

**AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL**

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ORDINANCE NO. 23-2024

**AN ORDINANCE OF THE AGUA CALIENTE BAND OF
CAHUILLA INDIANS ADDING TITLE 11 SPECIAL
PROCEEDINGS TO THE AGUA CALIENTE TRIBAL CODE**

WHEREAS, the Agua Caliente Band of Cahuilla Indians (the “**Tribe**”) is a federally recognized Indian tribe governing itself according to the Constitution and By-Laws of the Agua Caliente Band of Cahuilla Indians adopted by the Tribe on June 28, 1955 (the “**Constitution**”); and

WHEREAS, the Tribe, acting by and through its duly elected Tribal Council and pursuant to Articles II and IV (a) of the Constitution, exercises inherent sovereign authority and jurisdiction over the territory within the exterior boundaries of the Agua Caliente Indian Reservation (the “**Reservation**”) and over other lands which may be added to the Reservation; and

WHEREAS, pursuant to Article V (a) and (b) of the Constitution, the Tribal Council, among other things, is empowered to administer the affairs and manage the business of the Band; to protect the security and general welfare of the Band and its members; to regulate the procedures of the Tribal Council and of other tribal agencies; and to enact ordinances and resolutions pertaining to Tribal affairs and to take all proper means to enforce the same; and

WHEREAS, the Tribal Council desires to add the title noted above to the Agua Caliente Tribal Code.

NOW, THEREFORE, the Tribal Council of the Agua Caliente Band of Cahuilla Indians does hereby ordain as follows:

SECTION 1. All the recitals set forth above are true and correct, and the Tribal Council so finds and determines.

SECTION 2. New title 11 is hereby added to the Agua Caliente Tribal Code to read as follows:

TITLE 11 – SPECIAL PROCEEDINGS

CHAPTER 11.04

**FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL
DETAINER**



11.04.010. Title.

This chapter shall be referred to as the “Forcible Entry and Forcible and Unlawful Detainer Ordinance.”

11.04.020. Jurisdiction; subject matter jurisdiction.

The provisions of this chapter shall apply to all persons and property subject to the governing authority of the Tribe. The Tribal court shall have authority to hear all proceedings arising under this chapter.

11.04.030. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial tenant means any tenant who is entitled to use or occupy real property for non-residential purposes.

Court days means those days that the Tribal court is open for business. *Court days* exclude Saturday, Sunday, and Tribal court closures and holidays.

Detained premises means any dwelling or real property occupied by a person not lawfully entitled to possession.

Dwelling means any dwelling unit, including any single-family residence, apartment, duplex, triplex, or condominium, located on Indian land and any other buildings appurtenant to Indian land, and includes common areas, garage facilities, alleyways, stairwells, and elevators. *Dwelling* also includes a mobile home where rent is paid for the use or possession of such mobile home, or for the use or possession of the mobile home lot upon which the mobile home is located. *Dwelling* shall further include a recreational vehicle if located in a mobile home park or recreational vehicle park and if rent is paid for the use or possession of the recreational vehicle, or for the use or possession of the recreational vehicle lot upon which the recreational vehicle is located.

Indian land means:



(1) Land within or beyond the exterior boundaries of the Reservation owned by any member of the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or

(2) Land within the exterior boundaries of the Reservation owned by a member of any other federally recognized Indian tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or

(3) Land within or beyond the exterior boundaries of the Reservation owned by the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or

(4) Land within the exterior boundaries of the Reservation owned by the Tribe in fee simple; or

(5) Land within the exterior boundaries of the Reservation subject to the civil or criminal jurisdiction of the Tribe.

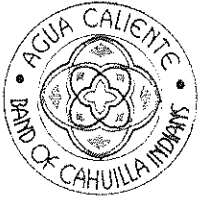
Judgment creditor means the person in whose favor a judgment is rendered or, if there is an assignee of record, means the assignee of record and includes the party adjudged to be in rightful possession of the detained premises. Unless the context otherwise requires, the term also includes the guardian or conservator of the estate, personal representative, or other successor in interest of the judgment creditor or assignee of record.

Judgment debtor means the person against whom a judgment is rendered.

Landlord means and includes any individual or entity, or an agent or other representative thereof, who is an owner, lessor, or sublessor of real property or a dwelling, and who receives or is entitled to receive payment for the use or occupancy of real property or a dwelling.

Lease means any lease, sublease, or agreement, written or oral, for the use and occupancy of a dwelling or real property.

Levying officer means the Tribal, federal, or local law enforcement officer with authority to execute a writ of possession or a writ of execution pursuant to this chapter.



Mobile home means every vehicle, including equipment, which is constructed, reconstructed, or added to in such a way as to have an enclosed room or addition occupied by one or more persons as a residence or sleeping place and which has no foundation other than wheels, jacks, skirting, or other temporary support.

Mobile home lot means a portion of Indian land within a mobile home park which is rented or held out for rent to accommodate a mobile home.

Mobile home park means an area or tract of Indian land where two or more mobile homes or mobile home lots are rented or held out for rent.

Real property means any improved or unimproved Indian land or portion thereof, including all buildings, structures, and other improvements located on such land.

Recreational vehicle means a vehicular structure primarily designed as temporary living quarters for travel, recreational, or camping use, which may be self-propelled or mounted upon or drawn by a motor vehicle.

Recreational vehicle park means an area or tract of Indian land where lots are rented or held out for rent to accommodate a recreational vehicle.

Recreational vehicle lot means a portion of Indian land within a recreational vehicle park, or a portion of land so designated within a mobile home park, which is rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

Tenant means a tenant, subtenant, lessee, sublessee, or any other person who is entitled to use or occupy real property or a dwelling.

11.04.040. Self-help remedies forbidden.

Except in the case where a person in possession voluntarily surrenders such possession to another claiming a paramount right to such possession, all self-help remedies to recover possession of detained premises are forbidden except as otherwise provided in this chapter.



11.04.050. Forcible entry prohibited.

A person is guilty of a forcible entry if he either:

(1) Breaks open or by any other type of unauthorized opening of the doors, windows, or other parts of a dwelling by fraud, intimidation, or stealth, or by any kind of violence or circumstances of terror, enters upon or into any real property; or

(2) After entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in actual possession.

11.04.060. Forcible detainer prohibited; occupant of real property.

A person is guilty of a forcible detainer if he either:

(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

(2) During the nighttime, or during the absence of the occupant of real property, enters thereon, and who, after receiving notice in writing demanding the surrender thereof, refuses for the period of five calendar days to surrender the same to such former occupant of real property. The occupant of real property, within the meaning of this subdivision is one who, within five calendar days preceding such unlawful entry, was in the peaceable and undisturbed possession of such real property.

11.04.070. Unlawful detainer prohibited.

(a) A person is guilty of an unlawful detainer if he, being a tenant of a dwelling or real property, or the executor or administrator of the tenant's estate heretofore qualified and now acting or hereafter to be qualified to act, either:

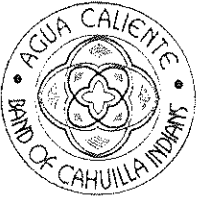
(1) Continues in possession, in person or by subtenant, of the dwelling, real property, or any part of the foregoing, after the expiration of the term for which it is let to him; provided the expiration is of a nondefault nature however brought about without the permission of the landlord, or the successor in estate of the



landlord, if applicable; including the case where the person to be removed became the occupant of the detained premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner.

(2) Continues in possession, in person or by subtenant, of the dwelling, real property, or any part of the foregoing, without the permission of the landlord, or the successor in estate of the landlord, if applicable, after default in the payment of rent, pursuant to the lease under which the detained premises are held, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring its payment or the surrender of the detained premises, stating the amount that is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the landlord by the tenant to the name and address provided, the notice or rent is deemed received by the landlord on the date posted, if the tenant can show proof of mailing to the name and address provided by the landlord), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the detained premises), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the detained premises, shall have been served upon the tenant and if there is a subtenant in actual occupation of the detained premises, also upon the subtenant. Within three court days after the service of the notice, the tenant, or any subtenant in actual occupation of the detained premises, or any mortgagee of the term, or other person interested in its continuance, may pay the rent, and thereby save the lease from forfeiture.

(3) Continues in possession, in person or by subtenant, of the dwelling, real property, or any part of the foregoing, after a neglect or failure to perform other conditions or covenants of the lease under which the detained premises are held, including any covenant not to assign or sublet, other than the payment of rent, and



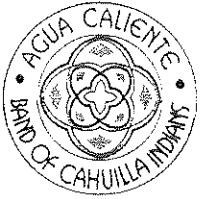
after three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring the performance of those conditions or covenants or the surrender of the detained premises (provided that the landlord shall have served said notice upon the tenant, and if there is a subtenant in actual occupation of the detained premises, also, upon the subtenant). Within three court days after the service of the notice, the tenant, or any subtenant in actual occupation of the detained premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the tenant, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the tenant or the subtenant, demanding the performance of the violated conditions or covenants of the lease.

(4) Continues in possession, in person or by subtenant, of the dwelling, real property, or any part of the foregoing, after he maintains, commits, or permits the maintenance or commission of a nuisance upon the detained premises, or uses the detained premises for an unlawful purpose contrary to the conditions or covenants of the lease, and after three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring the surrender of the detained premises.

(5) Continues in possession, in person or by subtenant, of the dwelling, real property, or any part of the foregoing, after he has provided written notice to the landlord in accordance with the lease of his intention to terminate the tenancy, or makes a written offer to surrender the detained premises by a date specified in the offer and the landlord accepts such offer, but fails to deliver possession to the landlord, or the successor in estate of the landlord if applicable, at the time specified in the written notice or offer.

(b) A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of any part of a dwelling or real property let to a subtenant or held by a servant, employee, agent, or licensee, in case of that person's unlawful possession of the detained premises underlet to or held by that person.

11.04.080. Unlawful detainer prohibited – possession of detained premises after judicial or non-judicial foreclosure.



A person is guilty of an unlawful detainer if he, being the previous owner or mortgagor of a leasehold estate, has:

(1) Defaulted on his mortgage obligations resulting in disposition of the leasehold estate through a trustee's sale or sheriff's sale; and

(2) Continues in possession of the detained premises, or any part thereof, after the completion of the trustee's sale or sheriff's sale, and after the new assignee of the leasehold estate provides three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring the surrender of the detained premises.



11.04.090. Notice; methods of service.

(a) Except as provided in subdivision (b), the notices required by this chapter may be served by any of the following methods:

(1) By delivering a copy to the tenant personally;

(2) If the tenant is absent from his place of residence, and from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place, and mailing a copy by first-class mail, postage prepaid, to the tenant at the address where the detained premises is situated;

(3) If such place of residence or business cannot be ascertained, or a person of suitable age or discretion there cannot be found through the exercise of reasonable diligence, then by affixing a copy in a conspicuous place on the detained premises, and also delivering a copy to a person there residing, if such person can be found; and also mailing a copy by first-class mail, postage prepaid, to the tenant at the address where the detained premises is situated. Service upon a subtenant may be made in the same manner.

(b) If the tenant is a commercial tenant, notices required by this chapter may be served by any of the following methods:

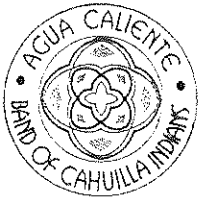
(1) By delivering a copy to the tenant personally.

(2) If the tenant is absent from his place of business, by leaving a copy with a person of suitable age and discretion at said place, and mailing a copy by first-class mail, postage prepaid, to the tenant at the address where the detained premises is situated.

(3) If, at the time of attempted service, a person of suitable age is not found at the tenant's place of business through the exercise of reasonable diligence, then by affixing a copy in a conspicuous place on the detained premises, and also mailing a copy by first-class mail, postage prepaid, to the tenant at the address where the detained premises is situated. Service upon a subtenant may be made in the same manner.

11.04.100. Nullification of declaration of forfeiture.

When the notice required by section 11.04.070 of this chapter states that the landlord may elect to declare forfeiture of the lease, that



declaration shall be nullified and the lease shall remain in effect if the tenant performs within the timeframe set forth in the notice or if breach is waived by the landlord after service of the notice.

11.04.110. Commencement of action for eviction.

If after the date set forth in the notice to quit possession of the detained premises, the tenant or such other person(s) has not quit possession, has not remedied the violation(s) upon which the notice to quit is based, or has not reached a negotiated settlement with the landlord, the successor in estate of the landlord, or any new assignee of a leasehold interest who has assumed the right of possession, the landlord, its successor, or new assignee may file a complaint with the clerk of the Tribal court to initiate a forcible entry or forcible or unlawful detainer action.

11.04.120. Necessary defendant parties; joinder; judgment; subtenants after notice to tenant; persons bound by judgment.

(a) No person other than the tenant and subtenant, if there is one, in the actual possession of the detained premises when the complaint is filed, may be made a party defendant in the proceeding. A proceeding may not abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant. If it appears that any of the parties served with process or appearing in the proceedings are guilty of the offense charged, judgment shall be rendered against those parties.

(b) If a person has become a subtenant in controversy after the service of any notice as provided in this chapter, the fact that the notice was not served on the subtenant is not a defense to the action. All persons who enter the detained premises under the tenant after the commencement of the action shall be bound by the judgment the same as if they had been made parties to the action.

11.04.130. Applicable rules of court and civil procedure.

Except as otherwise set forth in this chapter, the provisions of the General Rules of Court and Rules of Civil Procedure of the Agua Caliente Tribal Court are applicable to, and constitute the rules of practice for, the proceedings prescribed by this chapter.

11.04.140. Complaint.



(a) *Contents.* The plaintiff, in the plaintiff's written complaint, shall:

(1) Describe the detained premises with reasonable certainty;

(2) Set forth the facts on which the plaintiff seeks recovery;

(3) Set forth any circumstances of fraud, force, or violence that may have accompanied the alleged forcible entry or forcible or unlawful detainer;

(4) Set forth any claim for damages or compensation for the alleged forcible entry or forcible or unlawful detainer;

(5) If the unlawful detainer action is based on section 11.04.070(a)(2) of this chapter, state the amount of rent in default.

(6) State whether the lease for the detained premises was approved by the Indian landowner(s) and/or the Secretary of the Interior and, if not, provide the reasons for the lack of approval.

(7) State specifically the method used to serve the defendant with the notice or notices of termination upon which the complaint is based. This requirement may be satisfied by attaching a proof of service of the notice or notices of termination served on the defendant.

(b) *Verification.* The complaint shall be verified and include the typed or printed name of the person verifying the complaint.

(c) *Amendments.* The Tribal court may permit a complaint to be amended at any time prior to final judgment.

11.04.150. Summons.

(a) *Contents.* A summons shall:

(1) Name the Tribal court and the parties;

(2) Be directed to the defendant;



(3) State the name and address of the plaintiff's attorney or, if unrepresented, the name and address of the plaintiff;

(4) State the time within which the defendant is required to answer, or demur to, the complaint in writing pursuant to section 11.04.160(f) of this chapter;

(5) State the time within which the defendant must appear at a hearing, which shall be no more than thirty court days after the complaint is filed with the Tribal court, unless the defendant objects to the number of days, and the Tribal court determines that the facts of the case should allow more time;

(6) Notify the defendant that in the case of failure to answer or demur in writing, judgment by default may be entered against the defendant;

(7) Notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(8) Be signed by the clerk of the Tribal court; and

(9) Bear the Tribal court's seal.

(b) *Amendments.* The Tribal court may permit a summons to be amended.

(c) *Issuance.* On or after filing the complaint, the plaintiff shall present a summons to the clerk of the Tribal court for signature and seal. If the summons is properly completed, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of a summons that is addressed to multiple defendants, shall be issued for each defendant to be served.

(d) *Service.*

(1) *In general – personal service.* A summons shall be served on the defendant personally with a copy of the complaint. The plaintiff is responsible for furnishing the necessary copies to the person who makes service. Service under this subsection (d)(1) shall be deemed complete on the day the summons is served.



a. *By whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

b. *By a Tribal, federal, or local law enforcement or someone specially appointed.* At the plaintiff's request, the Tribal court may order that service be made by a Tribal, federal, or local law enforcement officer or by a person specially appointed by the Tribal court.

(2) *Substitute service.* In lieu of service under subsection (d)(1) of this section, where the defendant cannot with reasonable diligence be served as described, the summons may be served with a copy of the complaint as provided in this subsection (d)(2) by leaving both documents with a person of suitable age and discretion located within the detained premises, and by thereafter mailing a copy by first class mail, postage prepaid, to the defendant at his address on record. Service under this subsection (d)(2) shall be deemed complete on the tenth day after the required mailing.

(3) *Service by posting.* In lieu of service under subsection (d)(1) and subsection (d)(2) of this section, where the defendant cannot with reasonable diligence be served as described and a person of suitable age or discretion cannot be found at the detained premises, the summons may be served with a copy of the complaint by affixing a copy of both documents in a conspicuous place on the detained premises, and by thereafter mailing a copy by first class mail, postage prepaid, to the defendant at his address on record. Service under this subsection (d)(3) shall be deemed complete on the tenth day after the required mailing.

(4) *Proof of service.* The plaintiff shall file a proof of service of the summons and complaint with the clerk of the Tribal court prior to the date set forth in the summons for the initial hearing. The proof of service shall state the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, Tribal law enforcement, federal law enforcement, or local law enforcement, the proof of service shall be by affidavit or unsworn declaration. If the plaintiff fails to file a proof of service within the time contemplated herein, the Tribal court may dismiss the action without prejudice.

11.04.160. Answer and Demurrer.



(a) *Generally.* To respond to the complaint, the defendant, may answer or demur in accordance with this section.

(b) *Appropriate responsive pleading.*

(1) The defendant may respond to the complaint by demurrer when the ground for objection appears on the face of the complaint, or from any matter in which the Tribal court is required to take judicial notice.

(2) The defendant may respond to the complaint by answer when the ground for objection does not appear on the face of the complaint.

(3) The defendant may not demur and answer at the same time.

(c) *Answer.* The answer shall be in writing and shall:

(1) Set forth the general or specific denial of the material allegations of the complaint;

(2) Set forth all defenses (if any) to the allegations of the complaint and all facts essential to supporting a particular defense; and

(3) Set forth a request for relief (*i.e.*, “prayer”).

(d) *Demurrer.* The demurrer shall be in writing and shall distinctly specify the grounds on which the defendant concludes that the complaint is insufficient at law, as set forth in Rule 7(c) of Rules of Civil Procedure, as said rule is amended, renumbered, or restated from time to time. When the ground of demurrer is based on a matter which the Tribal court may take judicial notice, such matter shall be specified in the demurrer, or in the supporting points and authorities for the purpose of invoking such notice, except as the Tribal court may otherwise permit.

(e) *Verification.* The answer or demurrer shall be verified and include the typed or printed name of the person verifying the same.

(f) *Time period to file answer or demurrer.* The defendant shall file his answer or demurrer with the clerk of the Tribal court within five court days (1) of being served the summons and complaint



through personal service; or (2) after the date upon which service is deemed complete if the defendant is served the summons and complaint through substitute service or service by posting.

(g) *Amendments.* The Tribal court may permit an answer or demurrer to be amended at any time prior to final judgment. If amendment is allowed, the defendant shall file and serve the answer or demurrer in accordance with this section within five court days of the Tribal court's ruling on the matter.

(h) *Service.* An answer or demurrer must be served on the plaintiff in the same manner as service for a summons and complaint in this chapter.

(i) *Proof of service.* The defendant shall file a proof of service of the answer and/or demurrer with the clerk of the Tribal court prior to the date set forth in the summons for the initial hearing. The proof of service shall state the date, place, and manner of service, including a copy of the answer or demurrer. If service is made by a person other than by an attorney, Tribal law enforcement, federal law enforcement, or local law enforcement, the proof of service shall be by affidavit or unsworn declaration.

11.04.170. Counterclaims and cross-complaints; collateral defenses.

(a) In any proceeding prescribed by this chapter, the defendant shall be barred from asserting a counterclaim or filing a cross-complaint.

(b) In any proceeding prescribed by this chapter, the defendant shall be barred from raising any defense, or otherwise seeking relief, not bearing on the question of possession.

11.04.180. Order for immediate possession; notice; possession bond; issuance of writ of possession and execution.

(a) The plaintiff may, at any time after the filing of the complaint and issuance of the summons, file a motion with the Tribal court to gain immediate possession of the detained premises. If the Tribal court finds, after a hearing on the plaintiff's motion and review of the verified complaint and any affidavits filed or oral testimony given, that the defendant resides outside the Reservation, has departed from the Reservation, cannot, after due diligence, be



found within the Reservation, or has concealed himself to avoid the service of summons, the Tribal court shall enter an order for the immediate possession of the detained premises. The motion shall indicate that any writ of possession issued pursuant to the Tribal court's order applies to all tenants, subtenants, if any, named claimants, if any, and any other occupants of the detained premises.

(b) Written notice of the hearing on the motion for immediate possession shall be served on the defendant in the same manner as service of other notices in this chapter, and shall inform the defendant as follows:

"You may file affidavits on your behalf with the Tribal court and may appear and present testimony on your own behalf. However, if you fail to appear, the plaintiff will apply to the Tribal court for an order for immediate possession of the subject dwelling or real property unlawfully detained."

(c) Prior to the Tribal court's issuance of any order for immediate possession, the plaintiff shall deposit with the Tribal court a bond in such sum as the Tribal court may order. The bond may be in the form of a corporate bond, a cash bond, or certified funds and shall be payable to the Tribal court for the benefit of the defendant for all costs and damages that the Tribal court may award the defendant as a result of defendant's dispossession under any writ of possession.

(d) After entry of an order for immediate possession, the Tribal court shall issue the writ of possession upon application of the plaintiff and the writ shall be directed to levying officer to be enforced. A writ of possession issued pursuant to this section shall expire within 180 days. Writs may be issued successively until the order is satisfied, except that a new writ may not be issued until the expiration of a prior writ if the prior writ was not returned. Any writ executed pursuant to this section shall be returned in accordance with section 11.04.290 of this chapter.

11.04.190. Judgment due to non-appearance.

(a) If defendant fails to appear at any hearing scheduled for the date set forth in the summons or has failed to file and serve either an answer or demurer in accordance with this chapter, the Tribal court, upon proof of service of the summons and complaint, shall render a judgment in favor of the plaintiff as prayed for in the complaint. The



default judgment shall indicate that the judgment applies to tenants, subtenants, if any, named claimants, if any, and any other occupants of the detained premises.

(b) If the plaintiff fails to appear at any hearing scheduled for the date set forth in the summons, the Tribal court shall enter a judgment dismissing the case without prejudice.

11.04.200. Hearing on complaint and responsive pleadings.

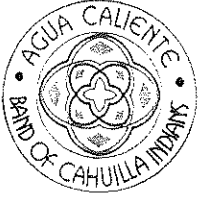
(a) If the defendant appears before the Tribal court at the initial hearing or any subsequent hearing and has filed and served an answer in accordance with this chapter, the Tribal court shall set a trial date.

(b) If the defendant appears before the Trial court at the initial hearing or any subsequent hearing and has filed and served a demurrer in accordance with this chapter, the Tribal court shall hear and rule on the demurrer at the hearing. If the demurrer is sustained, the Tribal court may dismiss the action or grant the plaintiff leave to amend the complaint. If the plaintiff is granted leave to amend the complaint, the Tribal court shall set a new date for a subsequent hearing which shall not exceed thirty court days from the date of the Tribal court's ruling on the demurrer. The plaintiff shall file and serve the amended complaint pursuant to sections 11.04.140 and 11.04.150 of this chapter provided that the summons shall state the date upon which the defendant must appear at the subsequent hearing in accordance with the Tribal court's ruling on the demurrer. Once the amended complaint is served, the defendant shall file and serve the answer or demurrer pursuant to section 11.04.160 of this chapter.

(c) If authorized by subsection (a) of this section, the Tribal court shall set the trial to commence on a date which is no more than twenty court days following the date of the initial hearing or any subsequent hearing. The Tribal court may extend the start date for the trial upon the agreement of all parties.

11.04.210. Informal discovery; motion to compel discovery.

(a) After the Tribal court has set the trial date, the plaintiff and defendant may submit an informal discovery request to the other party. Upon receiving the informal discovery request, the receiving party shall make available to the requesting party any nonprivileged



matter that is relevant to the requesting party's claim or defense proportional to the needs in the proceeding, considering the importance of the issues at stake in the proceeding, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs the likely benefit. Information within this scope of discovery need not be admissible in the evidence to be discoverable.

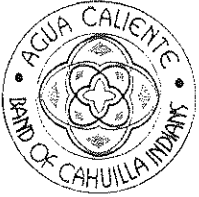
(b) An informal discovery request shall be made no later than five court days after the date of the initial hearing or any subsequent hearing.

(c) Discovery responsive to an informal discovery request, or an adequate justification for the non-disclosure thereof or an explanation for why the discovery proffered is sufficient, shall be made available to the requesting party no later than five court days after receipt of the informal discovery request.

(d) If a receiving party fails to adequately respond to a proper informal discovery request in accordance with subsection (c) of this section, the requesting party may file a motion with the clerk of the Tribal court requesting that the Tribal court issue an order compelling discovery in accordance with the request. Any motion to compel discovery shall be filed with the clerk no later than five court days after the deadline set forth in subsection (c) of this section. Upon motion, the Tribal court may issue an order to the non-responsive party to compel discovery of any information within the scope of discovery as provided in subsection (a) of this section.

11.04.220. Proof in forcible entry and detainer.

At the trial of any proceeding 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 was peaceably in the actual possession of the detained 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 defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.



11.04.230. Trial by court.

All actions commenced pursuant to this chapter shall be tried by the Tribal court without a jury.

11.04.240. Judgment.

(a) Within five court days after the conclusion of the trial, if not immediately following its conclusion, the Tribal court shall enter its judgment. The judgment shall grant all relief that the parties are entitled to as of the date of the judgment.

(b) If after conclusion of the trial, the Tribal court finds that the defendant is guilty of the violation(s) alleged in the complaint, the Tribal court shall enter a judgment for:

(1) *Restitution of the detained premises.* If the defendant is found guilty of the violation(s) alleged in the complaint, the judgment shall award restitution of the detained premises to the plaintiff, and (i) direct the defendant to vacate the detained premises, remove the defendant's personal property, and restore possession of the detained premises to the plaintiff, or be forcibly removed by a levying officer; and (ii) advise the defendant of the time limit set by the Tribal court for the defendant to vacate the detained premises, which shall be three calendar days following service of the judgment, unless the court determines that a longer or shorter period is appropriate after a finding of extenuating circumstances.

(2) *Forfeiture of the lease if the proceeding involves an unlawful detainer action.* If the defendant is found guilty of unlawful detainer and such determination is the result of defendant's neglect or failure to perform any condition or covenant of the lease under which the detained premises are held or such determination is the result of the defendant's default in the payment of rent, the judgment shall order forfeiture of the lease, provided, the ultimate forfeiture shall be conditioned upon cancellation of the lease by the Secretary of the Interior if required by federal law.

(3) *Actual damages, statutory damages, attorneys' fees, costs of suit, and/or rent due.* If the defendant is found guilty of unlawful detainer and such determination is the result of defendant's default in the payment of rent, the Tribal court shall calculate the amount of rent due and owing to the plaintiff pursuant to section 11.04.250 of this chapter. If the defendant is found guilty of the



violation(s) alleged in the complaint, and malice is shown, the plaintiff may be awarded statutory damages of up to six hundred dollars (\$600), in addition to actual damages, attorneys' fees, costs of suit, and/or rent due. The Tribal court shall determine whether actual damages, statutory damages, attorneys' fees, and costs of suit shall be awarded, and judgment shall be entered accordingly to reflect this.

(c) If after conclusion of the trial, the Tribal court finds that the defendant is not guilty of the violation(s) alleged in the complaint, the Tribal court shall enter judgment for the defendant against the plaintiff for actual damages, attorneys' fees, and costs of suit, and if it appears that the plaintiff acquired possession of the premises since the commencement of the action, a judgment granting restitution of the detained premises in favor of the defendant.

(d) The judgment of the Tribal court shall be final and not appealable.



11.04.250. Calculation of rent due.

(a) If the defendant is found guilty of unlawful detainer and such determination is the result of defendant's default in the payment of rent, the plaintiff shall recover from the defendant:

(1) The worth at the time of the judgment of the unpaid rent which had been earned up to the date upon which the defendant was required to pay rent or vacate the detained premises pursuant to the three-day notice;

(2) The worth at the time of the judgment of the amount by which the unpaid rent which would have been earned up to the date upon which the defendant was required to pay rent or vacate the detained premises pursuant to the three-day notice until the time of the judgment exceeds the amount of such rental loss that the defendant proves could have been reasonably avoided;

(3) The worth at the time of the judgment of the amount by which the unpaid rent for the balance of the term after the time of the judgment exceeds the amount of such rental loss that the defendant proves could be reasonably avoided; and

(4) Any other amount necessary to compensate the plaintiff for all the detriment proximately caused by the defendant's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

(b) The "worth at the time of award" of the amounts referred to in subsections (a)(1) and (a)(2) of this section is computed by allowing interest at such lawful rate as may be specified in the lease or, if no such rate is specified in the lease, at the legal rate. The worth at the time of award of the amount referred to in subsection (a)(3) of this section is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

(c) Efforts by the plaintiff to mitigate the damages caused by the defendant's breach of the lease do not waive the plaintiff's right to recover damages under this section.

(d) Nothing in this section affects the right of the plaintiff under a lease to indemnification for liability arising prior to the termination



of the lease for personal injuries or property damage where the lease provides for such indemnification.

11.04.260. Issuance of writ of possession.

Upon the Tribal court's entry of the judgment, a writ of possession shall be issued by the clerk of the Tribal court upon application of the judgment creditor and shall be directed to the levying officer. A writ of possession shall expire within 180 days after the date of its issuance. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued until the expiration of a prior writ if the prior writ was not returned.

11.04.270. Execution of writ of possession.

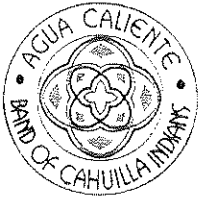
(a) Upon delivery of the writ of possession to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by this chapter.

(b) The levying officer shall only execute the writ of possession in the daytime between sunrise and sunset, and, if the writ of possession concerns a residential tenancy, the levying officer shall not execute the writ of possession until at least ten court days after entry of the judgment.

(c) Notwithstanding subsections (f) and (g) of this section, the levying officer that executes the writ of possession pursuant to subsection (a) of this section shall immediately inspect the detained premises for any pet animals.

(1) If the judgment debtor is present on the detained premises at the time the writ of possession is being executed, the levying officer shall give any pet animals found during the inspection to the judgment debtor.

(2) If the judgment debtor is not present on the detained premises at the time the writ of possession is being executed and there are any pet animals found during the inspection required by this subsection, the levying officer shall contact the local authority in charge of animal control to take custody of the pet animals. The judgment creditor shall provide the local authority in charge of animal control access to the detained premises to remove or secure the pet animals in a timely manner and provide the name and contact



information of the judgment debtor, if available. The judgment creditor shall post notice at the detained premises in a visible place with the name and contact information of the organization where the pet animals have been taken and, upon request of the judgment debtor, shall provide the judgment debtor with the name and contact information of the organization where the pet animals have been taken.

(d) No pet animal shall be removed from the detained premises during the execution of the writ of possession and left unattended on public or private property.

(e) The levying officer that executes a writ of possession pursuant to this chapter and the law enforcement agency that employs such officer shall be immune from civil liability under Tribal law for any damage to the defendant's personal property that was removed from the detained premises during the execution of the writ. A judgment creditor who complies with the lawful directions of the levying officer shall be immune from civil liability under Tribal law for any act or omission related to a judgment debtor's personal property that was removed from the detained premises during or after the execution of a writ of possession.

(f) A judgment creditor has no duty to store or maintain a judgment debtor's personal property that is removed from the detained premises during or after the execution of a writ of possession. Regardless of whether a judgment creditor elects to store or maintain the personal property so removed, the judgment creditor shall have no duty to inventory the personal property or to determine ownership of or the condition of the personal property. Such storage shall not create either an implied or express bailment of the personal property, and the judgment creditor shall be immune from liability under Tribal law for any loss or damage to the personal property.

(g) A judgment creditor who elects to store a judgment debtor's personal property that was removed from the detained premises during or after the execution of a writ of possession may charge the judgment debtor the reasonable costs of storing the personal property. To recover such costs, the judgment creditor may either dispose of the personal property under any lien rights the judgment creditor has under Tribal, federal, or state law, or the judgment creditor may allow the judgment debtor to recover the personal property after paying the reasonable storage charges incurred by the judgment creditor.



11.04.280. Enforcement of writ of possession as writ of execution to satisfy money judgment; other available remedies.

(a) Notwithstanding Rule 10(e) of the General Rules of Court, as said rule may be amended, renumbered, or restated from time to time, a writ of possession may be enforced as a writ of execution to satisfy any money judgment included in the judgement for restitution of the detained premises.

(b) If amounts due under the judgment are not satisfied pursuant to the writ of possession, the judgment creditor may obtain, upon application to the clerk of the Tribal court, issuance of a writ of execution in accordance with Rule 10(e) of the General Rules of Court to satisfy any money judgment included in the judgment after the writ of possession has been returned or 180 days after its issuance, whichever is earlier.

(c) If the judgment creditor does not desire issuance of a writ of possession (because possession has been voluntarily surrendered, the secured obligation has been voluntarily satisfied, or other reason), the judgment creditor may obtain, upon application to the clerk of the Tribal court, issuance of a writ of execution in accordance with Rule 10(e) of the General Rules of Court to satisfy any money judgment included in the judgment.

(d) A writ of execution issued pursuant to this chapter shall expire within 180 days after the date of its issuance. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued until the expiration of a prior writ if the prior writ was not returned.

(e) Whether or not a writ of possession has been issued, enforced, or returned, the judgment creditor may use any available remedies under federal, Tribal, state, or local law to satisfy any money judgment included in the judgment.

11.04.290. Return of writs.

The writ expires and the levying officer to whom the writ of possession or writ of execution is delivered shall return the writ to the Tribal court and file a return with the court reporting the levying officer's actions and an accounting of amounts collected, and costs incurred, at the earliest of the following times:



- (1) Promptly after all of the duties under the writ are performed.
- (2) When return is requested in writing by the judgment creditor.
- (3) If no action takes place under the writ within 180 days after its issuance, promptly after the expiration of the 180-day period.

11.04.300. Remedies under federal law.

Nothing in this chapter shall be interpreted or construed as supplanting the right or authority of the Secretary of the Interior to exercise remedies available to the Secretary for a violation of a lease involving Indian land subject to federal law.

SECTION 3. The Tribal Council hereby finds that the adoption of this Ordinance does not constitute a “Major Tribal Action” requiring the preparation of an environmental assessment or an environmental impact statement.

SECTION 4. If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.

SECTION 5. Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians’ sovereign immunity.

SECTION 6. The Tribal Council expressly reserves the right to alter, amend, or repeal this Ordinance if it determines that such action is in the best interest of the Tribe.

SECTION 7. This Ordinance shall become effective immediately upon its adoption.

SECTION 8. Upon the effective date of this Ordinance, any and all prior inconsistent resolutions, policies, ordinances, and/or procedures of the Tribe that pertain to the subject matter hereof are hereby repealed, superseded, and/or amended to comply with this Ordinance.



SECTION 9. Within fifteen (15) days after adoption, Tribal staff shall cause a summary of this Ordinance to be published one time in a newspaper of general circulation published and circulated on the Reservation.

BE IT ADOPTED AND ENACTED by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 9th day of July, 2024.

Reid D. Milanovich, Chairman

Candace C. Patencio, Vice Chairman

Savana R. Saubel, Secretary-Treasurer

John R. Preckwinkle III, Member

Virginia Siva, Member

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 9th day of July, 2024; that the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of 4-0-0 and that said Ordinance has not been rescinded or amended in any way.

Savana R. Saubel, Secretary-Treasurer