

WASHOE TRIBE OF NEVADA AND CALIFORNIA

Proposed Revisions to Title 26, Section(s) 1, 2 & 3

Washoe Tribe Law and Order Code, Title 26 Standard Assignments and Land Lease Ordinance

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3/13/2017

Attached are the draft revisions to Title 26, “Standard Assignments and Land Lease Ordinance” which was originally adopted on July 21, 2006. The proposed amendments have been presented to the Washoe Tribal Council, and are now being presented at the each of the Tribal Communities on an informational basis. The revisions provide a method of an application process, set forth a reasonable timeline for the application process, ensure compliance with the Tribal Constitution, and adds an eminent domain clause. The proposed changes bring clarity, continuity, and stability to the existing code. I encourage all members of our communities to access the website online at: <https://www.washoetribe.us/contents/organization/tribal-documents/law-and-order-code>. Should any Tribal member have any questions or concerns about the proposed amendment, please contact me at: Jeanne.mortimer@washoetribe.us or (775) 265-7252. Thank you.

Washoe Tribe of Nevada and California

Law & Order Code

**TITLE 26 — STANDARD ASSIGNMENTS & LAND LEASES
ORDINANCE**

[Last Amended 11/18/05. Issue Date: 7/21/06.]

BE IT ENACTED BY THE Washoe Tribal Council pursuant to Article VI Section 1(f) which delegates authority to the Washoe Tribal Council to make, hold and revoke land assignments and land leases for residential and/or commercial purposes to Washoe Tribal members within the exterior boundaries of the Washoe Tribe reservation; and Article VIII, “Tribal Lands” of the Washoe Tribe Constitution that the following provisions and conditions shall define and regulate the land use of all Washoe Tribal lands. This ordinance shall supersede all prior ordinances relating to the use of tribal land, and any land use customs heretofore observed.

The unallotted lands of the Washoe Tribe as well as lands which may hereafter be acquired by the Washoe Tribe or by the United States in trust for the Washoe Tribe shall be held as tribal lands. Tribal lands shall not be allotted to individual Indians, but may be assigned to members of the Washoe Tribe, or leased, or exchanged for other lands of equal value, or otherwise used by the tribe. Effective as of the date of approval of this ordinance, all assignments of Washoe tribal land granted prior to the date of the approval, ~~shall be null and void.~~

[Ordinance No. V enacted 2/10/67; Codified as Title 26 on 11/18/05, Resolution No. 107-WTC-2005.]

shall remain valid, subject to the conditions in the applicable assignments. All current Washoe Tribal Land assignments must be reprocessed within one (1) year of approval of these applicable amendments; review and management of the Washoe Tribal Land assignments shall be the responsibility of the Washoe Tribal Council.

DEFINITIONS

(A) “Assignee” means the holder of an assignment

(B) “Assignment” means a formal right of occupancy for the lifetime, and not ownership, of tribal trust land subject to the terms of the Washoe Tribe Constitution and this Title.

(C) “Land Lease” means a right to occupancy, not ownership, of tribal trust land that shall not exceed twenty-five (25) years.

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(D) “Secretary-Treasurer of the Tribal Council” means the appointed member of the Washoe Tribal membership that serves at the discretion of the Washoe Tribal Council, pursuant to Washoe Tribe Constitution, Article III, Section 1.

(E) “Tribal lands” are tribal trust lands, held in trust by the federal government for use by the Washoe Tribe, pursuant to Washoe Tribe Constitution, Section VIII.

(F) “Washoe Tribal Council” means the elected governing body of the Washoe Tribe of Nevada and California

SECTION I – STANDARD ASSIGNMENTS

(a) Assignment of tribal land shall be for the primary purpose of establishing homes for landless Washoe Indians, and shall be known as Standard Assignments. All Washoes who were holders of assignments on the date of the approval of this ordinance shall be given preference in the reassignment of those same lands. Preference in all assignments shall be given to heads of families who are entirely landless. (The term “landless” shall include those persons whose only interest in land is in trust lands.) A member of the Washoe Tribe shall hold no more than one assignment.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 and amended on 11/18/05, Resolution No. 107-WTC-2005.]

(1) When a person is assigned a parcel of Tribal trust land, the interest they take is only a permissive right of occupancy, not ownership, which may be revoked at any time in accordance with the provisions of Title VIII of the Washoe Tribe’s Constitution, and Title 26. Title to Tribal trust land which is assigned shall remain in the United States in trust for the Tribe. The power and responsibility to control the alienation, transfer, lease, inheritance or devise of the assigned land shall be retained by the Tribe, and no interest in the land shall be alienated, transferred, leased, or encumbered in any way without written permission of the Washoe Tribal Council, through resolution.

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(2) Only Washoe Tribal Trust land which is designated by the Tribal Council for residential use shall be used for assignment to Tribal members.

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(3) There shall be only one (1) occupied dwelling unit (house, mobile home, motor home, travel trailer, or recreational vehicle) allowed per assigned lot. This dwelling unit shall be so constructed as to meet all applicable health and safety codes, including, for instance, plumbing, septic, and electrical codes.

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(i) In no event will any travel trailer, motor home, recreational vehicle be allowed on the premises neither as a permanent dwelling, nor for any residence for more than three (3) months out of each year, unless it meets all pertinent health and safety codes. One such travel trailer, motor home, or recreational vehicle may be stored on the site in addition to the primary dwelling unit, but it may not be used as a residence for more than three (3) months out of each year.

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(4) An Assignment under Title 26 is a grant from the Tribe, through the Washoe Tribal Council, of permission to use and occupy all or described portion of Tribal trust land for such purposes, and under such conditions as set forth in this Title. An assignment is not a lease. An assignment does not confer upon the Assignee any vested interests, compensable rights of ownership or title in the Land, or its mineral, timber, or waters resources beyond the will of the Washoe Tribal Council, as circumscribed herein. An assignment may not be leased, rented, assigned, mortgaged, made subject to a lien, placed as collateral or otherwise encumbered in any manner. On all assigned lands, the Tribe expressly reserves the right to grant easements and rights-of-way for public purposes without the consent of the Assignee.

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- (b) Any member of the Washoe Tribe, twenty-one years of age or older, or who regardless of age is married, shall be eligible to apply for a standard assignment. An application for an assignment shall be made by the head of a family, and, if granted, the assignment shall be in the name of the applicant as the head of a family. A member of the Washoe Tribe married to a person who is not a member of the tribe shall be considered the head of the family, and shall be entitled to apply for an assignment.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 on 11/18/05, Resolution No. 107-WTC-2005.]

(1) The Washoe Tribal Council may take into consideration the following:

- (i) Whether the applicant has a family or ancestral connection to the parcel;
- (ii) Whether the applicant has a documented history of criminality or illegal drug use, or is likely to harbor or allow criminality or drug use on the assigned land;
- (iii) Whether the applicant's proposed use of the land would be in the best interest of the Reservation community council recommendations;
- (iv) Whether the applicant possesses financial resource, or has timely access to financial resources, to make beneficial use of the lands for which application is made;
- (v) Assignment parcels shall be no more than .25 acres

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- (c) Applications for Standard Assignments shall be filed with the Secretary of the Washoe Tribal Council on standard forms.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 and amended on 11/18/05, Resolution No. 107-WTC-2005.]

(1) Procedures for Applying for a Land Assignment

- (i) A person who wishes to have a parcel of Tribal land assigned to them shall apply in writing to the Tribal Council. The request shall be filled with the

Secretary-Treasurer of the Tribal Council. It shall contain the name of the person or persons applying and shall describe the specific parcel of property desired as fully as possible;

(A) Select a preferred Washoe Tribal land assignment, which is not currently assigned, encumbered or otherwise approved for use by another Tribal member;

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(B) Obtain a legal survey and legal description from the Washoe Housing Authority or applicable Community Council; the legal survey must be completed prior to presentation to the Washoe Tribal Council.

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(C) Complete a cultural resources survey of the proposed site through the Tribal Historic Preservation Office (THPO).

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ii. Within thirty (30) days after receiving a written request for an assignment, the Secretary-Treasurer of the Washoe Tribal Council shall notify the applicant of the date that they may appear before the Tribal Council to discuss the person's eligibility for an assignment and their proposed plans for its use. Application shall go before the Washoe Tribal Council within sixty (60) days of receiving application.

(A) The proposed Washoe Tribal Land Assignment shall be posted by the Secretary-Treasurer for thirty (30) days at public places to which Washoe Tribal members have access, such as Washoe Tribal Headquarters.

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(1) Washoe Tribal members that oppose such granting of Washoe Tribal Land Assignment may appear at the designated Washoe Tribal Council meeting, or may submit a notarized affidavit to the Washoe Tribal Council as to their opposition.

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iii. Within thirty (30) days after the applicant's appearance before the Tribal Council, the Council shall decide whether or not to assign the parcel to that person and shall so notify the applicant in writing. If the Tribal Council denies the request, the Secretary-Treasurer of the Washoe Tribal Council shall inform the applicant of the reasons for the denial; and

iv. The Secretary-Treasurer of the Tribal Council shall keep a complete record of all actions taken by the Tribal Council on all applications for assignment of Tribal land.

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v. Existing Tribal land assignments that are subject to reprocessing shall be assigned to the owner of the home that is an enrolled Washoe Tribal member. If the owner of the home is not an enrolled Washoe Tribal member, the property is subject to section (g) of Title 26.

(d) Certificate of Assignment, Issuance. Every assignment of Tribal lands made by the Washoe Tribal Council shall be evidenced by a "Certificate of Assignment" which shall describe the property assigned, list an assignment number, list the names of the person(s) to whom the parcel is assigned, the date of the assignment and its duration, any terms and conditions of the occupancy, and shall be given to the person named in it and a copy shall be kept on file with the Secretary-Treasurer of the Washoe Tribal Council.

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(1) A new certificate shall be issued any time an assignment is reassigned, including reassignments which result from death, divorce, moving from the trust land, exchanges or transfers, relinquishments or revocation.

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(2) A complete record of assignments shall be maintained in the Secretary-Treasurer's Office and shall indicate the status of each parcel of assignable land. The records shall be open for inspection by members of the Tribe. Other persons may inspect the records for limited purposes if specifically authorized by the Washoe Tribal Council.

(e) If any member of the Washoe Tribe who holds a Standard Assignment shall, for a period of one year, fail to use the land so assigned, or shall fail to abide by the terms of the assignment application, the assignment may be cancelled by the Washoe Tribal Council after due notice and an opportunity to be heard, as described in paragraph (e), and the said land may be reassigned. When a Standard Assignment is ~~given~~ assigned to a member, it is because that member, in his application, has shown a need for the area for which he is asking, and because he intends to establish a home upon the assignment. If any person holding an assignment desires to temporarily leave the assignment for a justifiable reason, such as educational, military service, or medical treatment, they shall contact the Washoe Tribal Council and request permission to vacate or lease the assignment until their return. Such an arrangement shall not exceed five (5) years.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 and amended on 11/18/05, Resolution No. 107-WTC-2005.]

(1) Additional causes for cancellation:

(i) Conviction of a felony criminal offense enumerated under the Major Crimes Act, 18 USC § 1153;

(ii) Relinquishment of Tribal membership by Assignee (Washoe Tribe Constitution, Article II, Section 4).

(2) Tenure of Assignment. The holder of an assignment shall be entitled to the use and occupancy of the assignment for their lifetime, in accordance with provisions of the Washoe Tribe's Constitution and Title 26.

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(3) Relinquishment of Assignment. A person holding an assignment may relinquish it to the Tribe at any time by signing a written statement to that effect and filing it

with the Tribal Council. By signing the written statement, a person relinquishes all their rights and interest in the assignment and any improvements thereon as of the date specified in the statement or if no date is specified in the statement, thirty (30) days after the statement is received by the Washoe Tribal Council.

(a) Relinquishment of Washoe Tribal membership: an assignee that relinquishes membership in the Washoe Tribal automatically relinquishes their Washoe Tribal land assignment, and shall have thirty (30) days to remove said personal property from the assignment.

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(fe) Petition, Notice, and Hearing. Any Washoe Tribal member, including a Washoe Tribal Council member, or a community council may petition the Washoe Tribal Council to cancel an assignment by filing a petition with the Secretary-Treasurer of the Washoe Tribal Council. The Secretary-Treasurer shall issue a notice to the assignment holder and the petitioner to inform the assignment holder of a hearing regarding cancellation of the assignment. The hearing shall provide both the petitioner and the assignment holder with the opportunity to present evidence, including witnesses, with regard to the merits of the petition. The assignment holder shall have the right to be represented at the hearing by any person whom the assignment holder may choose, at the assignment holder's expense. The filing of the petition, the notice issued, and the hearings held shall all be in accordance with procedures established by the Washoe Tribal Council. The final decision of the Washoe Tribal Council shall be subject to judicial review in the Washoe Tribal Court.

[Enacted 11/18/05, Resolution No. 107-WTC-2005.]

(gf) Upon the death of any member holding a Standard Assignment, his heirs, or other individuals designated by him, by will or written request, shall have preference in the re-assignment of the land, provided such persons are members of the Washoe Tribe who would be eligible to receive an assignment. Where no will or written request has been made by the holder of an assignment, in which is designated the person to whom he wishes the land reassigned, the Washoe Tribal Council may give preference in the reassignment to persons determined to be heirs. When a deceased holder of a Standard Assignment has willed that the land be reassigned to a person under 21, or where the heirs are determined to be persons under 21, the assignment may be granted to and be administered by the parents or guardians. If the spouse of a deceased assignment holder is not an eligible member of the Washoe Tribe, but the children are, then the assignment may be granted to him or her until the minor children either marry or reach twenty-one years of age.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 and amended on 11/18/05, Resolution No. 107-WTC-2005.]

(1) Disposition of Assignment at Death for a member spouse. At the death of a married person who holds an assignment of Tribal trust land, the assignment shall not pass to their surviving spouse if the surviving spouse is not a member of the Washoe Tribe. However, a non-member surviving spouse shall be allowed to continue to use an assignment which is for the benefit of the couple's minor children who are members of the Tribe, pursuant to Washoe Tribe Constitution, Article VIII, Section 5, ¶ 2.

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(2) In the event of the death of an assignee that has enrolled minor children, the assignment shall remain in the deceased enrolled member’s name until the enrolled minor child reaches the age of 21; which upon reaching the age of attainment, the land assignment shall be assigned to said person.

(hg) Improvements of any character made upon assigned lands may be bequeathed to and inherited by members of the tribe or otherwise disposed of under such regulations as the council shall provide. No permanent improvements shall be removed from the land without the consent of the Washoe Tribal Council. When personal property, including houses located on the standard Home-Site Assignment, is inherited, either by will or by natural inheritance, or is purchased by a person or persons who cannot make use of it on the assignment where it is located, the party so inheriting, or purchasing it, may dispose of it in one or more of the following ways: (1) by removing it at their own expense; (2) by sale to a person who can use it where it is located, with approval of the Washoe Tribal Council; or (3) by sale to the Tribe on such terms as may be agreed upon; provided that any such property that is to be removed from the land shall have passed to other heirs or have been reassigned, and provided further that the land from which the improvements are removed shall be left in the same good condition as before the improvements were placed upon it, except in the case of a well, or of foundations which may be left by agreement with the new assignee.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 and amended on 11/18/05, Resolution No. 107-WTC-2005.]

(1) It shall be the responsibility of the owner of improvements to arrange for their removal or sale when they, for whatever reason, no longer hold the assignment on which it is located. If the owner of improvements fails to arrange for their removal or sale within six (6) months after they move from the assignment, the improvements shall be considered abandoned and the Washoe Tribal Council has the right, after appropriate notice to the owner, to seek a declaration of abandonment in the Washoe Tribal Court. In seeking a declaration of abandonment, the Tribal Council shall follow all procedures outlined in the relevant section of Title 2, of the Washoe Tribe’s Law and Order Code.

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SECTION II – LAND LEASES

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(a) Washoe Tribal lands may be leased by the Washoe Tribal Council with the approval of the Secretary of the Interior, for such periods of time as are permitted by law and for a consideration acceptable to the Tribal Council. In the leasing of tribal lands for non-residential purposes, preference shall be give first to Indian cooperative associations, and secondly, to individual Indians who are members of the Washoe Tribe. This section shall be consistent with any future amendments to leasing regulations codified at 25 C.F.R. Part 162.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 on 11/18/05, Resolution No. 107-WTC-2005.]

- (b) Non-members who were enjoying tenure on Washoe lands on June 20, 1966, shall be given the opportunity to lease the land they presently occupy and use for homesite purposes for a period not to exceed 25 years. This privilege shall be extended to those persons in this category who are the heads of a household and shall not necessarily apply to the lessee’s heirs.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 on 11/18/05, Resolution No. 107-WTC-2005.]

- (c) With the exception of those persons provided for in (b) above, no lease of tribal land to non-members shall be made by the Washoe Tribal Council unless, it shall appear that no Indian cooperative or association or individual member of the Washoe Tribe is able and willing to use the land and to pay a reasonable fee for such use. The Washoe Tribal Council, in considering any such lease of tribal land upon a Washoe Colony, shall consider the recommendations of the respective community council.

[Ordinance No. V enacted 2/10/67; Codified as Title 26 on 11/18/05, Resolution No. 107-WTC-2005.]

Section III- Eminent Domain

1. Subject to the provisions of Title 26 and any other applicable law, the right of eminent domain may be exercised by the Tribe for the following uses and purposes:

- (a) Buildings and grounds for any public or quasi-public purpose or use of the Tribe including, but not limited to, economic enterprises of the Tribe;
- (b) Reservoirs, canals, aqueducts, flumes, ditches or pipes, whether public, quasi-public or private, for conducting water for the use of the Tribe;
- (c) Raising the banks of streams or rivers, removing obstructions therefrom, or widening, deepening, or straightening their channels;
- (d) Telephone lines and conduits for public communication;
- (e) All other public and quasi-public uses and purposes.

2. The following property may be taken, but is not limited to:

- (a) All property belonging to, assigned to, lease, or occupied by any person or entity;
- (b) Property appropriated to public or quasi-public use;
- (c) All easements and rights-of-way;

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(d) All rights and privileges of use, entry upon, and occupation of property;

(e) The right to remove or take earth, gravel, stone, and trees from property;

(f) A use in the water of a stream, river, or spring; and

(g) All types of interests, estates, and rights of property, private or otherwise, not enumerated.

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3. The right of the Tribe to enter and survey. Where property is required for public use or quasi-public use or purpose, the Department of Planning may survey and locate property most appropriate for such use and purpose. Before property may be condemned, it shall appear that:

(a) The use to which the property is to be applied or purpose for which it is to be taken is a use or purpose authorized by the laws of the Tribe.

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(b) The taking is necessary to such use or purpose, provided the term "necessary" as used in this subsection shall not be interpreted to mean the only possible option or alternative, but shall mean a viable solution to a problem or opportunity; and

(c) If the property is already appropriated to some public or quasi-public use or purpose, the public or quasi-public use or purpose to which it is to be applied is a more necessary public or quasi-public use or purpose.

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4. Procedures for condemnation. All condemnations shall be authorized by resolution of the Washoe Tribal Council approved by a majority vote of the council members present provided such present council members constitute a quorum as required by the Constitution. The Tribe, before taking any action in condemning any property or interest therein, shall post notice thirty (30) days before the proposed action is to be taken at the Tribal Office and on the property itself so that interested persons will have an opportunity to appear before the Tribal Council to support or oppose the proposed action.

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(a) Before condemning any property or interest therein, the Tribal Council shall make specific findings that:

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(1) The purpose for which the property is to be taken is authorized by this Article;

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(2) The prerequisites to taking property by condemnation under this Article have been met; and

(3) The property is subject to condemnation under this Title 26.

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(b) The final resolution of the Tribal Council condemning the property shall include at least:

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(1) A description of the property to be condemned;

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(2) The specifics of the findings required by subsection (a) of section 4; and,

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(3) If applicable, a specific amount of fair and just compensation to be paid any condemnees of the property.

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