

HO-CHUNK NATION CODE (HCC)
TITLE 6 – PERSONNEL, EMPLOYMENT AND LABOR CODE
SECTION 3 – TRIBAL EMPLOYMENT RIGHTS ORDINANCE

AMENDED BY LEGISLATURE: April 8, 2013

CITE AS: 6 HCC § 3

This Ordinance supercedes the Ho-Chunk Nation Tribal Employment Rights Ordinance enacted October 7, 1997 by Legislative Resolution 10/7/97A and amended by Legislative Resolution 04/08/130

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1. Authority.

- A. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.
- B. Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect Fees and license Fees.
- C. Article V, Section 2(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all government personnel.
- D. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.
- E. Article V, Section 2(q) of the Constitution grants the Legislature the power to issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities.
- F. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

2. Purpose. This Tribal Employment Rights Ordinance (TERO) is enacted to require employers doing business on or near lands owned by the Ho-Chunk Nation to provide training and employment opportunities to enrolled members of the Ho-Chunk Nation and other Indians, and to give preference in employment hiring, training and the promotion of tribal members and other Native Americans.

3. Applicability. This Ordinance applies on or near all lands owned and acquired by the Ho-Chunk Nation, including but not limited to, land held in trust by the Federal Government for the Ho-Chunk Nation or on behalf of its enrolled members as authorized by Article 1 Sections 1 and 2 of the Ho-Chunk Constitution.

4. Declaration of Policy.

- A. The policy of the Ho-Chunk Nation is to foster employment opportunities for its members and other Indian people.
- B. The policy of the Ho-Chunk Nation is to promote the economic and social interests of its members and other Indians by increasing employment of Indian people.
- C. This Ordinance is enacted to create employment and training opportunities for Indians within the jurisdiction of this Ordinance; and to promote adherence to the Indian Preference requirements of Title VII of the Civil Rights Acts of 1964 (42

U.S.C. § 2000e-2(i)) as applied to any Indian, business or enterprise “on or near” a Indian Reservation; and the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 *et seq.*) which requires preference be given to Indians, Indian owned economic enterprises and Indian organizations in the administration and award of all federal contracts, subcontracts or grants for the benefit of Indians.

5. Definitions. Terms used in this Ordinance have the following meaning:

- A. “Bid Bond” is a type of bond that will cover the difference between the submitted bid and the next higher bid.
- B. “Chairperson” means the Chairperson of the TERO Commission.
- C. “Commerce” means and includes all trades, traffic, distribution, communications, transportation, provisions of services, manufacturing production, agricultural production, building maintenance, construction, banking, mining, and energy resource production.
- D. “Commission” means the TERO Commission, covered in Section 22 of this Ordinance.
- E. “Commissioner” means a member of the TERO Commission.
- F. “Construction” refers to any work related to the building of or renovation of roads or structures requiring physical labor. Design and planning related work is generally considered vendor or service related work and subject to those provisions under the TERO Ordinance.
- G. “Contract” means a legally enforceable agreement between two or more parties.
- H. “Core Crew” means the part of a contractor’s crew that is a regular, full time permanent employee that holds an ownership interest, a supervisory or other key position that is necessary for the execution of the contract work and that displacement by someone who had not previously worked for the contractor would result in serious financial loss or a compromise in the contracted work. Any Indian already employed by a contractor on the project shall be considered part of the core crew and shall not be considered a referral nor shall they be displaced by a referral.
- I. “Corporation” means any person or legal entity created by or under the authority of the laws of a state or Nation as defined by Ho-Chunk Nation laws, or a foreign corporation formed under the laws of any other jurisdiction.
- J. “Covered Employer” or “Employer” means and includes any person or entity located on or engaging in commercial or employment activity on or near lands

- owned by the Ho-Chunk Nation that employs 2 or more persons. This term shall include the Ho-Chunk Nation for the purposes of this Ordinance only. It does not include the United States Government nor any State or Local government but shall include Contractors and Sub-Contractors hired by those entities.
- K. “Crafts” mean handmade products.
- L. “Department” means a Department or Division within the Ho-Chunk Nation.
- M. “Director” means the Ho-Chunk Nation TERO Director.
- N. “EEOC” means the Equal Employment Opportunity Commission of the United States.
- O. “Employee” means anyone currently working or providing services on or near Ho-Chunk Land.
- P. “Entity” means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other person or organization.
- Q. “Firm” means a business entity or enterprise, unincorporated business, or a Partnership.
- R. “Gross Payroll” means the total amount of payroll funds, not including any deductions for federal, state or local Fees or taxes.
- S. “Hearing Officer” means a member of the TERO Commission who is appointed to preside over the hearings.
- T. “Ho-Chunk Legislature” or “Legislature” means the duly elected legislative body governing the Ho-Chunk Nation.
- U. “Indian” means any individual who is an enrolled member of a federally recognized Indian Tribe.
- V. “Indian Land” means, (Article I, Section 1 of the Constitution of the Ho Chunk Nation), the territory of the Ho Chunk Nation shall include all lands held by the Nation or the People, or by the United States for the benefit of the Nation or the People, and any additional lands acquired by the Nation or by the United States for the benefit of the Nation or the People, including but not limited to air, water, surface, subsurface, natural resources and any interest therein, notwithstanding the issuance of any patent or right-of-way in Fee or otherwise, by the governments of the United States or the Ho Chunk Nation, existing or in the future.

- W. “Indian Preference” means preference is given for contracting and employment opportunities to TERO referrals and IPC’s that are qualified to perform the work.
- X. “Indian Preference Company” or “IPC” means any commercial, industrial or other business firm or entity that has applied and has been certified by TERO to be more than 51% Indian owned and managed.
- Y. “Indian Tribe” means only Tribes that are federally recognized by the BIA, established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq).
- Z. “JSBP” mean Job Skills Bank Participant of the Ho-Chunk Nation TERO.
- AA. “Key Employee” means the owner(s) and any employee who is essential to a contractor or employer. The replacement of a Key Employee with someone not familiar with the operations of a company would create a situation where the contractor would face serious financial loss or render the contractor unable to perform the contracted work.
- BB. “Land Owned By the Ho-Chunk Nation” means any real property in which the Ho-Chunk Nation or any of its members, individually or severally, hold at least a fifty-one percent (51%) property interest, including Ho-Chunk lands held in trust by the United States Government on behalf of the Ho-Chunk Nation or its members.
- CC. “Limited Liability Company” (LLC) means a non-corporate business who has registered with their respective State or Nation as being a Limited Liability Company (LLC).
- DD. “Notice” means that required written communication is to be given to all interested parties to an action. Where a person’s address is not known, it shall be sufficient if such notice is published in a news publication and is posted in a public place on or nearby land owned by the Ho-Chunk Nation or on the TERO website.
- EE. “OFCCP” means the Office of Federal Contract Compliance Program of the United States.
- FF. “On or Near Ho-Chunk Lands” refers to any real property owned by the Ho-Chunk Nation or any of its members individually or severally or hold at least a fifty-one percent (51%) property interest. This includes lands held in trust by the United States Government on behalf of the Ho-Chunk Nation or its members and includes lands upon which construction related projects are being conducted with the use of or assistance of Federal Government funding.. This Ordinance establishes that lands which are located up to a 100 mile radius of Land owned by the Ho-Chunk Nation shall be considered “On or Near”. This does not include

- lands which are within the reservation boundaries of another Federally Recognized Tribes.
- GG. “Performance and Payment Bond” means type of contract bond which protects the Nation in the event the contractor is unable or refuses to perform his contract and ensure that sub-contractors, suppliers and distributors are paid for the services they provided under a contract.
- HH. “Qualifications” are the list of skills an employee must possess in order to perform the work required of a given position. These must be established for each position by the covered employer and submitted to TERO as part of the Compliance Plan. It is reasonable to require that someone has a specific skill or experience such as “being able to install asphalt roof shingles” but it is unreasonable to list as a minimum qualification “being able to install 4 square of asphalt roof shingles per hour” or place similar restrictions as a qualification. If qualifications are not submitted, TERO will refer JSBP at their own discretion.
- II. “Qualified Person” means an individual that has been trained in, certified in, went to school or classes to learn or have more than 1 year of successful work experience or who meets each of the Contractor’s supplied “Qualifications” for a given position.
- JJ. “Qualified Business” means a business or company that has been certified by TERO as an IPC to perform specific functions or a company that has demonstrated both the skills necessary and the financial viability to perform the necessary functions of a specific contract.
- KK. “Registered” means a company or vendor that has registered with TERO and agrees to abide by the Ho-Chunk Nation TERO Ordinance as well as all other applicable Tribal, Federal and State laws.
- LL. “Secretary” means the Secretary of the U.S. Department of the Interior or duly authorized representative of the Secretary.
- MM. “Service Provider” is anyone who contracts with the Ho-Chunk Nation to perform work with a value that exceeds \$1,000.00 within a 12-month period except where the service is considered to be “Construction”, see also *Vendor*.
- NN. “Sole Proprietorship” means a form of business in which one person owns all the assets of the business in contrast to a partnership, trust or corporation. The sole proprietor is solely liable for all the debts of the business.
- OO. “Spouse” means one’s husband or wife, and “surviving spouse” is one of a married pair who outlived the other.
- PP. “TERO” means “Tribal Employment Rights Ordinance” or may be used to refer to the “Tribal Employment Rights Office” of the Ho-Chunk Nation.

- QQ. “TERO Certification” means a certificate was issued from TERO, identifying a company as holding the designation of Indian Preference Company.
- RR. “TERO Permit” as issued by TERO is required to be obtained prior to any construction work being performed and should be prominently displayed, along with regular permits and notices usually required to be posted on construction related projects. A TERO issued Construction Permit does not take the place of any other permits that may be required to be obtained from Federal, State or Local entities such as a building permit.
- SS. “Tribal Member” means any person whose name appears on the Official Membership Roll of a federally recognized tribe.
- TT. "TJSBP" means TERO Job Skills Bank Participant, and may also be referred to as JSBP or Job Skills Bank Participant.
- UU. “Vendor” means any outside provider of goods or services when the value of those goods or services exceed \$1,000.00 in a one year time period, and includes vendors that make deliveries to or for the Ho-Chunk Nation.

6. Indian Preference.

- A. TERO shall establish goals and guidelines for attaining Indian Preference consistent with this Ordinance and approved by the TERO Commission.
- B. The guidelines approved by the TERO Commission for attaining the goals of Indian Preference in Employment and Training may include, but are not limited to, awarding practices for contracting and subcontracting , minimum numerical hiring goals , on the job training positions, and guidelines to implement Indian Preference for employers.
- C. Guidelines approved and adopted by the TERO Commission will become effective upon an affirmative vote by the TERO Commission.
- D. The Guidelines shall be publically available upon request.

7. Indian Preference Certification (IPC) and TERO Registration.

- A. The purpose for IPC Certification is to enable the Ho-Chunk Nation and TERO to determine who is eligible for preference and to ensure companies that are claiming preference understand the requirements of TERO. IPC’s are agreeing to abide with all TERO Regulations while conducting business on or near Ho-Chunk Lands.
- B. The purpose of TERO Registration is to identify companies and entities that intend to perform work or provide services on or near Ho-Chunk lands and to ensure they understand and abide with all TERO Regulations while conducting business on or near Ho-Chunk Lands.

- C. The TERO shall establish requirements that must be met and maintained for a company to hold a valid Certification as an IPC or to Register with TERO and perform work on or near Ho-Chunk Lands. These requirements shall be approved by the TERO Commission.
- D. Withdrawal, Revocation or Suspension of TERO Certification and Registration
- i. The TERO Director may revoke any TERO Certification or Registration of any company, whether Indian Owned or non-Indian Owned for any violation or non-compliance with any of the Nation's Laws, including this Ordinance.
 - ii. The TERO Director shall notify the affected company within ten (10) days of initiating the proceedings and prepare a decision for the Complainant and shall send a copy to the firm or entity by registered mail within 15 business days of the initiation of the proceedings.
 - iii. All decisions regarding the withdrawal, revocation, or suspension of a TERO Certification or Registration shall be appealable to the TERO Commission for review.
 - iv. The TERO Commission shall set a date for hearing in accordance with the hearings procedures in this Ordinance. The TERO Commission will issue a decision.
 - v. The decisions of the TERO Commission may be appealed to the Ho-Chunk Trial Court.
 - a. Appeals to the Ho-Chunk Trial Court must be filed within thirty (30) days of the TERO Commission's decision.
 - b. Trial Court will base its decision upon a review of the TERO Commission's record of the proceedings, oral arguments, if any and any written briefs or submissions. The Trial Court will not exercise de novo review of the TERO Commissions findings but will determine whether the TERO Commissions decision was either:
 - i. Arbitrary or capricious;
 - ii. Is inconsistent with the TERO Ordinance;
 - iii. Is unsupported by Clear and Convincing Evidence or;
 - iv. Involves an abuse of discretion.

8. TERO Fees.

The Ho-Chunk Nation TERO Commission shall establish guidelines to determine the amounts for all Fees. The Fees established for construction contracts shall be no more than four percent (4%) of the total contracted work or sales. Fees shall be sent directly to the TERO office. Fees are to be made payable to "Ho-Chunk Nation TERO". The Fee Schedules shall be made available by the Ho-Chunk Nation, and explained to Contractors by TERO at Pre-Bid conferences, telephone contacts or through in-person meetings.

A. IPC and Registration Fees.

- i. All Contractors or Vendors who submit a bid to the Ho-Chunk Nation must be registered with TERO. Native American owned contractors may apply for certification as an Indian Preference Company (IPC).
- ii. IPC and Registration Fees shall be set forth in guidelines established by TERO and approved by the TERO Commission and are non-refundable. Fees must be submitted at the time a company submits an application to TERO. The TERO Director will approve IPC and TERO Registrations for one (1) year. The expiration date will be clearly noted on the Certificate or Registration. Companies wishing to receive Preference in Awarding must obtain an "IPC" designation for Preference to be enforced.

B. Construction Bidding.

- i. Only Indian Preference Companies or TERO Registered companies may bid on projects that are on or near Ho-Chunk Lands.
- ii. Any proposal or bid that is submitted by an unregistered or uncertified company shall not be considered.
- iii. Employers who have contracted with a State or the Federal Government to perform work on or near Ho-Chunk Lands must register with TERO prior to beginning work.
- iv. Companies may bid as frequently as they choose as long as the IPC certification or TERO registration remains in effect.
- v. New bids that are submitted by a company that fails to renew their registration or certification shall not be considered.
- vi. A proposal can no longer be considered after a Department receives notification that a certification or registration has been revoked or expires.

The TERO Commission may impose sanctions in accordance with section 22 of this Ordinance upon any Department that awards a contract to any unregistered company or awards a contract after the Department was notified of the revocation or expiration of a Bid Permit.

C. Construction Permit.

Every employer that provides services in conjunction with or related to a construction contract, which has a value of five thousand dollars (\$5,000.00) or more shall obtain a Construction permit. No work may begin without an approved TERO Construction Permit being issued. TERO Construction Permits must be clearly displayed or readily available for inspection at all work sites governed by this Ordinance.

- i. The construction permit shall be issued by the TERO office upon satisfactory completion and submission of the following and shall cover all aspects of the contracted project including sub-contractors and suppliers:

- a. A copy of a current IPC or TERO Registration certificate,
- b. A copy of the proposal or contract.
- c. Approval of the submitted Compliance Plan by the TERO Director
(see Section 9 of this Ordinance for Compliance Plan).

ii. The General Contractor is responsible for each subcontractor they will have on-site. Prior to the commencement of their portion of work, each subcontractor must be registered with TERO and must be included on or obtain an approved Compliance Plan. Any unauthorized or unapproved contractor or employee present on a work-site may result in sanctions by the TERO Commission.

- a. Weekly payroll reports must be submitted to TERO for every contractor and subcontractor for the duration of the project; to be evaluated for compliance with the submitted compliance plans.
- b. An assessment of each TERO Job Skills Bank referral that is hired on a project in accordance with this Ordinance must be submitted to TERO by the contractor; except when that referral is hired and retained by the contractor as a full-time regular employee beyond the duration of the TERO project. The assessment is intended to assist TERO to measure the training needs of our Job Skills Bank Participants and provide qualified referrals to employers.

Every Contractor will pay the Fee related to the Construction Permit directly to the Ho-Chunk Nation TERO office. The TERO Fee is determined by the guidelines adopted by the TERO Commission in accordance with Section 8 of this Ordinance.

- iii. This fee shall not apply to construction projects that are paid for by individual Ho-Chunk members or where the fee would result in a direct reduction of service or benefit of individual Ho-Chunk members.
- iv. This fee shall not apply to utilities franchised by the Ho-Chunk Nation.
- v. All other hiring requirements and provisions remain in effect.

D. Vendors and Service Provider Permits.

All Vendors and Service Providers who contract with the Ho-Chunk Nation must be registered with TERO. Native American owned contractors may apply for certification as an Indian Preference Company (IPC). The TERO Director will approve IPC and TERO Registrations for one (1) year. The expiration date will be clearly noted on the Certificate or Registration. Companies wishing to receive Preference in Awarding must obtain an "IPC" designation for Preference to be enforced.

- i. Vendor or Service Provider Permits are valid as long as the IPC certification or TERO registration is valid. If either expires or is otherwise terminated or revoked, the Vendor or Service Provider Permit shall be invalidated.
- ii. TERO shall notify the affected parties within five (5) days, whenever a Vendor or Service Provider Permit has been invalidated.
- iii. Upon receiving notification of revocation or suspension, the affected Department must suspend or terminate any agreement with the vendor or service provider.
- iv. If the goods or services are essential for operations, the Department may request a temporary waiver until an alternative source may be obtained to provide those goods or services.
- v. The TERO Commission may impose sanctions in accordance with section 22 of this Ordinance for the use of a vendor or service provider that does not possess a valid Vendor or Service Provider Permit or continues to use a vendor or service provider after the Department was notified of the revocation or suspension of a Vendor or Service Provider Permit.

Every vendor or service provider will be required to pay a TERO Fee of four percent (4%) of the overall sales or contract.

- vi. This Fee shall not apply to educational, health, or non-profit entities that are duly recognized by the State of Wisconsin or the Federal Government, nor apply to utilities franchised by the Ho-Chunk Nation.
- vii. This Fee shall not apply to the sales of goods or items sold by enrolled members of a federally recognized tribe.
- viii. This Fee shall not apply to contracts for services between the Ho-Chunk Nation and individual enrolled Ho-Chunk Tribal Members or other individual member of a federally recognized tribe.

E. Collection.

- i. TERO shall be responsible for collections of all Fees.
- ii. TERO shall establish procedures to be approved by the TERO Commission, to ensure that the correct Fees are assessed and collected.
- iii. TERO shall issue a formal notice to the covered employer, vendor or contractor whenever it is determined that Fees are due. Such notice shall indicate the specific amount due, the reason said Fees were due and, the date due of payment. The notice shall be mailed to the principal address on file with TERO.
- iv. Any contractor or vendor who disputes or disagrees with any TERO Fee may request a review by the TERO Commission.

F. Delinquent Fees.

- i. The TERO Director shall send notice to a vendor or contractor who fails to pay the required Fees by the due date. The notice shall be sent via registered mail to the employer's address on file with TERO.
- ii. Delinquent Fees must be paid within five (5) working days after the notice is mailed to the covered employer, sub-contractor, vendor or supplier to prevent further collection action.
- iii. Any contractor, vendor or service provider that has outstanding Fees will have their Certification or Registration suspended and will not be eligible to perform any additional work for the Ho-Chunk Nation until said Fees have been satisfied.

G. Expenditures of Fees.

- i. All Fees collected shall be deposited with the Ho-Chunk Nation Department of the Treasury and credited to the TERO restricted account and used to fund TERO. The TERO Commission shall approve guidelines for the administration and expenditure of the TERO funds including the annual budget. The Ho-Chunk Nation Legislature must approve any capital outlays in excess of \$100,000.00.
- ii. No funds shall be transferred from the TERO restricted account into any other account without an affirmative 2/3 majority vote by the TERO Commission and 2/3 majority vote by the Ho-Chunk Nation Legislature.
- iii. The TERO Commission shall insure that any guidelines they establish for the use of the TERO Funds shall not be used to purchase anything that would violate *5 HCC § 5 Finance Manual* of the Ho-Chunk Nation or its corresponding laws related to allowable use of funds.

9. Compliance Plans

- A. Each covered employer with a contract to perform construction work on or near lands owned by the Ho-Chunk Nation must complete and submit a Compliance Plan for approval by the TERO Director. Until an approved Compliance Plan is in place, TERO will not issue a Construction Permit. The Compliance Plan details the positions and their expected hours on-site and how the contractor will meet the Indian Preference Goals of the contract. The TERO Commission shall approve additional requirements to obtain an approval of a submitted Compliance Plan.

10. Equal Pay Compensation.

- A. The TERO JSBP shall receive at least equal amount of compensation as the Non-TERO worker for equal work, regardless of any difference in the job classification, provided that the JSBP has the same skill level.

11. Lay Offs.

- A. If workers must be laid off during a project, TERO Job Skills Bank Referrals must be the last to be laid off. If they are qualified to perform duties other than those they were initially hired to perform, they must be transitioned into that position rather than being laid off; unless that position is held by another TERO Job Skills Bank Referral or is a CORE CREW position.
- B. TERO must be notified at least 72 hours prior to any layoffs and must prove any layoffs are necessary and detail the measures taken to retain each TERO Job Skills Bank Participant.
- C. If any TERO Job Skills Bank Participants were laid off during a project, they must be the first to be recalled on that project into any position they are qualified to perform.

12. Publication of Ordinance and Forms.

- A. Duty to Publish. It shall be the duty and responsibility of the TERO to publish this Ordinance and distribute any rules, regulations or guidelines required by this Ordinance or adopted by the Commission to enable employers as well as Ho-Chunk Nation Departments and businesses to fully comply with the TERO requirements.

13. Confidentiality and Reporting Requirements.

- A. Upon request, an employer, subcontractor, vendor, or supplier shall submit to TERO information necessary to verify compliance with TERO requirements.
- B. All written materials submitted to TERO shall remain strictly confidential.

14. On-Site Inspections.

TERO will comply with all safety regulations including the use of Personal Protective Equipment whenever required while conducting an on-site inspection.

- A. Periodic Inspections.
 - i. The TERO Director may delegate the authority to conduct inspections, examine records or contact employers to a designated staff member.
 - ii. The TERO staff shall have the right to conduct on-site inspections during the normal business hours to monitor compliance with the requirements of this Ordinance and any rules, regulations, guidelines, or orders adopted by the Commission.

- iii. The TERO staff shall have the right to contact any contractor, sub-contractor, or employee working on the job site.
- iv. The TERO staff shall have the right to inspect all records and other written materials maintained on-site by a covered employer, sub contractor, vendor, or supplier which are not deemed confidential. Any and all written materials shall be kept strictly confidential.

B. Failure or Refusal to Allow Inspections.

- i. If an employer, sub contractor, vendor, department or supplier fails to, or unreasonably refuses to cooperate during an on-site inspection, it will be assumed that the employer, sub contractor, vendor, or supplier is not in compliance with the TERO requirements.
- ii. Sanctions may be imposed by the Commission against an employer, sub-contractor, vendor, department or supplier for failure or refusal to allow periodic inspection for compliance.
- iii. Employees of the Ho-Chunk Nation that intentionally hinder or prohibit TERO from carrying out the provisions of this Ordinance or willfully violate the provisions of this Ordinance will be subject to Section 22 of this Ordinance and may be brought before the TERO Commission for possible sanctions.

15. Union Agreements.

- A. The Nation's right to enforce Indian Preference on or near Ho-Chunk land supersedes the Union's hiring requirements and qualified TERO placements shall be hired over and instead of Union Placements. If TERO cannot provide qualified placements, the contractor may fill those positions with any other qualified person, including Union placements.
- B. It is the responsibility of any Contractor affiliated with a Union to obtain and file with the TERO Office, a copy of a written agreement confirming the union's intent to comply with this ordinance and the rules, regulations and order of the TERO whenever performing work covered under this Ordinance prior to the commencement of any work.
- C. TERO Job Skills Bank Participants are free to join or not join any Union. At no time should they be made to feel pressured or coerced into joining a Union however. TERO does not prohibit a Union or employer from providing Union information to our Participants or explain the benefits available. This allowance shall not be viewed as an endorsement by TERO of Unions in general or specifically.

16. Enforcement.

- A. The Commission shall have the authority to take necessary legal action to enforce its decisions and orders, included but not limited to, requesting assistance from Ho-Chunk Nation, federal, state and local law enforcement agencies.
- B. A Ho Chunk Nation judicial court order is not required for the TERO Commission to legally enforce its Decisions and Orders.
- C. An appeal to the Ho Chunk Nation Trial Court may be taken from any final order of the Commission by any Party including a complainant.

17. Recognition of Freedom of Religion.

- A. An employer shall make reasonable modifications in the operation of its business for the purpose of accommodating the religious beliefs, traditions and/or practices for Indian employees and/or Indian-owned firms including, allowing an employee leave for religious purposes.

18. Discrimination and Harassment.

- A. Except as provided by *Executive Order 11246 Indian Preference Provisions*, and federal exemptions of Title VII and other provisions for Tribes which allow or require Tribal and Ho-Chunk preference, it shall be a violation of this Ordinance for any employer on or near Ho-Chunk Lands to discriminate on the basis of race, religion, national origin, pregnancy, age, marital status, sexual orientation or disability.
- B. If any employee(s) of an employer believes that he or she has been discriminated against, harassed, intimidated or retaliated against, they can submit a written complaint to the TERO office. The TERO Director shall review the complaint and determine the appropriate follow-up action which may include EEOC involvement.
- C. It shall be unlawful employment discrimination to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature as well as unwelcome comments, jokes, acts, and other verbal or physical conduct related to race, color, national origin, religion, age, or disability when:
 - i. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - ii. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - iii. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

- iv. An Employer is responsible for the acts of workplace harassment of its supervisory and non-supervisory employees where the Employer, or its agents or supervisory employees, knew or should have known of the conduct. An Employer may rebut apparent liability for such acts by submitting a written report showing that it took immediate and appropriate corrective action upon learning of the harassment.
- D. The covered employer will have ten (10) days after notification by TERO to respond to the TERO Director addressing and resolving the issue(s). The TERO Director will mediate such issues if needed. If the prohibited conduct or activities continue, the TERO Director will request in writing, a formal hearing before the TERO Commission. Such hearings shall be conducted in accordance with the rules of procedure for hearings prescribed in this Ordinance.
- E. The Commission may impose sanctions in accordance with Section 22 of this Ordinance.

19. Tribal Employment Rights Office.

A. Authority and Duties.

The TERO Commission shall establish the duties and responsibilities of the TERO staff and delegate such authority to the TERO Director to carry out the day-to-day operations necessary to administer and enforce the provisions of this Ordinance and supervise the TERO office and staff.

- i. The TERO staff shall be vested with general authority to implement the policy of Indian Preference in employment and contracting as established by this Ordinance, pursuant to the oversight and direction of the Commission.
- ii. The TERO staff shall have specific duties and responsibilities for the daily implementation of the provisions set forth in this Ordinance and any rules, regulations or guidelines adopted by the Commission.
- iii. The TERO staff shall actively seek job placement and provide or make arrangements for training opportunities to advance the program's goal of providing qualified referrals to fill positions throughout the Ho-Chunk Nation's jurisdiction.

B. Director; Qualifications and Responsibilities.

- i. The TERO Director's qualifications shall include the administrative abilities, education, and training appropriate to carry out the duties and responsibilities, as set forth in this Ordinance, and listed in the TERO Director Job Description.

- ii. In accordance with the Ho-Chunk Nation *Employment Relations Act* (6 HCC § 5), the TERO Director shall have the authority to hire, supervise, and terminate all TERO staff in a manner consistent with the preference policy of TERO, and the authority to delegate to a member of the TERO staff any of the duties and responsibilities of the Director. The Executive Director of Labor will have supervision and authority pertaining to the TERO Director's daily administrative functions.
- iii. The TERO Director shall obtain funds and revenue from available resources to carry out the purposes of the Ordinance, including but not limited to obtaining grant funding, and recommending economic development opportunities for TERO. The TERO Director shall have the authority to prepare line item budgets for the TERO and to approve and oversee program expenditures, except those that directly affect the TERO Director.
- iv. The TERO Director or designee shall bring before the Commission any claims of non-compliance with this Ordinance or any rules, regulations or guidelines adopted by the Commission.

C. TERO Staff Duties and Responsibilities.

- i. The TERO staff shall implement the day-to-day operations of the program, under the supervision and direction of the TERO Director.

20. Tribal Employment Rights Commission.

A. Composition.

- i. The Commission shall be composed of five (5) enrolled members of the Ho-Chunk Nation.
- ii. The Commissioners shall select a Chairperson and a Vice-Chairperson from among the members.
- iii. Advisors and ex officio members of the Commission serve in a non-voting capacity at the pleasure of the Commission.

B. Term.

- i. Commissioners shall serve two (2) year terms, with each term to run from July 1 through June 30.
- ii. Commissioner terms shall be staggered.

C. Removal.

- i. The Ho-Chunk Legislature at the recommendation of the Commission, may remove a Commissioner for malfeasance, dereliction, or neglect of duty, by a two-thirds (2/3) majority vote at a regular meeting, provided that the member of the Commission subject to removal is informed of the charges and given an opportunity to respond.
- ii. Grounds for removal of a member of the Commission shall include, but are not limited to, the following:
 - iii. Conviction of any felony in tribal, county, state or federal court.
 - iv. Willful and persistent misconduct reflecting on the dignity and integrity of the Commission.
 - v. Failure to comply with the Ho-Chunk Constitution and other applicable laws.
 - vi. Unexcused absence from three (3) regular or special meetings of the Commission.
 - vii. Misappropriation of funds.

D. Vacancies.

i. Unexpired Term.

- a. If the unexpired term is greater than one year, the notice of vacancy shall be posted for a minimum of 45 days or until the vacancy is filled and advertised in the tribal newsletter for three consecutive issues.
- b. Any interested Ho-Chunk member shall submit an application to the TERO Director. The TERO Director shall submit the applications to the TERO Commission for review with the selected applicants forwarded to the Legislature for formal appointment.
- c. If the unexpired term is less than one year, the Commission shall make the appointment for the balance of the unexpired term.
- d. The remaining members may exercise all powers of the Commission until such time as the vacancy is filled.

ii. Expired Term.

- a. At least ninety (90) days prior to the expiration of the term, the notice of vacancy(s) shall be posted and advertised in the customary manner.
- b. Member(s) shall remain in office until their successors are appointed.

- c. The TERO Commission shall make recommendations to the Ho-Chunk Legislature for appointment.
- d. All appointments shall be made by the Ho-Chunk Legislature.

E. Compensation.

- i. Commissioners, advisors, and ex-officio members shall be compensated at a rate comparable to the standard rate of compensation received by Boards and Commissions of the Ho-Chunk Nation pursuant to Section 27 of the *Finance Manual* (5 HCC § 5).
- ii. Commissioners, advisors, and ex-officio members shall be reimbursed for any reasonable and documented actual expenses, such as mileage and stipends, incurred in connection with the performance of their duties and responsibilities, as determined by the Commission, in accordance with the policies of the Ho-Chunk Nation's *Finance Manual*.

F. Authority of the Commission.

- i. The Commission shall be vested with the jurisdiction and authority to carry out the provisions of this Ordinance, in accordance with the policy of Indian Preference in employment and in contracting, as established by the Ho-Chunk Nation Legislature. The Commission shall be free from interference from any branch of the Ho-Chunk Nation government in carrying out their duties under this Ordinance.
- ii. The Commission shall have the authority to adopt, amend, or rescind rules and regulations and to develop and implement policies and guidelines necessary to carry out the provisions of this Ordinance.
- iii. The Commission shall meet with the TERO program Director and Staff for the purpose of securing information relative to its duties.
- iv. The Commission shall meet at least quarterly with meetings subject to the provisions in 2 HCC § 2 *Open Meetings Act*.
- v. The Commission shall have the authority to adopt, amend and approve the job descriptions and wage levels for TERO in accordance with the needs and requirements of this Ordinance to carry out the provisions contained herein effectively and efficiently.
- vi. The Commission shall have the authority to conduct formal hearings, to issue notices, and to subpoena witnesses and documents in accordance with the hearing procedures set forth in this Ordinance, and any rules, regulations, or guidelines adopted hereunder.

- vii. The Commission shall have the authority to require a covered employer, sub contractor, vendor, department or supplier to take whatever corrective action deemed necessary for such employer to meet the provisions set forth within requirements in this Ordinance and any rules, regulations, or guidelines adopted by the TERO Commission.
- viii. The Commission shall have the authority to take such actions and engage in such other activities consistent with the intent and purpose of this Ordinance and any rules, regulations, or guidelines to achieve the objective of this Ordinance.
- ix. The Commission shall have the authority to interpret this Ordinance and any rules, regulations, or guidelines adopted hereunder and its determination shall be final.
- x. The Commission shall have the authority to impose monetary and other sanctions, as prescribed in this Ordinance in Section 22 and any rules, regulations, or guidelines adopted by the Commission.
- xi. The Commission shall have the authority to grant relief necessary including, but not limited to, the imposition of sanctions, as authorized in Section 22 of this Ordinance and by any rules, regulations, or guidelines adopted by the Commission.

G. Quorum.

- i. Three (3) appointed Commissioners must be present to constitute a quorum for all regular or special meetings.

H. Delegation of Duties. The Commission shall delegate to the TERO Director the authority to administer the duties of the Commission, except for the following:

- i. To adopt, amend, and rescind rules, regulations or guidelines.
- ii. To conduct hearings or to impose sanctions pursuant to this Ordinance and any rules, regulations, or guidelines adopted by the Commission.

I. Recusal of Commission Members.

- i. The Commission shall determine whether a conflict of interest exists between a member of the Commission and a participant in a matter pending before the Commission. Such determination shall be made according to relevant Ho-Chunk Nation law.
- ii. If the Commission determines that one of its members has conflict of interest, that member shall be disqualified from participating in the matter pending before the Commission.
- iii. A Commissioner shall recuse himself/ herself when a potential conflict of interest exists.

21. Violation Complaints and Hearing Procedures.

A. Complaint.

- i. Any interested person including, but not limited to, employees, contractors, subcontractors, covered employers, and the TERO may file a written complaint alleging that a covered employer has violated this Ordinance or any rules, regulations, or guidelines promulgated by the Commission.
- ii. Any interested person who has been denied TERO Registration or Certification as an Indian Preference Company under this Ordinance, or believes any Fees have been inappropriately assessed may file a written complaint with TERO to schedule an Appeal with the TERO Commission.

B. Notice of Complaint for Violation.

- i. Upon receipt of a written complaint of violation, the TERO Director shall prepare a written Notice of Complaint to the person or entity against whom the complaint has been filed. The Notice shall be sent by certified mail to the last known address of the person or entity or by personal service.
- ii. Within ten (10) business days from the date of receipt of such notice, the TERO Director shall attempt to achieve a voluntary, informal solution with the person or entity against which the complaint has been filed.
- iii. If an informal solution is not reached, the TERO Director shall notify the Commission's Chairperson and request a formal hearing on the complaint. The Commission shall set the hearing date no less than fifteen (15) business days from receipt of the hearing request. Complaints related to the assessment of TERO Fees will be reviewed and addressed at the next regularly scheduled TERO Commission meeting.

C. Notice of Complaint for Appeal.

- i. Upon receipt of a written complaint of violation, the TERO Director shall notify the Commission's Chairperson and request a formal hearing on the complaint. The Commission shall set the hearing date no less than fifteen (15) business days from receipt of the hearing request. Complaints related to the assessment of TERO Fees will be reviewed and addressed at the next regularly scheduled TERO Commission meeting.
- ii. The TERO Commission may not require a hearing to make a decision and impose sanctions for complaints that are related to the consideration, selection of, or awarding of a contract or position when the awarding of a contract or position is in direct violation of the hiring preference provisions of this Ordinance or any other Ho-Chunk Nation rule, policy or law.

D. Notice of Hearing.

- i. The Commission shall provide written notice of the hearing to the person against whom the allegation has been made, including the complainant, the TERO, and all other identified persons, at least seven (7) business days prior to the date set for the hearing. The notice shall be sent by certified mail or personally served upon the parties if the mailing address is unknown. The notice shall state the date, time, and place of the hearing. In addition, such notice shall advise each party of the following:
 - a. The nature of the hearing.
 - b. The right to be present and participate in the hearing.
 - c. The right to present witnesses, documents, and records.
 - d. The right to cross-examine witnesses.
- ii. The Commission shall post notice of any meeting or hearing in a prominent place in the Ho-Chunk Nation Executive Office no less than forty-eight (48) hours prior to the meeting or hearing, unless an emergency requires shorter notice, and shall publish, if feasible, such notice in the Ho-Chunk Nation newspaper or newsletter, or in such other newspaper serving the relevant community. The notice shall state the date, time, and place of the hearing.

E. Public Access.

- i. All meetings and hearings of the Commission, except Executive Sessions, shall be open to all members of the Ho-Chunk Nation and non-members upon invitation by the Commission, in accordance with the Nation's *Open Meetings Act* (2 HCC § 2).
- ii. The Commission may, upon a duly passed motion in accordance with the *Open Meetings Act*, go into Executive Session. At such session, all persons shall be excluded from the meeting chambers, except Commissioners. Any person(s) whose presence before the Commission is deemed necessary to the purpose of the Executive Session may be allowed to be present during the session if authorized by the Commission.

F. Hearing Guidelines.

- i. The Chairperson of the Commission or a member appointed by the Chairperson shall preside over all hearings and shall call the proceedings to order and control the presentation of evidence, the appearance of witnesses, and the order of proceedings.

- ii. The Commission shall have the authority to eject from the hearing any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.

G. Burden of Proof.

- i. The party alleging violation(s) of this Ordinance, any rule, regulation, or guideline adopted by the Commission or governed by this Ordinance, shall carry the initial burden of establishing a prima facie case to the Commission. If the Commission finds a prima facie case has been established, the burden to rebut the charge shall shift to the charged person or entity.
- ii. Any matter in dispute must be proven by clear and convincing evidence.

H. Subpoenas.

- i. The Commission shall have the power and discretion to subpoena identified person(s) and tangible documents on its own initiative or at the request of any person notified of a hearing. Subpoenas may be issued only to compel a person to appear at a hearing before the Commission to give oral testimony or to produce tangible documents or records.

I. Rules of Evidence and Testimony.

- i. The Commission shall not be bound by formal rules of evidence. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality, and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.
- ii. The Commission may require any person(s) including, but not limited to, any complainant or plaintiff to appear and testify before the Commission with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters, which the Commission deems relevant to the discharge of the Commission official duties. Failure to appear and testify fully at the time and place designated shall result in the possible imposition of sanctions.
- iii. Any party shall have the right to present testimonial evidence on their own behalf, to call witnesses to testify, and to cross-examine witnesses called by any other party. The Commission shall exercise its discretion to limit the testimony of witnesses if such testimony is objected to, argumentative and irrelevant.

- iv. Any member of the Commission may ask questions of witnesses and may request or allow the presentation of additional evidence during the hearing.
- v. Documentary evidence may be received in the form of authenticated copies or excerpts, if the original document is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.
- vi. Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence in support of their positions.

J. Record of Hearing.

- i. All testimonial and documentary evidence offered at the hearing by any party or by the Commission shall be duly offered and made a part of the record in the case.
- ii. Evidence from each party shall be properly tagged with identifying exhibit numbers or letters by the chair of the meeting.
- iii. The Commission may hire a court recorder for the hearing at their discretion.
- iv. The TERO Office shall hold the transcript record for the Commission.

K. Decision and Order.

- i. At the conclusion of the hearing, the Commission may, within its discretion, issue an immediate decision and order or take the matter under advisement. In any event, the decision of the Commission shall be issued in writing no later than thirty (30) days from the date of the hearing.
- ii. The Decision and Order of the Commission shall set forth the factual findings and legal basis for the decision. The Commission shall set forth the basis for its decision by a majority vote of the Commission.
- iii. A copy of the Decision and Order shall be mailed to all parties via certified mail.
- iv. If the Commissioners find that this Ordinance or any rules, regulations, or guidelines adopted by the Commission have been violated, sanctions may be imposed against the employer, including but not limited to, requiring specific corrective actions to remedy any harm resulting from the non-compliance.

22. Sanctions.

- A. The Commission may impose any of the following sanctions or a combination thereof, upon determination that an employer failed to comply with this Ordinance, or any rules, regulation, and guidelines adopted by the Commission. Individual department employees who willfully fail to comply with the

provisions of this Ordinance, or any rules, regulations, and guidelines adopted by the TERO Commission will be referred to their supervisor pursuant to the 6 HCC §5 Employee Relations Act, for violation of this Ordinance.

- i. Sanctions upon employers shall include a levy of a civil monetary fine up to a maximum of one thousand dollars (\$1,000) per violation, per day for non-compliance as a separate violation.
- ii. Suspend, halt, or terminate the conduct of business on or near Ho-Chunk Lands by an employer.
- iii. Prohibit future business activities by the employer on or near Ho-Chunk Lands for a definite or indefinite period of time.
- iv. Order monetary or other relief necessary to compensate the Ho-Chunk Nation or any worker(s) referred by the TERO for damages resulting from the non-compliance.
- v. Require termination from employment of any individual(s) hired in contravention to any TERO requirements relative for Indian Preference in Employment in the selection and hiring of qualified Indian employees.
- vi. Require immediate rescission of any contract(s) and/or subcontracts entered into by the employer in contravention of any TERO requirements relative to Indian Preference in contracting and subcontracting.
- vii. Award reasonable back pay by the employer to any Indian individual(s) adversely affected by the non-compliance with the Indian Preference in Employment requirements.
- viii. Require an employer to implement changes in its policies, procedures, and/or business practices to be in compliance with TERO requirements.
- ix. Order such other relief as the Commission determines is fair and reasonable.

23. Appeals Procedure.

A. Right of Appeal.

- i. Any party aggrieved by a decision of the Commission has a right to appeal the decision if that decision is contrary to provisions of the TERO Ordinance.
- ii. All appeals shall be brought in the Trial Court of the Ho-Chunk Nation, pursuant to the Ho-Chunk Nation Rules of Civil Procedure.

B. Procedures for Appeal.

- i. Notice of Appeal shall be filed within thirty (30) days after the issuance of decision and order of the Commission. The Notice of Appeal shall contain a short and concise statement of the reason for the appeal.
- ii. Upon receiving the Notice of Appeal, the Commission shall have ten (10) days to prepare and transmit a record of its hearing and decision to the Trial Court.
- iii. All decisions and orders of the Commission shall be in full force and effect pending an appeal, absent injunctive relief from the Court.

24. Rules and Regulations.

- A. The TERO Commission may propose changes to any of the provisions set forth in this Ordinance by submitting the recommended changes to the Ho-Chunk Nation Legislature for consideration.
- B. The proposed changes or amendments will be reviewed and acted upon by the Ho-Chunk Nation Legislature in accordance with procedures set forth in 2 HCC §11 *Legislative Organization Act of 2001*.

25. Severability. Should any provisions of this Ordinance be determined invalid by a court of competent jurisdiction, the invalidated provision shall be severed and the remainder of this Ordinance shall not be affected.

26. Coverage and Effective Date.

- A. This Ordinance shall be in full force and effect as of the date of the formal approval and enactment by the Ho-Chunk Legislature.
- B. This Ordinance shall apply to all contracts entered into after this Ordinance is enacted by the Ho-Chunk Legislature. All contracts entered into prior to the effective date of this Ordinance shall continue to be governed by the previous TERO Ordinance until such time as the contract is up for renewal, at which time the contract shall be governed under this current Ordinance.

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Legislative History:

8/17/85 Wisconsin Winnebago Business Committee approves the TERO concept and establishes a TERO Sub-Committee to develop a TERO resolution and Ordinance Resolution 8-17-85A

7/26/86 WWBC establishes a comprehensive Tribal Employment Rights Office (TERO) Program and Tribal Employment Rights Commission to enforce Indian Preference in employment and contracting activities for enterprises, businesses and projects operated on existing or future Winnebago Trust Lands Resolution 7-26-86-F.

10/7/97 Ho-Chunk Nation Legislature repeals WWBC Resolution 7-26-86-F and adopts the Ho-Chunk Nation TERO Ordinance Resolution 10/7/97A.

2/9/99 Section 2, Article VIII amended by Legislative Resolution 2/9/99A.

11/24/04 Ho-Chunk Nation Tribal Employment Rights Ordinance reformatted IAW Legislative Resolution 11/16/04A as a Proposed Bill (6 HCC § 3) and submitted to the Office of the President for Executive Review and Coordination.

2/21/05 Edited draft of Ordinance submitted to Legislative Office by TERO.

8/16/05 Final Proposed Bill submitted to the Legislature by Department of Labor.

07/ /08 Administration Committee tabled until November to allow comment by TERO.

11/6/08 Administration Committee recommended amending by adding clause of where TERO will be applicable.

12/5/08 Administration Committee requested research on comments and revisions put forward by TERO Director.

1/08/09 Administration Committee recommended referral to full Legislature.

1/20/09 Legislature approves release for 45 day comment period.

3/7/09 Legislature approves offsite regarding comments received.

5/12/09 Offsite held on proposed TERO ordinance at HCC.

06/10/09 Legislature passed Resolution adopting and approving Ordinance.

07/05/11 Quick Passage Resolution amending Ordinance to remove exemption on Tribally Funded Projects.

01/24/13 Legislature passes Resolution 01/24/13B placing amendments out for 45 day comment.

04/08/13 Legislature Amends and Adopts the Ho-Chunk Nation TERO Ordinance (6 HCC §3) Resolution 04/08/13O