

RESOLUTION OF THE GOVERNING BODY OF
THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD RESERVATION

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS, Article VI, Section 5(1) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to adopt resolutions regulating the procedures of Tribal agencies; and
- WHEREAS, There continues to exist the grave problem of the high rate of unemployment among the enrolled members of the Three Affiliated Tribes resident on the Fort Berthold Reservation; and
- WHEREAS, The Tribal Employment Rights Office of the Three Affiliated Tribes, an instrumentality and agency of said Tribal government, has been granted the authority to implement the federally recognized policy of Indian preference in employment and contracting; and
- WHEREAS, In the interest of assisting the Tribal Employment Rights Office in providing for an improved implementation of such policy of Indian preference, the Tribal Business Council has deemed it advisable, if not mandatory, to thoroughly revise the current document entitled "Fort Berthold Tribal Employment Rights Ordinance" (formally approved and adopted by the Tribal Business Council, on the 11th day of December, 1981, via Resolution #81-258), so as to provide more specific and comprehensive guidance to the Director and staff of the TERO Office and to the members of the TERO Commission for the purpose of realizing an improved implementation of the federally recognized policy of Indian preference in employment and contracting within the exterior boundaries of the Fort Berthold Reservation;
- NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes, pursuant to its constitutional power and authority, hereby approves adoption of the attached provisions, entitled "Tribal Employment Rights Ordinance of the Three Affiliated Tribes of the Fort Berthold Reservation," which provisions shall forthwith supersede and replace all provisions currently set forth in the document entitled "Fort Berthold Tribal Employment Rights Ordinance" (formally approved and adopted by the Tribal Business Council, on the 11th day of December, 1981, via Resolution #81-258).
- BE IT FURTHER RESOLVED, That said attached provisions entitled "Tribal Employment

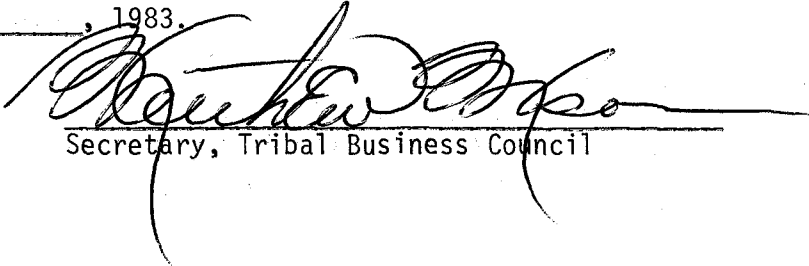
Rights Ordinance of the Three Affiliated Tribes of the Fort Berthold Reservation" shall take effect immediately.

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

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members, of whom 7 constitutes a quorum, 9 were present at a Regular meeting thereof duly called, noticed, convened and held on the 13 day of MAY, 1983; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 9 members, - members opposed, - members abstained, - members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman (Voting) (~~Not Voting~~)

Dated this 13 day of MAY, 1983.


Secretary, Tribal Business Council

ATTEST:


Chairman, Tribal Business Council

TRIBAL EMPLOYMENT RIGHTS ORDINANCE
OF THE THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD RESERVATION

CHAPTER I

DECLARATION OF POLICY

The Three Affiliated Tribes of the Fort Berthold Reservation believe that it is of crucial importance to create employment and training opportunities for their own members and for other Indians, and to attempt to eliminate employment discrimination against Indian people. An integral part of attaining this goal is constituted by the structuring of employment and training opportunities within the exterior boundaries of the Fort Berthold Reservation, so as to provide for the hiring of Indians who are qualified and for the training of Indians in those areas in which there is not a sufficient number of qualified Indians to meet the employment opportunities. In addition, the policy of Indian preference will be implemented and adhered to in contracting and subcontracting, in accordance with the applicable provisions set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, in an effort to promote Tribal and individual economic development.

There exists substantial legal support for the policy of Indian preference in employment in federal statutory and regulatory law, of which the following represent only a few examples.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§2000e et seq.) generally prohibits discriminatory practices in a number of elements of employment on the basis of race, color, religion, sex, or national origin. However, 42 U.S.C. §2000e-2(i) (entitled "Preferential treatment to Indians living on or near reservation") provides a specific exemption from such general prohibition, as follows:

Nothing contained in this title (42 U.S.C. §§2000e et seq.) shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. §§450 et seq.) provides, in part, that all federal contracts or subcontracts with or federal grants or subgrants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible, (1) preferences and

opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians, and (2) preference in the award of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises [25 U.S.C. 8450e(b)].

25 C.F.R. 8271.44 sets forth the federal regulations implementing the provisions of the above-identified section of the Indian Self-Determination Act, requiring, to the greatest extent feasible, that preference be given to Indians in employment and training and to Indian organizations and Indian-owned economic enterprises in the award of contracts and subcontracts.

The regulations promulgated by the Office of Federal Contract Compliance Programs provides, at 41 C.F.R. 860-1.5(a)(6), a specific exemption in the context of Indian preference, as follows:

Work on or near Indian reservations. It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word 'near' would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor or subcontractor from complying with the other requirements contained in this chapter.

Nothing contained in this Ordinance shall, in any manner or to any extent, violate or undermine any federal requirements relative to equal employment opportunities.

CHAPTER 2

SHORT TITLE

This Ordinance shall be known and cited as the Three Affiliated Tribes Tribal Employment Rights Ordinance.

CHAPTER 3

AUTHORITY

Article VI, Sections 3(d), 5(a), and 5(1) of the Constitution of the

Three Affiliated Tribes of the Fort Berthold Reservation (formally approved by the Secretary of the Interior) authorize and empower the Tribal Business Council to enact and implement the provisions set forth in this Ordinance.

CHAPTER 4

DEFINITION OF TERMS

For the purposes of this Ordinance, the term

A. "Commerce" shall mean and include all trades, traffic, distribution, communications, transportation, provisions of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining, and energy resources production.

B. "Employee" shall mean and include any currently working employee, any applicant for employment, and any employee whose work has ceased as a consequence of, or in connection with, any current labor dispute or as a result of unfair labor practices and who has not secured any alternative regular and substantially equivalent employment; however, the term shall not mean and include any individual employed in the domestic services with any family or person at its/his/her home, or any individual employed by any other individual who is not an "employer," as such term is defined hereinafter.

C. "Employee on the Fort Berthold Reservation" shall mean and include any employee who, in a non-supervisory or non-managerial position, spends in excess of one-tenth (1/10) of his/her working hours per month or per pay period, whichever is the more brief, on the Fort Berthold Reservation; the term shall also mean and include any employee who, in a supervisory or managerial position, spends in excess of one-twentieth (1/20) of his/her working hours per month or per pay period, whichever is the more brief, on the Fort Berthold Reservation.

D. "Employer" shall mean and include, but not be limited to, any person or entity who engages in commerce through compensated agents or servants, or who is hired pursuant to contracts for services, within the exterior boundaries of the Fort Berthold Reservation; the term shall also mean and include any person or entity acting in the capacity of a contractor or subcontractor of an employer, directly or indirectly; however, the term shall not mean and include the United States or any wholly-owned government corporation, or any state or political subdivision thereof, but shall mean and include any independent contractors and subcontractors of the United States or of any wholly-owned government corporation or of any state or of any political subdivision thereof.

E. "Covered employer" shall mean and include any employer who employs two or more employees within the exterior boundaries of the Fort Berthold Reservation for an aggregate of sixty (60) or more working days within any period of twelve (12) months.

F. "Indian" shall mean and include any individual who is a duly enrolled member of an Indian tribe.

G. "Indian tribe" shall mean and include any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

H. "Indian-owned firm or entity" shall mean and include any commercial, industrial, or other business firm or entity in which fifty-one percent (51%) or more of the ownership is held by and fifty-one percent (51%) or more of the actual management and control is exercised by an Indian or Indians.

I. "Indian preference" shall generally mean that Indians resident within the exterior boundaries of the Fort Berthold Reservation, without regard to tribal affiliation, shall be given preference over nonresident Indians in employment, training, contracting, and subcontracting, and that Indians, whether resident or nonresident, shall be given preference over non-Indians in employment, training, contracting and subcontracting.

J. "Resident Indian (or Indian resident within the exterior boundaries of the Fort Berthold Reservation)" shall mean and include any Indian, without regard to tribal affiliation, who, on the date on which any contract for on-reservation work is let or, in the case of any employment offer made by any employer permanently located on the Reservation, on the date on which any individual employment offer for on-reservation work is made, has been a bona fide resident of the Fort Berthold Reservation for a period of not less than sixty (60) days next preceding the date on which such contract is let or employment offer is made.

K. "Nonresident Indian (or Indian not resident within the exterior boundaries of the Fort Berthold Reservation)" shall mean and include any Indian who is not a "resident Indian," as such term is defined hereinbefore.

L. "Located near the Fort Berthold Reservation" shall be applicable to any person or entity whose residence and/or principal place of business is located within reasonable daily commuting distance from the Fort Berthold Reservation.

M. "Union (or labor union)" shall mean and include any organization, association, or combination of skilled workers, in which such workers participate and which is organized for such purposes as securing favorable wages, improved labor conditions, and improved hours of labor, and righting grievances brought against employers.

N. "Person" shall mean and include both natural persons and artificial persons, including but not limited to, corporations, partnerships, joint ventures, sole proprietorships, associations, unions, trusts, trustees, and agents.

O. "Notice" (as is required to be given to unnamed parties to an action and to all interested persons not parties to an action, and in all instances wherein a specific person is not addressed) shall be sufficient if such notice is published in a news publication serving the geographic area of the Fort Berthold Reservation and posted in a public place within the exterior boundaries of the Reservation.

P. "Council" shall mean the Tribal Business Council of the Three Affiliated Tribes.

Q. "Commission" shall mean the Three Affiliated Tribes Tribal Employment Rights Commission.

R. "Commissioner" shall mean a member of the Three Affiliated Tribes Tribal Employment Rights Commission.

S. "Chairman" shall mean the Chairman of the Three Affiliated Tribes Tribal Employment Rights Commission.

T. "TERO" shall mean the Three Affiliated Tribes Tribal Employment Rights Office.

U. "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.

V. "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.

W. "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

CHAPTER 5

APPLICABILITY

The provisions set forth in this Ordinance shall apply to any and all lands situated within the exterior boundaries of the Fort Berthold Reservation, as defined

in Article I of the Constitution of the Three Affiliated Tribes, and to such other lands, within or without such boundaries, as have been or may be hereafter included within and subject to the jurisdiction of the Three Affiliated Tribes under any law of the United States, except as otherwise provided by law.

CHAPTER 6

SCOPE OF INDIAN PREFERENCE

A. All covered employers shall grant preference to resident Indians, without regard to tribal affiliation, over nonresident Indians in hiring, promotion, training, and all other elements of employment.

B. All covered employers shall grant preference to Indians, whether resident or nonresident, over non-Indians in hiring, promotion, training, and all other elements of employment.

C. All covered employers shall grant preference to certified Indian-owned firms, whose principal places of business are located within the exterior boundaries of the Fort Berthold Reservation, without regard to tribal affiliation, over certified Indian-owned firms whose principal places of business are located without such boundaries, in awarding contracts and subcontracts.

D. All covered employers shall grant preference to certified Indian-owned firms, without regard to the location of their respective principal places of business, over non-certified firms with some Indian ownership, in awarding contracts and subcontracts.

E. All covered employers shall give preference to non-certified firms with some Indian ownership, whose principal places of business are located within the exterior boundaries of the Fort Berthold Reservation, without regard to tribal affiliation, over non-certified firms with some Indian ownership, whose principal places of business are located without such boundaries, in awarding contracts and subcontracts.

F. All covered employers shall grant preference to non-certified firms with some Indian ownership, without regard to the location of their respective principal places of business, over non-Indian-owned firms, in awarding contracts and subcontracts.

CHAPTER 7

TRIBAL EMPLOYMENT RIGHTS OFFICE

The Tribal Employment Rights Office shall be vested with the general authority to implement the policy of Indian preference in employment and in contracting as established and espoused by the Tribal Business Council. The Office shall have the specific duty and responsibility of engaging in the daily implementation of the provisions set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

The supervisory authority over the staff of the Office shall be vested in the Tribal Employment Rights Director, who shall be selected and employed by the Tribal Business Council, to which body the Director shall have a direct reporting responsibility. The Director shall have the exclusive authority to select and employ individuals to serve in the various staff positions within the Office, to terminate for cause any individual employed in a staff position within the Office, to prepare line item budgets based upon any and all sources of funding for the operation of the Office and oversee the expenditures of funds therefrom, and may prosecute, before the Tribal Employment Rights Commission, any and all claims of noncompliance with this Ordinance, with any and all supplementary ordinances, or with any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

The Tribal Employment Rights Director, in conjunction with the staff within the Office, shall have the following authority, duties, and responsibilities:

A. To develop and maintain in updated status a register setting forth the names of Indian-owned firms certified for Indian preference by the Commission, together with an identification of the respective areas of work in which such firms are considered qualified.

B. To develop and maintain a plan for coordination with the Fort Berthold Agency of the Bureau of Indian Affairs in disseminating the certification register to all appropriate covered employers.

C. To develop and maintain a plan for the dissemination of this Ordinance, of any and all supplementary ordinances, and of any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, to all covered employers and to all governmental entities letting contracts within the exterior boundaries of the Fort Berthold Reservation.

D. To ensure compliance by covered employers with any and all reporting requirements as prescribed by this Ordinance, by any and all supplementary ordinances, and by any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

E. To enter into formal negotiations with representatives of any covered employer in an effort to resolve, on an informal, voluntary basis, any claim of noncompliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

F. To inspect any and all non-privileged information set forth in the books and records maintained by any covered employer for the purpose of ensuring continued compliance thereby with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

G. To conduct on-site inspections at any time during the actual operation of the business of any covered employer for the purpose of monitoring compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, and to speak with any contractor, subcontractor, or employee on-site, so long as such conversation does not interfere with the operation of the business.

H. To review applications for Indian preference certification (together with any and all supporting documentation), conduct whatever investigations are deemed necessary and/or requisite relative to any applicant's qualifications, and submit to the Commission a written analysis and recommended disposition of each such application.

I. To initiate proceedings before the Commission for the purpose of suspending or revoking the Indian preference certification of a firm when changed circumstances so warrant.

J. To monitor and ensure the collection from covered employers of the appropriate employment rights fees for the purpose of providing fiscal support for the operation of the Tribal Employment Rights Office.

K. To secure additional funding from alternative sources (e.g., federal and/or state funding sources, private foundations, and public agencies), if necessary for the continued adequate functioning of the Tribal Employment Rights Office.

L. To implement and maintain a Tribal hiring hall from which covered employers shall select and employ qualified Indians to fill employment positions.

M. To establish minimum numerical hiring goals and timetables setting forth the minimum number of qualified Indians a covered employer must employ within its work force, during any year, by craft, skill area, or job classification.

N. To require covered employers to establish and maintain job training or apprenticeship programs for the purpose of assisting Indians to become qualified in the various crafts, skill areas, or job classifications used by such employers and of increasing the pool of Indians qualified to engage in the various employment positions available on the Fort Berthold Reservation.

O. To prohibit covered employers from instituting and utilizing job qualification criteria and/or personnel requirements, which, in effect, serve as barriers to employment of Indians, unless such criteria and/or requirements can be demonstrated to be required by business necessity.

P. To enter into negotiated agreements with labor unions for the purpose of ensuring union compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

Q. To work in conjunction (and possibly enter into cooperative agreements) with federal agencies whose regulations provide for the policy of Indian preference in employment and in contracting (e.g., EEOC and OFCCP), for the purpose of attempting to coordinate the respective Indian preference requirements, monitoring efforts, and sanctioning activities to the extent possible.

R. To assume the full power and authority of the Tribal Employment Rights Commission in emergency situations or under exigent circumstances (e.g., immediate action must be taken and/or a decision made so as to prevent further substantial harm resulting from certain noncompliance or it is impossible to secure a quorum of the members of the Commission); provided, however, that any such action taken and/or decision made by the TERO Director shall be deemed temporary, pending review thereof and a determination thereon by the Commission within a period not to exceed thirty (30) days from the date on which such action was taken and/or decision made.

S. To take such other actions and engage in such other activities as are deemed necessary to achieve the purposes and objectives inherent in the policy of Indian preference in employment and in contracting.

CHAPTER 8

TRIBAL EMPLOYMENT RIGHTS COMMISSION

As the governing body of the Three Affiliated Tribes, the Tribal Business Council hereby delegates to the Tribal Employment Rights Commission all of its constitutional authority and power to implement the federally recognized policy of Indian preference in employment and in contracting.

The Commission shall be constituted by five (5) members, each of whom shall be formally appointed by the Tribal Business Council. Three (3) of the five (5) members of the Commission shall be members of the Tribal Business Council. The respective terms of office of the members of the Commission shall be held at the pleasure of the Tribal Business Council. The members of the Commission shall not receive any compensation per se, but shall be reimbursed for any and all reasonable and documented expenses actually incurred in connection with the performance of their duties and responsibilities.

The Tribal Employment Rights Commission shall be vested with the general authority to implement the policy of Indian preference in employment and in contracting as established and espoused by the Tribal Business Council. The Commission shall have the following specific authority, duties, and responsibilities:

A. To establish and implement rules and regulations governing all activities and procedures of the Commission.

B. To issue rules, regulations, and guidelines deemed necessary to fully implement the provisions set forth in this Ordinance and those set forth in any and all supplementary ordinances.

C. To meet with the TERO Director and staff members on a monthly basis for the purpose of securing updates relative to the operation of the TERO Office.

D. To hold formal hearings, issue notices thereof, and subpoena witnesses and documents in accordance with the hearing procedures set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

E. To impose any sanctions and grant any relief as authorized and prescribed by this Ordinance and by any and all supplementary ordinances.

F. To require any covered employer to pursue whatever corrective actions are deemed necessary for such employer to come into compliance with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and/or in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

G. To take such other actions and engage in such other activities as are deemed necessary to achieve the purposes and objectives inherent in the policy of Indian preference in employment and in contracting.

In the event that, at any hearing before the Commission, the members of the Commission should determine that a potential conflict of interest exists between a member or members of such body and a hearing participant or participants, any such member or members of the Commission shall be disqualified from any participation in such hearing and shall not be present thereat.

CHAPTER 9

EMPLOYMENT RIGHTS FEE

Pursuant to their Constitutional and federally recognized power and authority, the Three Affiliated Tribes hereby impose an employment rights fee on certain covered employers for the purpose of deriving a source of revenue for the administration and operation of the Tribal Employment Rights Office, an instrumentality and agency of the government of the Three Affiliated Tribes.

Each covered employer, irrespective of whether its principal place of business is located within or without the exterior boundaries of the Fort Berthold Reservation, who engages in business, in the capacity of a prime contractor or subcontractor, in the area of mineral exploration, mineral development, or construction (including, but not limited to, residential, commercial, industrial, highway, and bridges), shall be liable for payment of an employment rights fee in the amount of one-half (1/2) of one percent (1%) of the total gross contract price per each contract entered into. Such fee may be paid in installments over the period of performance of the contract.

Such fee shall be paid to the Finance Office of the Three Affiliated Tribes and shall be deposited by such Office in a special account, the funds from which account shall be used for the administration and operation of the Tribal Employment Rights Office. The TERO Director and/or the staff members within the TERO office shall have the duty and authority to collect such fees and to establish such rules and regulations, subject to the approval of and adoption by the Tribal Employment Rights Commission, as are deemed necessary so as to ensure an equitable and timely fee collection procedure. Any prime contractor or subcontractor liable for payment of such fee, who fails to make payment of the required fee in a timely manner, as prescribed by the rules and regulations established by the TERO Office, shall be subject to one or more of the sanctions prescribed by and set forth in Chapter 12 of this Ordinance, as imposed by the TERO Commission upon formal hearing.

CHAPTER 10

COMPLAINT AND HEARING PROCEDURE

Any person, including covered employers, employees, contractors, subcontractors, and the TERO Director, who believes that any other person has failed to comply with any requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, shall file a written complaint with the TERO Office, whether or not such complainant can demonstrate that he/she/it has suffered personal harm as a result of the alleged noncompliance.

Upon the filing of any such complaint, the TERO Director shall forthwith direct written notice of the alleged noncompliance to the person against whom the allegation of noncompliance has been made. Within a period of seven (7) days (exclusive of weekends and legal holidays) from the date of receipt of such notice, the person against whom the complaint has been filed and the TERO Director and/or staff shall attempt to achieve a voluntary, informal resolution of the matter through negotiation. In the event that no such resolution has been achieved at the termination of such seven- (7) day period, the TERO Director shall forthwith notify the Commission and request that it set a date for a formal hearing on the matter within a period of twenty (20) days from the date of such notification.

Upon its receipt of such request for hearing, the Commission shall forthwith direct to (1) the person against whom the allegation of noncompliance has been made, (2) the complainant, (3) the TERO Director, and (4) any and all other identified interested persons, written notice of such hearing, wherein is set forth the date, time, and location of such hearing. In addition, such notice shall advise each interested person of (1) the nature of the hearing, (2) the right to be present at and participate in the hearing, (3) the right to present the testimony of witnesses and documentary evidence and to cross-examine witnesses, and (4) the right to be represented by counsel at his/her/its own expense. On its own initiative, or upon the request of any person so notified of such hearing, the Commission shall subpoena identified witnesses and documents and/or records. Within its discretion, the Commission may direct that the TERO Director assist the complainant in the presentation of his/her/its claim of noncompliance.

At all hearings before the Commission, the following rules of procedure shall be recognized and adhered to:

A. Each notified interested person shall have the right to be present at and participate in the hearing.

B. Each such person shall have the right to present relevant sworn testimony and documentary evidence.

C. Each such person shall have the right to call witnesses on his/her/its own behalf and to cross-examine witnesses called by any other hearing participant.

D. Each such person shall have the right to be represented by counsel at his/her/its own expense.

E. The Chairman of the Commission or a member thereof appointed by the Chairman shall preside over the proceedings.

F. Neither the formal rules of evidence nor any formal rules of procedure need be observed, but the Commission shall proceed to ascertain the facts inherent in the matter in a reasonable and orderly manner.

G. A complete transcript of the proceedings shall be made and maintained by the Commission.

H. The proceedings may be continued at the discretion of the Commission, should it deem such action advisable.

I. Any matter to be proven must be so done to the satisfaction of the Commission by a preponderance of the evidence.

J. At the termination of the proceedings, the Commission, within its discretion, may either render an immediate determination or take the matter under advisement and issue its decision no later than ten (10) days from the date of the hearing.

Within a period not to exceed ten (10) days from the date of the hearing, the Commission shall issue its written decision and order, setting forth the specific ground(s) therefor and shall direct a copy thereof to each notified interested person who was present at and participated in the hearing. Should the Commission determine that the person against whom the complaint was brought did fail to comply with any requirement(s) set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, the Commission shall impose one or a combination of the sanctions set forth in Chapter 12 of this Ordinance and may order such person to take such corrective actions as are deemed necessary to remedy any harm caused by the noncompliance at issue.

CHAPTER 11

APPEAL PROCEDURE

Any notified interested person who was present at and participated in any hearing before the Commission and who is aggrieved by a decision and order issued thereby shall have the right to appeal therefrom to the Fort Berthold Tribal Court.

A Notice of Appeal shall be filed with the Court within a period of thirty (30) days from the date of receipt by such aggrieved person of the Notice of Decision from the Commission. Copies of the Notice of Appeal shall be directed by such person to both the TERO Director and Commission.

The Court shall reverse the decision of the Commission only where it finds such decision to be arbitrary and capricious, or unsupported by substantial evidence.

(Note: Prior to seeking any judicial relief within the Fort Berthold Tribal Court system, any person aggrieved by any action taken by a covered employer, the TERO Director, or the TERO staff, shall initially seek administrative relief pursuant to the specific procedures as prescribed by and set forth in Chapter 10 of this Ordinance.)

CHAPTER 12

SANCTIONS

Any one or combination of the following sanctions shall be imposed by the Commission upon its determination that a person has failed to comply with any requirements set forth in this Ordinance, in any and all supplementary ordinances, or in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission.

A. Imposition of a civil monetary fine not to exceed the amount of Five Hundred and 00/100 Dollars (\$500.00) per violation. Each day on which a person has been determined to have been out of compliance with any TERO requirements shall constitute a separate violation.

B. Suspension or termination of the person's current conduct of business within the exterior boundaries of the Fort Berthold Reservation, provided that such person be granted a reasonable period of time during which to remove its equipment and other property located on the Reservation and to arrange with

another person for the assumption of any of its outstanding contractual obligations.

C. Prohibition of the person's engaging in the future conduct of business within the exterior boundaries of the Fort Berthold Reservation for a definite or indefinite period.

D. Provision of monetary or other appropriate relief as and for damages to compensate any person harmed as a result of the noncompliance at issue.

E. Order the immediate termination by the covered employer of any individual(s) hired in contravention of any TERO requirements relative to Indian preference in the selection and hiring of employees.

F. Order the immediate rescission of any contract(s) and/or subcontract(s) entered into by the covered employer in contravention of any TERO requirements relative to Indian preference in contracting and subcontracting.

G. Order the employment, promotion, and training by the covered employer of any Indian individual(s) adversely affected by the noncompliance with any TERO requirements relative to Indian preference in employment opportunities.

H. Order the award of a contract or subcontract by a covered employer to any qualified Indian-owned firm adversely affected by the noncompliance with any TERO requirements relative to Indian preference in contracting and subcontracting.

I. Order the award of back pay by the covered employer to any Indian individual(s) adversely affected by the noncompliance with any TERO requirements relative to Indian preference in employment opportunities.

J. Order the covered employer to make such changes in its policies, procedures, and/or conduct as are deemed necessary for the purpose of securing compliance with any TERO requirements.

K. Such other or further relief and/or sanctions as the Commission should deem just and proper.

CHAPTER 13

PUBLICATION OF ORDINANCE

The obligation of all covered employers to fully comply with the requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, shall be made known to all covered employers doing business within the exterior boundaries of the Fort Berthold Reservation whether currently or in the

future. It shall be the duty and responsibility of the staff of the TERO Office to cause the publication of such requirements to be performed to the extent as prescribed herein.

The TERO staff shall direct copies of this Ordinance, of any and all supplementary ordinances, and of any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, upon formal adoption thereof by the Tribal Business Council, to all covered employers, the Superintendent of the Fort Berthold Agency of the Bureau of Indian Affairs, and all government agencies and wholly-owned government corporations intending to undertake projects within the exterior boundaries of the Fort Berthold Reservation. In addition, the TERO staff will continuously maintain in its files a sufficient number of copies of all such ordinances, rules, regulations, and/or guidelines for dissemination to any person who should request copies thereof.

The TERO staff shall take whatever action is deemed appropriate and necessary to ensure that all bid announcements, issued by federal, state, and Tribal agencies and wholly-owned government corporations and by all other entities, shall each contain a provision therein providing that the successful bidder shall fully comply with the applicable requirements set forth in all TERO ordinances, rules, regulations, and/or guidelines.

CHAPTER 14

REPORTING REQUIREMENTS

A covered employer shall submit to the TERO Office, in a timely manner, such information (including documentation) as the TERO Director should request, from time to time, on report forms furnished by the TERO Office; provided, however, that a covered employer may refuse to submit any information or documentation which it can demonstrate must remain confidential for valid business purposes.

All written materials, relating to any covered employer, including certified Indian-owned firms, maintained on file in the TERO Office shall remain strictly confidential. Such written materials shall include, but not be limited to, Indian preference certification applications and accompanying documentation, financial records, tax records, corporate and other business organic documents, resumes, and financial institution documents. No person other than the TERO Director, staff members within the TERO Office, and members of the TERO Commission, shall

have any access whatsoever to any such written materials or other information maintained on file in the TERO Office; provided, however, that an authorized representative or agent of a covered employer shall have the right to secure access only to the particular file so maintained on such covered employer, for the purpose of review and/or photostatic copying within the location of the TERO Office (i.e., no file or any written materials maintained therein shall be removed from the location of the TERO Office by any such representative or agent of a covered employer). In addition, the TERO Director, staff, and Commission shall be obligated to recognize and comply with the policy of such strict confidentiality in the context of the prohibition against their relating, whether verbally or in written form, any information whatsoever to any other person relative to such written materials so maintained on file in the TERO Office.

CHAPTER 15

ON-SITE INSPECTIONS

The TERO Director, the staff members, within the TERO Office, and the members of the TERO Commission shall have the right to conduct periodic on-site inspections at any time during the actual operation of the business of any covered employer, in order to monitor compliance by such employer with the requirements set forth in this Ordinance, with those set forth in any and all supplementary ordinances, with any and all rules, regulations, and/or guidelines promulgated by the TERO Commission, and with any order issued by the Commission. During the period of any such on-site inspection, such TERO personnel and officials shall have the right to speak with any contractor, subcontractor, or employee working on the site, so long as such conversation does not interfere with the operation of the business. In addition, such TERO personnel and officials shall have the right to inspect any and all records and other written materials maintained on-site by a covered employer, which cannot be deemed confidential for valid business purposes. Any and all such written materials so inspected shall be subject to the requirements relative to strict confidentiality, as prescribed by and set forth in Chapter 14 of this Ordinance.

CHAPTER 16

COMPLIANCE PLAN

Subsequent to the effective date of this Ordinance, no covered employer, who intends to do business within the exterior boundaries of the Fort Berthold Reservation, shall commence the conduct of such business until such time as he/she/it has consulted with the TERO Director and/or staff for the purpose of being advised of his/her/its Indian preference and other obligations, as prescribed by and set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission. After such consultation and previous to the commencement of the conduct of business, such covered employer shall develop a compliance plan which is acceptable to and approved by the TERO Director.

CHAPTER 17

UNION AGREEMENTS

A covered employer, who intends to enter into a collective bargaining agreement with a labor union, shall ensure that such agreement includes a provision whereby such labor union agrees to comply with the applicable Indian preference requirements set forth in this Ordinance, in any and all supplementary ordinances, and in any and all rules, regulations, and/or guidelines promulgated by the TERO Commission. Any such collective bargaining agreement shall be subject to the approval of the TERO Director, so as to ensure that such agreement satisfies the intent of this Chapter.

CHAPTER 18

ENFORCEMENT OF ORDERS

The police officers of both the Three Affiliated Tribes and the Bureau of Indian Affairs are hereby expressly authorized and directed to take whatever reasonable legal enforcement action is necessary to fully enforce any and all cease and desist and related orders as are, from time to time, properly issued by the Tribal Employment Rights Commission or by the Fort Berthold Tribal Court. Such an order issued by the Commission shall not require an accompanying or affirming judicial order, so as to render the order legally enforceable.

CHAPTER 19

RECOGNITION OF FREEDOM OF RELIGION

A covered employer shall make any reasonable modifications in the operation of its business for the purpose of accommodating the religious beliefs, traditions, and practices of Indian employees and Indian-owned firms in accordance with any relevant guidelines which may be promulgated by the TERO Commission.

CHAPTER 20

HARASSMENT

No person, including any representative or agent of a covered employer, contractor, subcontractor, or certified Indian-owned firm, shall attempt to or, in fact, harass, intimidate, or retaliate against the Director or any member of the staff within the TERO Office, or any member of the Tribal Employment Rights Commission. Should any person be deemed by the TERO Director to have violated such prohibition against harassment, intimidation, and retaliation, the Director shall forthwith direct to such person's employer, by certified mail, a formal written warning, wherein is set forth a full description of the nature of the alleged harassment, intimidation, and/or retaliation, and a clear admonition that such conduct shall forthwith be discontinued. Should such conduct continue subsequent to the receipt by such employer of the written warning, the TERO Director shall forthwith notify the Commission of the matter and request that it set a date for a formal hearing thereon. Any such hearing shall be conducted in accordance with the rules of procedure prescribed by and set forth in Chapter 10 of this Ordinance. Should the Commission determine that such employer did violate the prohibition against harassment, intimidation, and retaliation, the Commission shall impose against the employer, depending upon the degree of severity of such conduct, any one or combination of the sanctions prescribed by and set forth in Chapter 12 of this Ordinance.

CHAPTER 21

INDIAN PREFERENCE GUIDELINES

Any and all guidelines promulgated by the Tribal Employment Rights

Commission, setting forth requirements for covered employers and the TERO Director and staff relative to Indian preference in employment practices and in contracting and subcontracting (e.g., minimum numerical hiring goals and timetables, Tribal hiring hall, training, promotions, layoffs, and contract awards), shall be incorporated herein and made part hereof, subject to the approval of both the Tribal Business Council and the Secretary of the Interior.

CHAPTER 22

RULES AND REGULATIONS

Any and all rules and regulations implementing any of the provisions set forth in this Ordinance or any of those set forth in any and all supplementary ordinances, issued by the Tribal Employment Rights Commission, subsequent to the effective date of this Ordinance, shall be subject to review and comment by interested persons resident within the exterior boundaries of the Fort Berthold Reservation.

In issuing any and all such rules and regulations, the Commission shall recognize and comply with the following minimum procedures:

A. The proposed rules and regulations shall be published once in every newspaper whose respective principal places of business are located within the exterior boundaries of the Fort Berthold Reservation.

B. Within a period of twenty (20) days from the date of the publication of the latest newspaper, all interested persons may submit written comments to the TERO Office.

C. Simultaneous with its initial review of the proposed rules and regulations, the Tribal Business Council shall review and discuss any and all written comments submitted.

D. The Tribal Business Council, upon its final review of the proposed rules and regulations with any changes made therein based upon any written comments, shall formally approve and adopt the same, at which time such rules and regulations shall become effective.

E. The adopted rules and regulations shall forthwith be directed to the Secretary of the Interior for review and approval.

CHAPTER 23

SEVERABILITY

Should any provision set forth in this Ordinance, or the application thereof to any person or circumstance, be held invalid by a court of competent jurisdiction, the full remainder of such provision, or the application of the provision to another person or circumstance, shall not be affected thereby.

CHAPTER 24

COVERAGE

This Ordinance shall be applicable to all "covered employers" (as such term is defined in Chapter 4 herein), whether such person is doing business within the exterior boundaries of the Fort Berthold Reservation at the time of the effective date hereof or will be so doing business subsequent thereto.

CHAPTER 25

EFFECTIVE DATE

This Ordinance shall be in full force and effect as of the date of the formal approval and adoption hereof by the Tribal Business Council.