

Chapter 8

Hearings

Regulation # _____

Section 1. Purpose; Authority

- 1-1. *Purpose.* The purpose of these Hearing Regulations is to provide consistency and uniformity in hearings held by the Housing Commission and to set forth the rules governing the conduct of the hearing and the participants.
- 1-2. *Authority.* The Housing Commission Ordinance #04-700-01, states that the Housing Commission shall develop and promulgate regulations as the Commission deems necessary and desirable to effectuate the powers granted by the ordinance.

Section 2. Definitions

- 2-1. *General.* For purposes of this Regulation, certain terms are defined in this section. The word “shall” is always mandatory and not merely advisory. Unless defined elsewhere, terms defined in this Chapter, the Housing Ordinance and the Housing Commission Ordinance are defined for the purposes of all Housing Commission Regulations.
- 2-2. *Party.* Any person who has an interest in a proceeding before the Commission will be referred to as a Party in this Regulation.

Section 3. Hearing Requests; Types

- 3-1. *Eligible Review.* All hearings pertaining to decisions of the Housing Department held before the Housing Commission will be conducted in accordance with this Regulation.
- 3-2. *Hearing Requests.* All requests for hearing shall be in writing and submitted to the Housing Department at the following addresses:
 - a. Mailing Address: LRBOI Housing Department
2608 Government Center Drive
Manistee, MI 49660
 - b. Physical Address: 2953 W. Shaw-be-quong
Manistee, MI
- 3-3. *Hearing Requests.* The following are eligible for review by the Housing Commission:
 1. Appeals of suitability determinations, determinations of ineligibility, denial of business use of home, denials of visitor extensions, denials to enter into or renegotiate payment agreements, objections to a final action or decision of the Director, determination of pet removal due to violation of peaceful enjoyment, any grievance as a consequence of Chapter Seven (7) of the

Housing Commission Regulations and removals from waitlists by the Department of tribal housing applicants tenants;

2. all cases where a lease or rental agreement allegedly breached by a tenant has resulted in notice of termination or eviction issued by the Department;
3. all cases in which a tenant or former tenant disputes the withholding by the Department of all or any part of the person's security deposit;
4. all cases in which the Department requests a variance from Tribal building, housing, or zoning codes. The standard in any such case shall be whether the requested variance is necessary and reasonable. The Tribal Building Official shall be a necessary party to any such action.

Section 5. Appearances.

- 5-1. *In person.* Parties shall appear for the hearing in person. Tenants or Applicants may bring a representative or attorney of their choice and at their own expense; however, they will be expected to testify on their own behalf.
- 5-2. *Appearance through an Advocate.* Parties to proceedings governed by this Regulation may appear personally or through an advocate. If a party appears through an advocate, the party also must attend hearings unless excused by the Housing Commission or its Chairperson. Parties retaining an advocate shall retain the advocate at their own cost and provide the Commission with seven (7) days' notice.
 - a. When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney.
 - b. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests and other papers on behalf of the party.
 - c. The Housing Commission reserves the right to directly question the Tenants or Applicants at a hearing.

Section 6. Hearing Rules.

- 6-1. *Preliminary Issues.* The Housing Commission may issue rulings on discovery matters, scheduling matters, continuances, the admissibility of evidence and other procedural or pre-hearing matters.
- 6-2. *Admissibility of Evidence and Witnesses.* The Commission will follow the rules of evidence of the Tribal Court of the Little River Band of Ottawa Indians.
- 6-3. *Communications with Housing Commissioners.* Neither party, either Housing Commissioners or applicant/tenant, shall communicate, directly or indirectly, with each

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other in regards to issues before the Commission. Unless required for the disposition of ex parte matters authorized by law or by the Housing Commission:

- a. A member of the Housing Commission (this does not include Housing Department staff) shall not communicate, directly or indirectly in connection with any issue of fact or law related to a proceeding under this Regulation with any party or their representative except upon notice and opportunity to all parties to participate;
- b. This Section shall not preclude Housing Department staff from having necessary contact with tenants and applicants at any stage of the proceedings under this Regulation.
- c. Communications in the meaning of this Section does not include the issuance of rulings of the Chairperson in accordance with Section 6-1.

6-4. *Discovery and Exchanges.* At least seven (7) calendar days before the hearing, the parties shall request the opportunity to review:

- a. Copies of all documents then reasonably available to a party which are intended to be offered as evidence in support of the party's case;
- b. Identify, describe or make available for review all tangible things, other than documents, then reasonably available to a party which are intended to be offered as evidence in support of the party's case and upon request, arrange for the opposing party to inspect, view, or review the evidence under the supervision of the parties; and
- c. Exchange written lists of persons each party then intends to call as a witness in support of that party's case. Each witness shall be identified by name, position, business address, and a brief description for which the witness will be called.

It shall be the continuing obligation of the parties to produce documents, witness lists and other matters governed by this Section as such become identified by and available to the parties. The parties shall make every effort to resolve disputes regarding discovery. Disputes that are unresolved may be brought to the Commission in accordance with Section 6-1, for resolution by way of motion to compel discovery, or other appropriate motion. The filing of such motion shall not extend the time to complete discovery nor provide probable cause for a continuance of the hearing on the merits unless the Commission otherwise orders. Either party may request a pre-hearing conference to coordinate discovery and exchanges. Absent unusual circumstances, the Housing Commission will not participate in the pre-hearing conference. At the request of the parties, the Chairperson may participate.

6-5. *Continuances.* Continuances of hearings may be granted by the Housing Commission. The party requesting a continuance must provide the request in writing to the Housing Department. The request for continuance must provide the specific reasons for the request.

A party may be required to provide supporting documentation affirming the specific reason (i.e., death, hospitalization of self or immediate family member, etc.).

- 6-6. *Confidential and Privileged Materials.* If any document or other material required to be produced by this Regulation is the subject of a privilege or is confidential under the law or is subject to a confidentiality agreement, the document shall be marked “confidential” before disclosure or use in a hearing on the merits. Parties shall not further disseminate confidential or privileged materials except to counsel of record in the action and necessary staff persons employed by counsel. This Section does not require the parties to produce privileged or confidential documents or evidence the parties do not intend to introduce at a hearing on the merits.
- 6-7. *Conduct of Hearings.* The hearing before the Housing Commission will proceed as follows:
- a. Housing Commission Chairperson welcome and subject introduction.
 - b. Petitioner (applicant/tenant) will present its opening statement and its case, including any witnesses or evidence offered for the Commission’s review.
 - c. Upon conclusion of Petitioner’s case, Respondent (Housing Department Staff) shall present the case for the defense, including any witnesses or evidence offered for the Commission’s review.
 - d. Any member of the Housing Commission may ask questions of witnesses or parties during testimony.
 - e. Upon conclusion of Respondent’s case, Petitioner may present its closing argument.
 - f. Upon conclusion of Petitioner’s closing, Respondent may present their closing. At that time, the matter will stand submitted for decision.
- 6-8. *Extenuating Circumstances.* The Housing Commission may determine on a case by case basis that the Housing Department’s presence during a hearing may cause unnecessary conflict. At the discretion of the Housing Commission the Commission may suspend the procedures in section 6-7 and have the parties leave the room when the other party presents their case.
- 6-9. *Tribal Council Liaisons.* Liaisons will be asked to leave during Commission hearings unless the presences of the Liaison is required for quorum.

Section 7. Burden of Proof.

- 7-1. *Burden of Proof.* The burden of proof shall be upon the applicant or tenant.

Section 8. Decision of the Housing Commission.

- 8-1. *Written Decision.* The Housing Commission will provide a written decision which shall include the finding of facts and decision.
- 8-2. *Default Decision.* The failure of a party to appear at the hearing shall constitute a default decision and an admission of any facts that may have been alleged in regard to said Party. The Housing Commission may take action based on such default decision or admission or any other evidence without further notice to the Party. Upon receipt of written request outlining an emergency situation, the Housing Commission may re-schedule the hearing. Supporting documentation affirming the emergent matter and/or situation may be required.

Section 9. Appeal to Tribal Court.

- 9-1. *Appeal of Decision of the Commission.* A decision by the Housing Commission may be appealed to the Tribal Court.
- 9-2. *Standard of Review.* In all appeals before the Tribal Court, there shall be deference given by the Tribal Court to the determination of the Housing Commission as the agency charged with responsibility for interpreting its own regulations. The Tribal Court review of Housing Commission hearing determinations is limited to interpretation and application of law or regulation. The decision of the Tribal Court shall be final.

Section 10. Adoption; Amendment; Repeal

- 10-1. *Adoption.* This Chapter is approved by the Housing Commission by Resolution No. HC 19-0404-05 on April 4, 2019, and approved by the Tribal Council on _____.
- 10-2. *Amendment.* This regulation may be amended by the Housing Commission in accordance with the *Administrative Procedures Act*, Ordinance #04-100-07.
- 10-3. *Severability Clause.* If any provision of this regulation or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are severable.
- 10-4. *Compliance.* In regards to compliance with this regulation, substantial compliance with the 'spirit' of this regulation rather than complete compliance is acceptable.
- 10-5. *Sovereign Immunity.* Nothing in this Regulation shall be interpreted as a waiver of sovereign immunity from suit of the Tribe or any of its governmental officers and/or agents.
- 10-6. *Effective Date.* This Regulation shall take immediate effect on the date of approval by Tribal Council.