of the items.

SECTION 2.40.22 APPEALS PROCESS

1. Subject to the limitations set forth in the Bear River Band of the Rohnerville Rancheria's Act Establishing the Judiciary, and the Bear River Band Tribal Court Rules, any party who has a good faith belief that the Court made a mistake in interpreting the law or made a decision that was not supported by substantial evidence and such error materially affected

the outcome of his or her case may file a Motion for Reconsideration, or Appeal a final judgment of the Court.

2. Any party who wishes to Appeal a final judgment of the Court must file a written Notice of Appeal with the Court within twenty (20) days after the judgment becomes final.
3. A final judgment of a Trial Court shall be reversed or modified only if the record indicates that the Trial Court incorrectly applied the law in a manner that materially affected the outcome of the case or if the final judgment is not supported by substantial evidence in light of the record taken as a whole. No judgment of a Trial Court shall be reversed where the record shows that the same result would have occurred even if the Trial Court had not made the alleged error(s).
4. The decision of the Appellate Court is final and no further appeal is allowed.

SECTION 2.40.23 SEVERABILITY

If any provision of this Ordinance, or its application to any person or circumstance is held invalid, the remainder of the Ordinance, or its application of the provision to other persons or circumstances shall not be affected.

SECTION 2.40.24 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing herein shall be deemed to be a waiver of the sovereign immunity of the Commission, Tribal Council or the Bear River Band of the Rohnerville Rancheria. The sovereign immunity of the Tribe shall extend to its Tribal Law Enforcement Officer(s) or at all times while carrying out the enforcement of this Ordinance.

SECTION 2.40.25 RETROACTIVE EFFECT

The provisions of this Eviction Ordinance shall apply to all lease, ownership, and occupancy agreements no matter when entered. (Previous agreements are known as Ground Lease Agreement, Occupancy Agreement, and/or Useful Life Agreement.)

SECTION 2.40.26 AMENDMENTS

The Tribal Council of the Bear River Band of the Rohnerville Rancheria has the authority to make amendments to this Ordinance. The Commission may make amendment recommendations for Tribal Council consideration.

SECTION 2.40.27 EFFECTIVE DATE

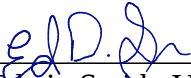
The Ordinance will become effective upon adoption by the Tribal Council. This Ordinance supersedes and replaces any conflicting provisions of any and all other Eviction procedures or policies of the Tribe.

C*E*R*T*I*F*I*C*A*T*I*O*N

This is to certify that the Bear River Band of the Rohnerville Rancheria Tribal Council duly assembled in Loleta, California and adopted the foregoing Eviction Ordinance on July 27, 2021 by a vote of 5 For, 0 Against, 0 Abstaining, and 1 Absent.



Josefina Cortez, Chairperson



Edwin Smith, Vice Chairperson



Edward Bowie, Secretary

Wendell Freeman, Jr., Treasurer



Niekoma Cantrell, Member-at-Large



Darrell Sherman, Member-at-Large

Vacant, Member at Large