

TERO ORDINANCE OF THE THREE AFFILIATED TRIBES

TITLE I. POLICY AND DEFINITIONS

Section 101: Declaration of Policy

As a guide to the interpretation and application of this Ordinance, the public policy of the Mandan Hidatsa and Arikara Nation is declared to be as follows:

Economic insecurity and unemployment are a serious menace to the health, morals and welfare of the Nation. Private employment on the Fort Berthold Reservation is an important resource for Indian people, from which they have been unjustly deprived. Indians have unique and special employment, subcontract and contract rights and are entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination on or near Indian Reservations. The Mandan Hidatsa and Arikara Nation Council therefore declares that in its considered judgement, the public good and welfare of the Nation require the enactment of this measure, under its inherent sovereign and police powers, for the establishment of an employment rights office in order to use and enforce the aforementioned laws and rights, in order to increase employment of Indian workers and businesses and to eradicate employment discrimination within the exterior boundaries of the Fort Berthold Reservation.

Section 102: Definitions

- (A) “Commission” means the Tribal Employment Rights Commission established by the Ordinance.
- (B) “Day” means a work day, which excludes Saturdays, Sundays, and Federal holidays.
- (C) “Employee” means any person employed for remuneration.

- (D) “Employer” means any person, partnership, corporation or other entity that employs, for wages, two or more employees.
- (E) “Covered Employer” means any employer employing two or more employees who during any 20-day period, spend, cumulatively, 16 or more hours performing work within the exterior boundaries of the Reservation.
- (F) “Entity” means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term “entity” is intended to be as broad and encompassing as possible to ensure the Ordinance’s coverage over all employment and contract activities within the Nation's jurisdiction, and the term shall be so interpreted by the Commission and the Courts.
- (G) “Government Commercial Enterprise” means any activity by the Nation or any subsidiary governmental entity of the Nation, such as a District or Segment.
- (H) “Indian” means any member of a federally-recognized tribe.
- (I) “Local Indian” means any member of a federally-recognized tribe who has resided within the exterior boundaries of the Reservation or within reasonable commuting distance of the Reservation for at least 60 days prior to asserting a right granted by this Ordinance.
- (J) “Nation” shall mean the Mandan Hidatsa and Arikara Nation.
- (K) “Regulations” shall mean the regulations implementing this Ordinance adopted by the Mandan Hidatsa and Arikara Tribal Employment Rights Commission.

- (L) “Reservation” means the Fort Berthold Reservation and any other lands that are subject to the jurisdiction of the government of the Mandan Hidatsa and Arikara Nation.
- (M) “TERO” or “Office” means the Mandan Hidatsa and Arikara Tribal Employment Rights Office.

TITLE II. EMPLOYMENT RIGHTS

Section 201: Coverage

- (a) For purposes of this Title, the term “Covered Employer” shall include all private employers subject to the Nation's jurisdiction, the Nation's government, including all branches and divisions, all subsidiary governmental entities of the Nation (including the Mandan Hidatsa and Arikara Housing Authority, Districts, and Segment), and any governmental commercial enterprises of the Nation, its divisions or subsidiary governmental entities (including casinos), unless one of the exceptions in section 301(c) applies.
- (b) The requirements set out in this Title shall not apply to any direct employment by the Federal or State government or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments so long as they are subject to the jurisdiction of the Nation.

Section 202: Indian Preference in Employment

All Covered Employers, for all employment that is subject to the jurisdiction of the Nation, shall give preference to qualified Indians, with the first preference to local Indians, in all hiring, promotion, training, lay-offs, and all other aspects of employment. Such employers shall comply

with the rules, regulations, guidelines and orders of the Tribal Employment Rights Office which set forth the specific obligations of employers in regard to Indian preference and local Indian preference.

Section 203: TERO Hiring Hall

No Covered Employer shall employ a non-local Indian or a non-Indian without first providing the TERO with no less than 72 hours to locate and refer a qualified local Indian; provided, that, the Commission may, by regulation, provide for a period of less than 72 hours when required by business necessity.

Section 204: Goals and Timetables

All Covered Employers shall comply with the goals and timetables established by the TERO specifying the minimum number or percentage of Indians a Covered Employer must hire, by craft or skill level.

Section 205: Job Qualifications and Business Necessity

No Covered Employer shall use any job qualification criteria or other personnel requirements that serve as barriers to Indian employment, as determined by the TERO, unless the employer can demonstrate that such criteria or requirements are required by business necessity.

Section 206: Discrimination in Employment Prohibited

- (a) Except as provided in this Title in regard to Indian preference, it shall be unlawful for a Covered Employer to fail or refuse to hire, or to discharge, any individual, or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion and training, or

to engage in any other action that would deprive or tend to deprive any individual of employment opportunities, on the basis of race, color, religion, national origin, sex, age, marital status, sexual orientation, family responsibilities, disability, or political affiliation.

- (b) The TERO director is authorized to work cooperatively with Federal, other Indian Nations, state, and local governmental agencies that have responsibility for enforcing the prohibitions on discrimination set out in subsection (a) and shall assist Indians to file and prosecute discrimination complaints with such agencies when the Director determines said complaints have merit and the TERO lacks the full authority to provide complete relief to the complainant.
- (c) Nothing in this Title shall bar a complainant from filing a complaint with the TERO just because he has filed a complaint involving the same matter with another governmental entity. However, in such cases the TERO Director shall seek to coordinate with the other agency(s) in order to promote efficiencies in the processing of the complaints.

Section 207: Unions

Covered Employers with collective bargaining agreements with a union are responsible for informing such unions of this Ordinance and TERO rules and regulations. A Covered Employer shall obtain a written agreement, acceptable to the TERO Director, from each union with which it has a collective bargaining agreement providing that:

- (a) the union will give absolute preference to local Indians in job referrals regardless of the position of said local Indians on any referral list the union may keep;

- (b) the union will grant Temporary Work Permits to any local Indian who does not wish to join a union; and
- (c) the union will agree to the employer paying the fringe benefits in cash to any local Indian who is not a union member and who chooses not to participate in the union's fringe benefit programs.

No union agreement shall supersede the requirements of this Ordinance and its implementing Regulations. Nothing herein shall constitute official recognition by the Nation of any union or the Nation's endorsement of any union activities on the Reservation.

TITLE III. INDIAN PREFERENCE IN CONTRACTING AND SUBCONTRACTING

Section 301: Indian Preference in Contracting

- (a) All Entities awarding contracts or subcontracts for supplies, services, labor and materials in an amount of \$5,000 or more where the majority of the work on the contract or subcontract will occur within the jurisdiction of the Nation, shall give preference in contracting and subcontracting to qualified firms that are certified by the TERO as more than 50% Indian-owned and controlled. Where the contractor or subcontractor is selected through a competitive process, the awarding entity shall limit competition to Indian certified firms; provided that, if the bid submitted by a firm owned by a member of the Three Affiliated Tribes is within 2% of the low bid, award shall be made to that firm if it is technically qualified to perform the work. The Commission shall issue regulations providing guidance on the implementation of this

- requirement and for implementation of Indian preference when the awarding entity uses a method other than competition to select a contractor or subcontractor.
- (b) The Commission may issue regulations providing for a points system that gives additional preference consideration for certified Indian firms that have greater percentages of Indian ownership and control.
 - (c) The requirements set out in this Title shall apply to contracts awarded directly by the Nation, its branches, divisions and all subsidiary governmental entities of the Nation, (including the Mandan Hidatsa and Arikara Housing Authority, Districts, and Segments) and any governmental commercial enterprises of the Nation or its divisions or subsidiary governmental entities, (including casinos) except; (1) when a contract is procured pursuant to another tribal law or policy, or (2) it is determined by the Mandan Hidatsa and Arikara Legal Department that application of these requirements to that entity is specifically prohibited by Federal law. If a Federal Indian contract or subcontract requirement applies and is in conflict with the requirements of this Ordinance, the Federal requirements shall apply.
 - (d) The requirements set out in this Title shall not apply to contracts awarded by the federal or state government or their subdivisions. They shall apply to all subcontracts awarded by a federal or state direct contractor or grantee that is subject to the jurisdiction of the Nation, whether or not the prime contract was subject to these requirements, except when it is determined by the Mandan Hidatsa and Arikara Legal Department that application of these requirements to that entity is specifically prohibited by Federal law.

(e) Notwithstanding subsections (a), (b) and (d) of this Section, all tribal programs and tribal entities shall give a right of first refusal for the contract to perform any project where the contract is to be awarded by the Tribe, Tribal Program, Tribal Office or any Tribal entity, regardless of the source of funds for that project and contract, to a Tribally-owned firm qualified to perform the work on the project or contract. The Tribal program, office, or entity that is letting the contract on the project shall engage in negotiations with the qualified Tribally-owned contracting firm to negotiate a price and terms of a contract for the work. If good faith negotiations do not result in a contract within thirty days after commencement of negotiations, the Tribal entity letting the contract may put the contract out for competitive bid in a manner consistent with subsections (a) (b) (c) and (d) of this Section.

Section 302: Certification as Indian Preference-Eligible

The Commission shall establish a system for certifying firms as Indian preference and local Indian preference eligible (“Certified Firm”).

TITLE IV. NOTIFICATION OF TERO REQUIREMENTS AND TERO COMPLIANCE PLAN

Section 401: Compliance Plan

All Covered Employers and all Entities subject to this Ordinance shall, no less than twenty days prior to commencing business on the Reservation, prepare a plan, acceptable to the TERO Director, setting out how the Employer or Entity shall comply with the requirements of this Ordinance and implementing regulations. A Covered Employer or Covered Entity already

present on the Reservation on the effective date of this Ordinance that has not prepared a Compliance Plan acceptable to the TERO Director, shall come into compliance with the requirements of this section within 60 days of the effective date of this Ordinance.

Section 402: Signs at Reservation Ports of Entry

The TERO Director shall cause to be erected next to each paved road at the point at which it enters the Reservation, a sign informing prospective Covered Employers and Entities that they are subject to the requirements of this Ordinance.

Section 403: Notice to Proposed Contractors

Any office, division, branch, subsidiary entity, or commercial enterprise of the Nation or any of its subsidiary entities, including the Mandan Hidatsa and Arikara Housing Authority, Districts and Segments, when issuing a notice of a proposed contract to be awarded by it or a notice involving a proposed lease, right-of-way agreement, or notice of any other proposed action that will create new employment or subcontracting opportunities on the Reservation, shall include provisions in the notice that fully inform the prospective contractor or other entity about the requirements established by the Ordinance.

Section 404: Contract Language Imposing TERO Requirements

Any office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities, including the Mandan Hidatsa and Arikara Housing Authority, Districts and Segments, when awarding a contract, lease, right-of-way or entering into any other legal agreement with a party that will create new employment or subcontracting opportunities on the Reservation, shall include provisions that impose the requirements of this Ordinance on the

contractor, lessee, right-of-way grantee, or other party, such that the legal document will fully bind the party to comply with the requirements of this Ordinance, notwithstanding any future decision by a court that has the effect of eliminating, reducing, or putting into question the Nation's authority to impose the requirements of this Ordinance on said contractor pursuant to the sovereign authority of the Nation.

Section 405: Model Language

In order to implement the requirements of Sections 403 and 404, the TERO Director shall prepare and provide to the offices, divisions, branches, subsidiary entities and commercial enterprises of the Nation and its subsidiary entities:

- (a) model language that shall be included in the notice to prospective contractors, lessees, rights-of-way grantee, or other parties who will be engaged in activity that will create new subcontracting or employment opportunities on the Reservation informing them of the requirements established by this Ordinance; and
- (b) model language to be included in each contract, lease, right-of-way agreement, or other legal document issued by that office, division, branch, subsidiary entity or commercial enterprise of the Nation and its subsidiary entity, imposing the requirements set out in this Ordinance as terms of the contract, lease, right-of-way agreement or other legal agreement being entered into with the party that will be engaged in activity that will lead to the creation of subcontracting or employment opportunities on the Reservation.

The TERO Director shall submit the proposed model language to the Mandan Hidatsa and Arikara Legal Department for its approval prior to distributing the language to the offices, branches, divisions, subsidiary entities and commercial enterprises of the Nation and its subsidiary entities, as provided for in this Section.

Section 406: TERO Approval of Contracts Awarded by Nation Entities

- (a) Each office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities, prior to issuing notice of a contract to prospective contractors or issuing any other notice to prospective Covered Employers or Covered Entities that will lead to the creation of employment, contracting or subcontracting opportunities on the Reservation, and prior to awarding a contract or entering into any other agreement that will lead to the creation of employment, contracting, or subcontracting opportunities on the Reservation, shall submit the proposed notice or contract to the TERO director for his approval. The TERO Director shall indicate his approval by signing his name at a place provided for TERO approval on the document at issue.
- (b) Any contract awarded or agreement entered into by an office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities that is subject to the requirements of this Ordinance and which has not received the prior approval of the TERO Director shall be voidable at the option of the TERO Director. Any disputes between the TERO Director and the office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities regarding appropriate contract language or other disputes arising

under this Section shall be submitted to the Mandan Hidatsa and Arikara Legal Department for resolution, whose decision shall be binding on the parties. Pending action by the Mandan Hidatsa and Arikara Legal Department, the TERO Director may petition the Tribal Courts to enjoin, and, upon good cause shown, said Courts shall enjoin, the issuance or award of any contract or the initiation of any other activity by an office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities that will create employment, contracting, or subcontracting opportunities on the Reservation and that fails to comply with the requirements of this Ordinance.

- (c) No employee of the Nation shall disseminate any information on TERO or the Nation's Indian preference requirements without first obtaining approval of said document by the TERO Director.

Section 407: Nation's Assumption of Federal Indian Preference Enforcement

If the Federal laws or regulations governing any program administered by any office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities authorize a tribe's Indian preference requirements to replace, or permit a tribe to obtain delegated authority to assume responsibility for enforcing, Indian preference requirements established by Federal law or regulations and enforced by a Federal agency, said office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities, including but not limited to the Mandan Hidatsa and Arikara Housing Authority, shall within 90 days of the effective date of this Ordinance, in coordination with the TERO Director and the

Nation Attorney General, apply for such delegated or replacement authority and request that such delegated or replacement authority be vested in the TERO. Any disputes regarding the implementation of this Section shall be submitted to the Mandan Hidatsa and Arikara Legal Department, whose decision shall be binding on the parties.

TITLE V. TRIBAL EMPLOYMENT RIGHTS COMMISSION

Section 501: Commission; Members, Qualifications, Compensation, Quorum

- (a) There is hereby created the Tribal Employment Rights Commission (“Commission”), which shall be an independent commission of the Nation, reporting directly to the Tribal Business Council, or a Committee designated by the Tribal Business Council.
- (b) The Commission shall be composed of seven members, one from each Segment nominated by the Council Member from that Segment and one nominated by the Tribal Chairman, all of whom shall be approved by the Tribal Council. The individuals nominated and approved shall meet the ethical and prior history requirements established for judges in the MHA court system and shall have experience or expertise in one or more of the following areas:
 - (1) Business;
 - (2) Financial management;
 - (3) Construction;
 - (4) Employment Training; or
 - (5) Law.

- (c) Commissioners shall be appointed for a term of three years; provided that, the appointments to the Commission shall be made in such a manner that their terms shall be staggered, so that the terms of no more than two Commissioners shall terminate in any year.
- (d) The Tribal Council may remove a member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.
- (e) The TERO Commission shall appoint a chairman, vice chairman and secretary/treasurer from within the body of TERO Commissioners, for two-year terms on even calendar years.
- (f) The Commissioners shall serve until replaced. The TERO Director shall notify the Mandan Hidatsa and Arikara Nation Chairman of any vacancies within ten working days after he becomes aware of such vacancy.
- (g) Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as are in effect for Commissioners of the Nation or for officers or committee members of the Council.
- (h) A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.
- (i) Recusal of Commission Members:
 - (1) For purposes of this section, "immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, half-sister, or brother, sister, son, daughter, mother or father by adoption.

- (2) No member of the Commission shall participate in any action or decision by the Commission directly involving himself, or a member of his immediate family, or any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership interest, or with which he or a member of his immediate family has a substantial contractual relationship.
- (3) Nothing in this section shall preclude a Commissioner from participating in any action or decision by the Commission which:
 - (a) Generally affects a class of persons, regardless of whether the Commissioner or a member of his immediate family is a member of the affected class;
 - (b) Affects the Nation, a Nation enterprise, or a person or entity in a contractual relationship with the Nation or a Nation enterprise, regardless of whether the Commissioner is a member of the Nation.
- (4) A Commissioner may voluntarily recuse himself and decline to participate in any action or decision by the Commission when the Commissioner, in his discretion, believes:
 - (a) that he cannot act fairly or without bias; or
 - (b) that there would be an appearance that he could not act fairly or without bias.

Section 502: Powers of the Commission

The Commission has the full power, jurisdiction, and authority to:

- (a) Take all actions necessary and appropriate to implement the provisions of this Ordinance.
- (b) Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this Ordinance. Except when an emergency exists, the Commission shall provide the public with a reasonable time for comment before promulgating any final regulations.
- (c) Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the Commission, and to order any relief or sanctions authorized by this Ordinance, and to petition the Nation's Court for such orders as are necessary and appropriate to enforce the decisions of the Commission and any sanctions imposed by the Commission.

Section 503: TERO Director; Qualification; Staff; Duties

- (a) There shall be a TERO Director, who shall serve as the chief executive officer of the TERO, who shall be appointed by the Mandan Hidatsa and Arikara Nation Council, who shall serve at the discretion of the Council, and shall be subject to the direction of and report directly to the Commission.
- (b) The Council shall have exclusive authority to appoint, direct, suspend and remove the Director. The Commission shall perform the annual evaluation of the TERO Director. If at any time the Commission believes the Director is failing to properly carry out his responsibilities, it shall, by formal action, send a communication to that effect to the Council.

- (c) The Director shall have such administrative ability, education and training as the Council determines.
- (d) The Director shall have authority to hire staff, to expend funds appropriated by the Tribal Council pursuant to a budget submitted to the Council, and to expend funding from federal, state or other sources to carry out the purposes of this Ordinance, subject to the approval of the Commission.
- (e) The Director shall be subject to the supervision of the Commission and shall enforce all decisions and orders duly adopted by the Commission.

Section 504: Intergovernmental Relationships

The Director or his designee, subject to the approval of the Commission, is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Reservation and to enter into cooperative relationships with federal agencies, such as the BIA, HUD, FHWA and IHS, in order to implement any federal Indian preference employment or contracting requirements as such agency may lawfully delegate to the Tribes.

TITLE VI. EMPLOYMENT RIGHTS FEE

Section 601: Employment Rights Fee

An employment rights fee, to raise revenue for the operation of the TERO, is imposed as follows:

- (a) Every covered employer with a construction contract in the sum of \$1,000 or more shall pay a fee of two- and one-half percent of the total amount of the contract. Such

fee shall be paid by the employer or entity prior to commencing work on the Reservation. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments over the course of the contract.

- (b) Every covered employer other than construction contractors, with five (5) or more employees working on the Reservation, or with gross sales on the Reservation of \$1,000 or more shall pay a quarterly fee of two- and one-half percent of his quarterly payroll for employees working on the Reservation, which shall be paid within 30 days after the end of each quarter.
- (c) The fee imposed by subsections (a) and (b) of this Section shall not apply to education, health, religious, governmental, or non-profit employers. It shall apply to contractors employed by such employers.
- (d) Provided that, a construction contractor awarded a contract by the Nation's government, including all branches, offices and divisions, all subsidiary governmental entities of the Nation (including the Mandan Hidatsa and Arikara Housing Authority, Districts, and Segment), and any governmental commercial enterprises of the Nation, its divisions or subsidiary governmental entities, (including casinos) regardless of the source of funds for that contract, shall, as a condition of doing business on the Ft. Berthold Reservation, grant its consent to the tribal entity awarding the contract to deduct the amount of the TERO fee from the total amount due the contractor under the contract and to pay said amount directly to the MHA TERO prior to the commencement of work under the contract. Prior to making said deduction, the tribal entity awarding the contract shall provide the contractor with a form prepared by the

TERO, in which the contractor grants its consent to the deduction of the TERO fee from the amount it is entitled to receive from the tribal entity, as provided for above. A contractor shall not be permitted to commence work on the Ft. Berthold Reservation until it has executed said form. This provision shall not apply where the Nation's legal counsel has opined that application of these requirements to that tribal entity is specifically preempted or otherwise prohibited by Federal law.

Section 602: Fee Collection and Expenditure

The fee shall be collected by the TERO Director pursuant to the regulations of the Commission. The fee shall be paid over to the Nation's Treasurer and shall be credited to the general account of the Nation. Said funds shall be expended by the TERO, pursuant to budgets duly approved by the Tribal Council, to carry out the purposes of this Ordinance.

Section 603: Monthly Statements

The Tribal Treasurer shall provide the TERO Director with a monthly statement that provides the following information:

- (a) The total amount of money that was in the fees account at the beginning of the month;
- (b) The fees paid into the account during the month, itemized by the name of the payer, the amount paid, and the date of payment.

TITLE VII. ENFORCEMENT

Section 701: Investigations

- (a) On his own initiative or on the basis of a complaint filed pursuant to this Title, the Director or any field compliance officer designated by the Director may make such

public or private investigations within or without the exterior boundaries of the Reservation as the Director deems necessary to ensure compliance with this Ordinance, to determine whether any Covered Employer or Entity has violated any provision of this Ordinance or its implementing regulations, or to aid in prescribing rules, regulations or policies hereunder.

- (b) The Director or any field compliance officer designated by the Director may enter the place of business or employment of any Covered Employer or Entity for the purpose of such investigation. The Director or designated officer may, at said place of business or employment, in a manner consistent with good safety practices and with the orderly operation of the business activity, interview any employee or agent of the Covered Employer or Entity, review and copy any documents, and carry out any other activity the Director or officer deems necessary to the carrying out of the investigation; provided that, the Director or officer shall comply with the requirements of subsection (d) when reviewing or copying any confidential documents subject to that subsection.
- (c) For the purpose of investigations or hearings which, in the opinion of the Director or the Commission are necessary and proper for the enforcement of this Ordinance, the Director or the Commission chairman may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements, or other documents records or information which the Director or the Commission deems relevant or material to the inquiry.

- (d) Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed pursuant to this section or used in a compliance hearing or subsequent appeal to the Tribal Court, shall be confidential records of the Commission or the Court, shall not be opened to public inspection, shall be used only by the Director, the Commission, parties to a Compliance Hearing or subsequent appeal to Court, and the Court, and shall be used in a manner that, to the maximum extent possible consistent with the requirements of fairness to the parties, protects the confidentiality of the documents.

Section 702: Complaints

Any individual, group of individuals, business or organization that believes any Covered Employer or Entity, (with the exception of any office, division, subsidiary entity or commercial enterprise of the Nation or any of its subsidiary entities, which are subject to the complaint provisions set out in Section 703), the Director or TERO staff, has violated any requirement imposed by this Ordinance or regulations issued pursuant to it, may file a complaint with the Director, unless the complaint is against the Director, in which case the complaint shall be filed directly with the Commission Chairman. The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation. The Director shall within 30 days of the date on which a complaint is filed complete an investigation of said complaint unless the Director requests and is granted an extension by the Commission, which shall be for no more than 30 days. If upon investigation, the Director has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of this Title. Within 15 days

after receipt of the complaint, and on a regular basis thereafter, the Director shall provide the complaining party with a written report on the status of the complaint.

Section 703: Complaints Against Offices, Division, Branches, Subsidiary Entities or Commercial Enterprise of the Nation or of any of the Nation's Subsidiary Entities

Any individual who believes any office, division, branch, subsidiary entity or commercial enterprise of the Mandan Hidatsa Arikara Nation Government or any of its subsidiary entities has violated any requirements imposed by this Ordinance or regulation issued pursuant to it regarding employment may file a complaint with the Director only after he has either:

- (a) filed a complaint with, and exhausted the administrative remedies provided by, that office, division, branch, subsidiary entity, or commercial enterprise of the Nation or of any of the Nation's subsidiary entities, or
- (b) filed a complaint and 60 days have passed since he filed said complaint and no meaningful action has been taken on the complaint by that office, division, subsidiary entity, or commercial enterprise of the Nation or of any of the Nation's subsidiary entities,

whichever comes first, at which time the individual, group of individuals, business, or organization may file a complaint with the Director. Upon receiving a complaint that meets the requirements of this Section, the Director shall proceed in the same manner as he would on a complaint filed pursuant to Section 702, except that the Director and the Commission shall give careful consideration to any written decision on the complaint issued by the office, division, branch, subsidiary entity or commercial enterprise of the Nation or any of the Nation's subsidiary entities that is the subject of the complaint.

Section 704: Resolution of Complaints

- (a) When, after conducting an investigation, whether said investigation was initiated by a complaint filed by a party or was an investigation initiated by the Director, the Director has reasonable cause to believe a violation of this Ordinance or regulations issued pursuant to it has occurred, (including a failure on the part of a party to comply with a subpoena or other request during the investigation phase) the Director shall so notify the Covered Employer or Entity in writing, delivered by registered mail, specifying the alleged violations. However, he may withhold the name(s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation.
- (b) If the Director is unable to achieve an informal settlement, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time, which in no event shall be less than five days from the date of receipt of such notice, to comply, unless the Director has reason to believe irreparable harm will occur during that period, in which case, the Director may require that compliance occur within fewer than five days.
- (c) If the party fails or refuses to comply as provided for in the formal notice, the party may request a hearing before the Commission, which shall be held no sooner than five days and no later than 30 days after the date for compliance set forth in the

Director's notification to the party charged with a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm.

- (d) If a party fails or refuses to comply and does not request a hearing, the Director shall request the Commission Chairman to convene a session of the Commission for the purposes of imposing sanctions on the party.
- (e) Notwithstanding the other provisions of this Section, if the Director has good cause to believe that immediate remedial action is necessary to prevent the irreparable loss of employment, contracting, or subcontracting opportunities for Indians, the Director may require that the party come into compliance immediately or that the party immediately enter into a written agreement to come into compliance pursuant to a schedule acceptable to the Director. In such cases, if the party fails or refuses to comply and requests a hearing, the hearing shall be held within 48 hours after the party has received notification of the hearing schedule. If the party fails or refuses to comply but does not request a hearing, the Director shall request that the Commission Chairman convene a session of the Commission within 48 hours to impose sanctions on the party.
- (f) If a party files a written complaint filed pursuant to this Title and the Director either fails to act in a timely manner or does not find a violation of the law or regulations, a party may appeal the complaint, decision or failure to decide to the Commission.
- (g) When a matter is appealed to the Commission, the Commission, in its sole discretion, can make a ruling on the written record submitted or provide the parties an evidentiary hearing prior to making a ruling on the record. An evidentiary hearing is

not necessary when there are no disputed material facts or when the written record clearly reveals that the matter presented lacks merit or does not present an issue under the TERO laws or regulations.

- (h) In the course of investigating a complaint as referenced in Sections 702 or 703 of this Title, if the TERO Director fails to act within 60 days or finds no violation of the law or regulations, an appeal to the Commission can proceed wherein the party with the complaint can make its case and any other party to the dispute can respond.

Section 705: Hearing Procedure

- (a) Any hearing held pursuant to this Title shall be conducted by the Commission. The hearing shall be governed by the rules of practice and procedure which shall be adopted by the Commission. The Commission may consider any evidence which it deems relevant to the hearing. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the Commission. A tape recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.
- (b) The TERO Director shall prosecute the alleged violation on behalf of the TERO. For the hearing and during all stages of the procedures provided for in this Title, the TERO Director shall be represented by the Nation's Legal Department.

- (c) During the hearing phase of the enforcement process, to avoid a conflict of interest between the Commission, which shall sit as an impartial judicial body, and the TERO Director who shall act as the prosecutor, the Commission shall establish such procedures and safeguards to ensure the due process rights of all parties are protected and that there is no improper contact or communication between the Commission and the Director.
- (d) If the Commission requires legal assistance during the hearing process or at any other phase of the enforcement process and it would be a conflict of interest for the Nation's Legal Department to provide such representation, the Commission shall retain its own legal counsel from a source other than the Nation's Legal Department.

Section 706: Sanctions

- (a) If, after a hearing, the Commission determines that the alleged violation of this Ordinance or regulations has occurred and that the party charged has no adequate defense in law or fact, or if a party were issued a formal complaint and failed to request a hearing, the Commission may:
 - (1) Deny such party the right to commence business on the Reservation;
 - (2) Suspend such party's business activity within the Indian Reservation;
 - (3) Terminate such party's business activity within the Reservation;
 - (4) Deny the right of such party to conduct any further business within the Reservation;
 - (5) Impose a civil fine on such party in an amount not to exceed \$500 per day for each violation;

- (6) Order such party to make payment of back pay or other damages to any aggrieved party;
 - (7) Order such party to dismiss any employees hired in violation of the Tribes' employment right requirements;
 - (8) Order the Tribal Treasurer to reimburse any party who improperly paid a TERO fee or overpaid said fee, but no interest shall be paid in such cases;
 - (9) Order the party to take such other action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation of this Ordinance, consistent with the requirements of the laws of the Nation and the Indian Civil Rights Act, 25 U.S.C. 1301 et seq.
- (b) The Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person by an employee of the TERO no later than thirty days after the close of the hearing, or within ten days after the Commission session to impose sanctions where a party has not requested a hearing. Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Director may move the Tribal Court, and the Court shall grant, such injunctive relief as is necessary to preserve the rights of the beneficiaries of this Ordinance, pending the party's appeal or expiration of the time for appeal.

Section 707: Appeals

- (a) An appeal to the Tribal Court may be taken from any final order of the Commission by any party adversely affected thereby, including a complainant. Said appeal must be filed with the Tribal Court, with a copy to the TERO Director and any other party to

the proceeding, no later than 20 days after the party receives a copy of the Commission's decision.

- (b) The notice of appeal shall:
 - (1) Set forth the order from which appeal is taken.
 - (2) Specify the grounds upon which reversal or modification of the order is sought.
 - (3) Be signed by the appellant or his legal representative.
 - (4) Comply with any other requirements for actions filed in the Tribal Court established by that Court.
- (c) Except as provided elsewhere in this Title, the order of the Commission shall abate pending the determination of the Tribal Court. However, the Director may petition and, for good cause shown, the Court may order the party filing the appeal to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's Order if that Order is upheld by the Court.
- (d) If a complainant files an appeal of a decision by the Commission, the Commission may choose not to be a party to the appeal. If the Commission chooses not to be a party in such a situation, the Director shall so notify the Court and the other parties.
- (e) The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission.

- (f) If, by the 20th day after the Tribal Court has issued a final decision upholding the Commission's decision from which no appeal may be taken, or if no appeal were sought from the decision by the Commission, by the 20th day after the date of the party's receipt of the Commission's order, the party has failed to come into compliance with the decision of the Commission or Court, the Director shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission or Court and the sanctions imposed by them, including confiscation and sale as provided for in Section 708.
- (g) If the order of the Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

Section 708: Confiscation and Sale

If a party has failed to pay monetary damages imposed on it or otherwise failed to comply with an order of the Commission or the Court, and the Director believes there is a likelihood the party will remove itself and its property from the jurisdiction of the Nation, the Director may petition the Nation's Court to order the Nation's police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damage order or to otherwise achieve compliance with the order of the Commission or the Court. Said petition shall be accompanied by a list of property belonging to the party which the Director has reason to believe is within the jurisdiction of the Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Nation's police to

confiscate and hold said property or as much as is available. The Nation's police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If 30 days after confiscation the party has not come into compliance, the Court shall order the police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission or Court and all costs incurred by the Court and police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

Section 709: Other Enforcement Authorities

- (a) If at any stage in the enforcement process, the Director has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the Commission or the Court will not be able to collect monetary damages or TERO fees that are (1) owed by that party pursuant to any outstanding order of the Commission or Court, or (2) which may be owed if the charges set out in any outstanding notice of violations are upheld, he may, in his discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be or have been assessed against the party. If the party fails or refuses to post said bond, the Director may petition the Nation's Court for such interim and injunctive relief as is appropriate to protect the rights of the TERO and other parties during the pendency of the complaint and hearing proceedings.
- (b) If the Director believes that irreparable loss of employment, contracting, or subcontracting opportunities will occur pending a hearing requested by a party,

- pending a session of the Commission where a party has failed to request a hearing, pending action by the Tribal Court, or at any other stage of the process provided for in this Title, the Director may petition the Tribal Courts to temporarily enjoin such actions of the party as may be necessary to prevent the irreparable loss. Upon a showing by the Director of probable cause of success on the merits and irreparable injury, the Court shall grant the requested injunction for such period as may be necessary to prevent the irreparable loss.
- (c) When irreparable harm will occur before a matter can be brought before the Tribal Courts, the Commission is authorized to issue such cease and desist or related orders as may be necessary to enforce the requirements of this Ordinance. The Nation's police are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the Commission. Such orders do not require a judicial decree or order to render them enforceable. The police shall not be civilly liable for enforcing such orders so long as the order is signed by the Chairman of the Commission as a duly authorized order of the Commission. The Commission shall seek a Court order as quickly as possible. The Court may dissolve the cease and desist order or may order such injunctive or other relief to replace the cease and desist order as it deems appropriate.
- (d) In addition to the procedure and remedies provided for in this Ordinance, the Director is authorized to petition the Tribal Courts under any other appropriate provision of the laws and ordinances of the Nation as is necessary to effect implementation of and compliance with this Ordinance.

**Section 710: Monitoring and Coordination in Regard to Other Nation,
Federal and State Laws**

If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this Ordinance, the Director or TERO compliance officers have reason to believe that a requirement of a Nation, Federal, state or local law, ordinance or regulation, other than the one included in this Ordinance, may have been violated by a party, the Director is authorized to document such possible violation, to report it to the appropriate enforcement agency, and, to the extent that resources permit and the Director determines it to be appropriate, assist that agency to investigate and cure the possible violation.

TITLE VIII. MISCELLANEOUS

Section 801: Severability

If for any circumstance, provisions or sections of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections will not be affected in the application of the Ordinance to any person, employer and others covered by the Ordinance.

Section 802: Effective Date

This Ordinance shall be effective on the date of its approval by the Tribal Council.