

## TITLE 17

### SOUTHERN UTE INDIAN TRIBAL CODE

#### EMPLOYMENT RIGHTS CODE

##### Article 1. GENERAL PROVISIONS AND PURPOSE

- 17-1-101. Title.** This Code shall be known as the Southern Ute Tribal Employment Rights Code.
- 17-1-102. Purpose.** The purpose of this Code is to promote the employment of ~~Indians~~ Native Americans, in accordance with federal law, on or near the Southern Ute Indian Reservation; to provide for ~~Indian~~ Native American preference in employment in accordance with federal law; to assist Employers, Contractors and subcontractors in the fair employment of ~~Indians~~ Native Americans on or near the Reservation; to provide a contracting preference for ~~Indian~~ Native American owned businesses; to prevent discrimination, unlawful, or Unfair hiring practices against ~~Indians~~ Native Americans ~~in the employment practices of~~ by Employers ~~within the jurisdiction of the Tribe on Tribal land~~; and to establish a Tribal Employment Rights Commission and Office to further these objectives.
- 17-1-103. Definitions.**
- (1) “Commission” means the Southern Ute Indian Tribal Employment Rights Commission.
  - (2) “Commissioner” means a duly appointed member of the Commission.
  - (3) “Compliance agreement” means the document completed by a Covered Employer, on the form provided by TERO that contains the Covered Employer’s compliance obligations and deadlines for a particular Contract or project.
  - (4) “Construction work” or “Construction” means services ~~OR~~ labor, ~~or~~ materials or a combination, provided for development, construction, or maintenance work for residential, commercial, industrial, oil and gas operations, and infrastructure. Construction work includes but is not limited to, doing one or more of the following:
    - (a) Engineering or erecting any new structure, dwelling, or building;

- (b) Remodeling, converting, renovating, altering, assembling, fitting-out, commissioning, de-commissioning, removing, dismantling, demolishing, repairing, or maintaining, including painting, decorating, and landscaping;
  - (c) Preparing land or area, including but not limited to site clearance, exploration, investigation (but not site survey), excavation, and the laying or installing of the foundations; and
  - (d) Work carried out on any infrastructure, equipment, support facilities, including the installation, commissioning, maintenance, repair, or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunication, computer system or similar services.
- (3)(5) “Contract” or “Contracts” means all contracts and subcontracts, including, but not limited to, contracts for supplies, services and equipment.
- (4)(6) “Contractor” means a Person performing work pursuant to Contracts or subcontracts.
- (5)(7) “Covered Employer” means an Employer ~~doing business within the exterior boundaries of the Reservation, on land subject to the jurisdiction of the Tribe, who employs for wages 5 or more persons. The term “Covered Employer” excludes federal, state and county governmental entities, but includes the Tribe, except as otherwise provided herein. Regardless of the Federal Employer Identification Number used for particular employment positions within their organizations, for purposes of this Code, the Growth Fund, Sky Ute Casino, and Shared Services shall each be deemed separate Covered Employers with respect to employment or contracting occurring within the boundaries of the Reservation on land subject to the jurisdiction of the Tribe~~ who employs for wages 5 or more Persons doing Construction work, as defined by this Code, doing business with the Permanent Fund, the Growth Fund, Sky Ute Casino, Southern Ute Shared Services (SUSS), and any other Tribal entity, on Tribal land within the exterior boundaries of the Reservation.
- (a) The term “Covered Employer” excludes:
    - (i) Federal, state, county, and municipal governmental entities;

- (b) For Articles 4 (Preference in Employment), 5 (Preference in Contracting), and 7 (Reporting) the term “Covered Employer” includes the Tribe, its departments, agencies, and organizations, except as otherwise provided herein. Regardless of the Federal Employer Identification Number used for particular employment positions within their organizations, for purposes of this Code, the Permanent Fund, the Growth Fund, Sky Ute Casino, and SUSS shall each be deemed ARE separate Covered Employers with respect to FOR employment or contracting PURPOSES occurring on Tribal Land.
- (c) For Article 8 (Fees), the term "Covered Employer" shall DOES not include Tribal entities, including departments, agencies, and organizations when the Tribal entity is doing CONSTRUCTION work itself, but it shall DOES include any Covered Employer doing CONSTRUCTION work for a Tribal entity ENTITIES INCLUDING BUT NOT LIMITED TO THE PERMANENT FUND, THE GROWTH FUND, SKY UTE CASINO, AND SUSS.
- (d) This Code shall not apply to any Employer not determined to be a Covered Employer by TERO under this Code.
- ~~(6)(8)~~ “Employee” means ~~any individual, natural Person employed for remuneration.~~ any Person paid for work or service.
- ~~(7)(9)~~ “Employer” means a Person ~~that has Employees~~ as defined by this Code that has Employees.
- (10) “First Descendant” means the UNENROLLED biological child of at least one parent who is an enrolled Southern Ute Tribal Member.
- ~~(10)(11)~~ “Local ~~Indian~~ Native American” means ~~an Indian~~ a Native American residing on ~~or near~~ the Reservation or within a 100-mile radius of the TERO Office, who has so resided for not less than 6 months prior to commencement of, or application for, employment with a Covered Employer or not less than 6 months prior to application as ~~an Indian~~ a Native American Owned Business.
- ~~(11)~~ —“Near the reservation” means ~~within reasonable commuting time to the Reservation of not more than 2 hours.~~

- (8)(12) ~~“Indian Native American”~~ means ~~an individual, a natural~~ a Person who is an enrolled member of a federally recognized ~~Indian~~ Native American Tribe.
- (9)(13) ~~“Indian Native American Owned Business”~~ means any commercial, industrial, or other business in which 51% or more of the ownership is held by, and 51% or more of the actual management and control is exercised by a Local ~~Indian~~ Native American(s) or ~~Local Indians Non-Local Native Americans~~, and which is so certified in accordance with Article 6 herein.
- (14) “Nondisclosable Confidential Business Information” means privileged, classified, or specific information of a type for which there is a clear and compelling need to withhold from disclosure, such as trade secrets, processes, operations, or apparatus that have commercial value, identification of customers, inventories, amount or source of income, profits, losses, or expenditures, or information that the Covered Employer has a contractual obligation to protect, the disclosure of which is likely to cause substantial harm to the competitive position of the Covered Employer.
- (15) “Non-Local Native American” means a Native American residing within a 500-mile radius from the TERO Office.
- (12)(16) “Person” means both natural persons and artificial persons, including but not limited to, corporations, partnerships, limited liability companies, unions, societies, sole proprietorships, joint ventures and trusts.
- (13)(17) “Qualified ~~Indian~~ Native American Applicant” means ~~an Indian~~ a Native American applicant for employment who meets the minimum mandatory requirements of a position and is capable of performing those requirements as they are stated by the Employer in a written job description or written policies, including factors for the determination of general suitability, such as previous employment job history and criminal history, as minimum mandatory requirements; provided, however, that such established requirements may not include non-job related requirements that have an ~~improper~~ unfair or unlawful discriminatory impact on ~~Indian~~ Native American applicants.
- (14)(18) “Reservation” means the Southern Ute Indian Reservation.
- (15)(19) “TERO” means the Tribal Employment Rights Office.

~~(16)~~(20) “Tribal Council” means the Southern Ute Indian Tribal Council.

~~(17)~~(21) “Tribal Court” means the Southern Ute Tribal Court.

(22) "Tribal land" for the purposes of this Code, means Tribal trust land, Tribal fee land, and Indian allotments within the exterior boundaries of the Reservation, which includes any right-of-way bounded on both sides by these lands. If any portion of the work done by a Covered Employer occurs on Tribal land, that Employer is covered by this Code.

~~(18)~~(23) “Tribe” means the Southern Ute Indian Tribe.

(24) “Unfair hiring practice” means any discriminatory or biased method used during the recruitment and selection process that unjustly disadvantages a candidate based on characteristics unrelated to their qualifications or ability to perform the job.

~~(19)~~(25) “Union” or “labor organization” means an organization, combination or association in which Employees participate, or by which Employees are represented, and which exists for the purpose, in whole or in part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment.

**17-1-104. Application.** The Tribe has chosen to apply the TERO Code to the lands and properties described in this Code solely for administrative purposes. The Tribe may amend the Code to include additional lands and properties subject to the Tribe's jurisdiction in the future. Nothing in this Code is intended to restrict, amend, or otherwise limit the Tribe's jurisdiction or sovereign powers within the exterior boundaries of the Reservation.

## **Article 2. TRIBAL EMPLOYMENT RIGHTS OFFICE**

**17-2-101 Establishment.** TERO is hereby created as a division of the Tribe, responsible for the implementation and enforcement of the provisions of this Code.

**17-2-102 Functions.** TERO shall have the following responsibilities:

- (1) To implement and enforce the established rules and regulations governing the activities of TERO.

- (2) To assist ~~Indians~~ Native Americans seeking or applying for employment with job counseling and referrals to training programs.
- (3) To cooperate with federal agencies to enforce applicable federal antidiscrimination statutes and regulations, eliminate hiring discrimination, eliminate unlawful or Unfair hiring practices against ~~Indians~~ Native Americans, and enforce federal ~~Indian~~ Native American preference requirements on lands subject to the Tribe's jurisdiction.
- (4) To process requests by Employers for ~~Indian~~ Native American Employees.
- (5) To receive, process and investigate informal complaints regarding employment discrimination, or unlawful or Unfair hiring practices on ~~lands subject to the Tribe's jurisdiction~~ Tribal land.
- (6) To assess penalties, pursuant to a table of penalties approved by the Commission, from any ~~Indian~~ Native American Owned Business or Covered Employer who fails to comply with the reasonable instructions of TERO.
- (7) To issue probationary certifications and to make recommendations to the Commission concerning final certification or decertification of businesses as ~~Indian~~ Native American-Owned Businesses.
- (8) To maintain a list of TERO-certified ~~Indian~~ Native American-Owned Businesses and to review their status with the Commission on an annual basis.
- (9) To advise the Director of TERO and recommend review of ~~Indian~~ Native American-Owned Businesses whose eligibility for certification becomes questionable based on ownership or performance on Contracts.
- (10) To establish and maintain a skills bank to assist Employers by referring Qualified ~~Indian~~ Native American Applicants for available job positions.
- (11) To file formal complaints with the Commission as set forth herein.
- (12) To coordinate with the ~~Personnel~~/Human Resource Departments of the Tribe, INCLUDING THE PERMANENT FUND, the Growth Fund, SUSS, and SKY UTE CASINO, as well as the Tribal Higher Education Department, to determine and address training needs for ~~Indians~~ Native Americans and ~~Indian~~ Native American-Owned Businesses.

- (13) To take such other actions as are necessary to achieve the purposes and objectives of this Code; provided, however, that no significant new program or component of a program may be introduced, or program or component of a program significantly expanded, without prior approval of the Tribal Council.
- (14) To account properly for the TERO fees assessed and collected pursuant to Article 8 of this Code, to prepare proposed budgets for use of those fees in accordance with the purposes of this Code, and to use such funds as appropriated by the Tribal Council for the uses designated by the Tribal Council.

**17-2-103 Director.** The Director of TERO shall be hired in accordance with Southern Ute Tribal Personnel Policies and Procedures. The TERO Director shall have the following responsibilities:

- (1) To administer all TERO programs.
- (2) To hire and supervise TERO Employees pursuant to the Southern Ute Tribal Personnel Policy and Procedures.
- (3) To process ~~Indian~~ Native American-Owned Business applications and issue probationary certifications when the applicants meet all of the requirements set forth in Article 6.
- (4) To issue recommendations to the Commission for decertification of a listed ~~Indian~~ Native American-Owned Business when qualifications supporting its listing no longer exist, based on ownership, management or location, or when such business no longer meets the qualifications for listing based upon its job performance history.
- (5) To obtain funds from federal, state, or other sources to carry out the purposes of TERO.
- (6) To present to the Tribal Council such reports as the Tribal Council may require, including reports on TERO's activities on at least a quarterly basis.
- (7) To assist Covered Employers in pursuing whatever corrective actions are necessary for such Covered Employers to come into compliance with the requirements set forth in this Code or with Commission rules and regulations.

### Article 3. TRIBAL EMPLOYMENT RIGHTS COMMISSION

#### 17-3-101. Establishment of Commission.

- (1) The Commission is hereby established to carry out the powers and duties set forth in this Code.
- (2) ~~Commission~~ Commissioners ~~members~~ shall be appointed by the Tribal Council and shall serve until resignation or replacement. The ~~membership~~ Commission shall be composed of the following 5 regular ~~members~~ Commissioners, one Ex Officio Tribal Council member, and one alternate ~~who shall each be enrolled members of the Southern Ute Indian Tribe. At least 3 Commissioners shall be enrolled Southern Ute Indian Tribal members. The Commission must make best efforts to include:~~
  - (a) One ~~member~~ Person with tribal regulatory knowledge and experience;
  - (b) One ~~member~~ Person with knowledge and experience in tribal energy resource development;
  - (c) One ~~member~~ Person with knowledge and experience in tribal economic development; ~~and~~
  - (d) Two members Commissioners at-large who are not currently employed by the Tribe or a tribal entity or division and who do not have an ownership interest in or are employed by a certified ~~Indian~~ Native American Owned Business.
  - (e) One Person that may serve as an alternate;
  - (f) A Tribal Council member who may serve as an Ex Officio Commissioner, but not as TERO Commission Chairman, and shall not be entitled to vote on matters before the Commission. The Tribal Council member shall be selected by the Tribal Council, shall serve for the duration of their Tribal Council term, unless the Tribal Council removes them from Commission before their Council term expires, and shall not be subject to the term or removal provisions of this section; and
  - (g) AT LEAST ONE FIRST DESCENDANT OF AN ENROLLED MEMBER OF THE TRIBE.

- (3) The Chairman of the Commission shall be designated by the Commission and shall preside over all meetings of the Commission. The Commission Chairman shall be entitled to vote on all matters before the Commission the same as other members.
- (4) Three ~~members of the Commission~~ Commissioners shall constitute a quorum.
- (5) ~~Commission~~ Commissioners ~~members~~ shall disqualify themselves from proceedings in cases that present a conflict of interest.
- (6) When a Commissioner has been disqualified with regard to a matter before the Commission, the Chairman of the Commission may substitute an alternate with similar qualifications to serve as a Commissioner for that particular matter.
- (7) Commissioners who are not otherwise compensated by the tribe by Contract or through employment shall be compensated at the same daily rate as Gaming Commissioners.
- (8) Employees of the Tribe may be appointed by Tribal Council to serve as temporary Commissioners when there are Commission vacancies and there is a need to conduct Commission duties.

**17-3-102. Term of Appointment of Commissioners.** Commissioners shall be appointed to 3-year staggered terms; provided, however, that each Commissioner shall serve until reappointed or a successor is appointed. The beginning date of a term shall be fixed and shall not change based on the actual date of appointment, even if that means the Commissioner serves less than a full 3-year term.

**17-3-103. Removal.** A Commissioner may be removed by a majority vote of the Tribal Council for neglect of duty, failure to attend meetings or other good cause demonstrating a Commissioner's unfitness for continued service.

**17-3-104. Powers of the Commission.** The Commission shall have the following responsibilities:

- (1) To promulgate and implement such written rules and regulations as may be necessary to effectuate the purposes of this Code, including all activities and procedures of the Commission; provided, however, with the

sole exception of rules or regulations governing hearing proceedings before the Commission, no new rule or regulation shall be implemented without prior approval of the Tribal Council.

- (2) To review and hold hearings on formal complaints of employment discrimination, unlawful employment practices, or Unfair hiring practices.
- (3) To approve or deny final certifications to businesses granted probationary certification as ~~Indian~~ Native American-Owned Businesses.
- (4) To approve de-certification for any business no longer meeting the requirements for certification as an ~~Indian~~ Native American-Owned Business, including requirements related to the ownership or management structure of the ~~Indian~~ Native American-Owned Business or the performance history and qualifications of the ~~Indian~~ Native American-Owned Business.
- (5) To regulate collective bargaining agreements of any Covered Employer, as well as to regulate collective bargaining by employees of a Covered Employer.
- (6) To impose appropriate sanctions and grant any relief authorized by this Code.
- (7) To take such other lawful actions as are necessary to achieve the purposes and objectives inherent in the policy of ~~Indian~~ Native American preference in employment and contracting.

#### Article 4. ~~INDIAN~~ NATIVE AMERICAN PREFERENCE IN EMPLOYMENT

##### 17-4-101. Preference Policy.

- (1) Every Covered Employer is required to give employment preference to Qualified ~~Indian~~ Native American Applicants in accordance with this Code in hiring, promotion, lay-off and training for work ~~performed within the exterior boundaries of the Reservation on land subject to the jurisdiction of the Tribe~~ on Tribal land.
- (2) A Covered Employer shall include and specify an employment preference policy statement consistent with this Code in all job announcements and advertisements covered by this Code.

- (3) If any requirement of this Code is inconsistent with requirements directly applicable pursuant to federal law, or regulations or indirectly applicable through enactments by the Tribal Council adopting such federal standards, those federal standards shall take precedence. When contracting with any federal agency, the term “Indian or Native American preference” may be used if required by federal law.

**17-4-102. Hiring.**

- (1) A Covered Employer may not hire any Person not entitled to preference pursuant to this Code for work on ~~land subject to the jurisdiction of the Tribe~~ on Tribal land until the Covered Employer has given TERO a reasonable time to locate a Qualified ~~Indian~~ Native American Applicant or to communicate to the Covered Employer that no Qualified ~~Indian~~ Native American Applicant is available to fill the job.
- (2) For purposes of this section, “reasonable time” shall be defined as follows:
  - (a) For construction jobs, TERO shall have 72 hours to refer a Qualified ~~Indian~~ Native American Applicant.
  - (b) For all other kinds of employment, TERO shall have 5 working days to refer a Qualified ~~Indian~~ Native American Applicant.
  - (c) TERO may reduce these time periods if they would impose an undue burden upon the Covered Employer or if emergencies threatening life, property or environment justify such a reduction.
- (3) For purposes of this section, the terms “hire” and “vacancy” shall not apply to positions that are subject to promotion opportunities that conform to the requirements of Section 17-4-103.
- (4) A Covered Employer may set the job requirements for employee hiring; provided, however, that such requirements may not include non-job-related qualifications that have a discriminatory, unlawful, or unfair impact on ~~Indian~~ Native American applicants.
- (5) Every Covered Employer shall establish written minimum qualifications for each position in its work force, a copy of which shall be provided to TERO and to all applicants at the time they express an interest in such position. These may be provided in electronic form.

- (6) If TERO has reason to believe that any Covered Employer is setting discriminatory job qualifications, it shall first attempt to meet with the Covered Employer and resolve the matter informally. If informal resolution is unsuccessful, TERO may file a complaint against the Covered Employer pursuant to § 17-9-101.
- (7) A Covered Employer may recruit and hire Employees or trainees from whatever source and by whatever process the Covered Employer chooses; however, the Covered Employer must notify TERO and provide a list of Employees hired.
  - (a) A Covered Employer must report to TERO within five business days after the position has been filled by whatever tier is applicable. This must include the applicant's name, position, date of hire, and rate of pay.
  - (b) To ensure compliance with Article 4, Covered Employers that are Tribal entities shall provide wage scales for all positions annually.
- (8) A Covered Employer shall advertise and announce all job vacancies for a minimum of ten business days in the Southern Ute Drum, on KSUT, on the Tribal member portal and on at least one locally available online job listing service with the following exceptions:
  - (a) A Covered Employer may post a job vacancy internally to allow promotion of existing Employees. However, if the Covered Employer has no Southern Ute tribal member employees who are qualified for the vacancy or no Southern Ute tribal member is selected to fill the vacancy, then the vacancy must be advertised and announced externally in the manner required by this section;
  - (b) A Covered Employer is not required to advertise and announce a vacancy in the event a Southern Ute tribal member, who is a current Employee or participant in an internship or apprenticeship program, is selected for the employment opportunity.

#### **17-4-103. Promotions.**

- (1) Each Covered Employer must give preference to Qualified ~~Indian~~ Native American Applicants in all promotion opportunities.
- (2) Covered Employers shall provide adequate advance notice of promotion opportunities to their current ~~Indian~~ Native American Employees.

**17-4-104. Lay-Offs.**

- (1) Each Covered Employer must accord preferential protection to ~~Indians~~ Native Americans against ~~lay-off~~ layoffs, and reductions in work force. Such preference shall be in accordance with § 17-4-106.
- (2) A Covered Employer may not lay-off or terminate ~~an Indian~~ a Native American Employee as a result of lay-off or reduction in work force if a ~~non-Indian~~ non-Native American Employee in the same job classification and with the same seniority is still employed.

**17-4-105. Training.** Each Covered Employer must give preference to Qualified ~~Indian~~ Native American Applicants in existing training or apprenticeship programs. Every Covered Employer with a training program shall employ the maximum number of ~~Indian~~ Native American trainees for available positions in such program.

**17-4-106. Priority of Employment Preference.** The employment preference provided for in this Code shall follow these priorities:

- (1) First preference shall be given to enrolled members of the Southern Ute Indian Tribe.
- (2) Second preference shall be given to ~~Indians who are legally married to enrolled members of the Southern Ute Indian Tribe~~ FIRST DESCENDANTS OF ENROLLED MEMBERS OF THE SOUTHERN UTE INDIAN TRIBE.
- (3) Third preference shall be given to ~~enrolled members of the Ute Mountain Ute and Northern Ute tribes~~ Native Americans who are legally married to enrolled members of the Southern Ute Indian Tribe.
- (4) Fourth preference shall be given to ~~Local Indians~~ NON-NATIVE AMERICANS WHO ARE LEGALLY MARRIED TO ENROLLED MEMBERS OF THE SOUTHERN UTE INDIAN TRIBE.
- (5) Fifth preference shall be given to ~~non-Local Indians~~ enrolled members of the Ute Mountain Ute and Ute Indian Tribes.
- (6) Sixth preference shall be given to Local Native Americans.
- (7) Seventh preference shall be given to Non-Local Native Americans.

**17-4-107. Collective Bargaining Agreements.**

- (1) All transaction documents, including without limitation, leases, subleases, Contracts, subcontracts, permits, and collective bargaining agreements between Covered Employers and labor organizations that are entered into by or issued to any Covered Employer and that are to be performed on Tribal lands ~~subject to the jurisdiction of the Tribe~~ shall contain a provision pursuant to which the Covered Employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Code. With respect to any transaction document that does not contain the foregoing provision, the terms and provisions of this Code are incorporated therein as a matter of law and the requirements of the Code shall constitute affirmative contractual obligations.
- (2) No Employee of the Tribe, ~~including Employees of the Tribe, at the Permanent Fund, the~~ Growth Fund, Shared Services or the Sky Ute Casino, may enter into a collective bargaining agreement.

## Article 5. PREFERENCE IN CONTRACTING AND SUBCONTRACTING

### 17-5-101. Contract Preference Policy.

- (1) All Covered Employers awarding Contracts shall give preference to certified ~~Indian~~ Native American-Owned Businesses technically qualified to perform the work required and shall utilize competitive bid procedures in accordance with this Article when ~~the majority~~ ANY of the ~~CONSTRUCTION~~ work under the Contract will occur on Tribal lands ~~subject to the jurisdiction of the Tribe~~.
- (2) If a qualified ~~Indian~~ Native American-Owned Business participates in the bidding process, then the contracting entity shall give preference to such bidder if the ~~Indian~~ Native American-Owned Business' initial bid or resubmitted bid is no more than 5% higher than the lowest bid received.
- (3) Before a Covered Employer can reject a qualified ~~Indian~~ Native American-Owned Business on the basis of its bid, it must offer the ~~Indian~~ Native American-Owned Business a single opportunity to resubmit a revised bid. In requesting and/or receiving revised bids from ~~Indian~~ Native American-Owned Businesses, the Covered Employer shall not, in any circumstance, disclose any other bids received.

### 17-5-102. Determination of Technical Qualifications.

- (1) All Covered Employers awarding Contracts under this Article shall have the discretion to determine technical qualifications. However, if the Covered Employer determines that there are no ~~Indian~~ Native American-Owned Businesses that are technically qualified, the Covered Employer must provide to each ~~Indian~~ Native American-Owned Business it rejects a written description of areas in which it believes the business is weak and steps the ~~Indian~~ Native American-Owned Business could take to upgrade its qualifications. A Covered Employer may also be required to cooperate in establishing a tribal member or ~~Indian~~ Native American-Owned Business training program, coordinated with and fully funded by TERO.
- (2) If a Covered Employer determines that ~~an Indian~~ a Native American-Owned Business lacks the technical qualifications to perform all of the work required under the proposed Contract, the Covered Employer shall make a good faith effort to divide the scope of work requirement into small Contracts or components, so that the ~~Indian~~ Native American-Owned Business can qualify for a portion of the work or provide a written explanation as to why the Contract cannot be so divided. Such written explanation shall be provided to the disqualified ~~Indian~~ Native American-Owned Business.
- (3) If ~~an Indian~~ a Native American-Owned Business disqualified on technical qualification grounds believes that the disqualification was the result of an improper effort by a Covered Employer awarding the Contract to circumvent its preference responsibilities under this Article, the ~~Indian~~ Native American-Owned Business may file a written complaint pursuant to § 17-9-102.

**17-5-103. Priority of Contract Preference.** The ~~Indian~~ Native American Contract preference provided for in this Code shall be given in the following priority:

- (1) First preference shall be given to ~~Indian~~ Native American-Owned Businesses controlled by enrolled members of the Southern Ute Indian Tribe.
- (2) Second preference shall be given to ~~Indian~~ FIRST DESCENDANT-Owned Businesses controlled by ~~Indians who are legally married to enrolled members of the Southern Ute Indian Tribe~~ FIRST DESCENDANTS OF ENROLLED MEMBERS OF THE SOUTHERN UTE INDIAN TRIBE.
- (3) Third preference shall be given to ~~Indian-Owned Businesses controlled by enrolled members of the Ute Mountain Ute and Northern Ute tribes~~ Native

American-Owned Businesses controlled by Native Americans who are legally married to enrolled members of the Southern Ute Indian Tribe.

- (4) Fourth preference shall be given to ~~Indian Owned Businesses controlled by Local Indians~~ BUSINESSES OWNED AND CONTROLLED BY NON-NATIVE AMERICANS WHO ARE LEGALLY MARRIED TO ENROLLED MEMBERS OF THE SOUTHERN UTE INDIAN TRIBE.
- (5) ~~In the event that there are 2 or more businesses entitled to preference within any of the above-listed categories, a 100% Indian Owned Business shall be given preference over a less than 100% Indian Owned Business, and an Indian Owned Business located within the exterior boundaries of the Reservation shall be given preference over an Indian Owned Business controlled by Local Indians but located off the Reservation~~ Fifth preference shall be given to Native American-Owned Businesses controlled by enrolled members of the Ute Mountain Ute and Ute Indian Tribes.
- (6) Sixth preference shall be given to Native American-Owned Businesses controlled by Local Native Americans.
- (7) Seventh preference shall be given to Native American-Owned Businesses controlled by Non-Local Native Americans.
- (8) In the event that there are 2 or more businesses entitled to preference within any of the above-listed categories, a 100% Native American Owned Business shall be given preference over a less than 100% Native American Owned Business, and a Native American Owned Business located within the exterior boundaries of the Reservation shall be given preference over an Native American Owned Business controlled by Local Native Americans but located off the Reservation.

**17-5-104. Applicability.**

- (1) These bid award procedures shall not apply to the award of Contracts by federal, state, county and municipal governmental entities but shall apply to the Tribe, unless explicitly waived pursuant to Article 12.
- (2) When a Tribal department, division, entity or enterprise selects a Contractor other than in accordance with the priorities listed in § 17-5-103, it must indicate the steps taken to award the Contract in accordance

with those priorities and the reasons for its selection when submitting a Contract to the Tribal Council for approval.

**17-5-105. Conflict of Interest.**

- (1) No member of the Tribal Council, TERO Commissioner, Employee of the PERMANENT FUND, the Growth Fund, Sky Ute Casino, a Tribal entity, or SUSS, shall have an interest in, or be employed by, any Person that has entered into or is seeking to enter into a Contract FOR CONSTRUCTION WORK with the Tribe, unless approved by Tribal Council.
- (2) Any member of Tribal Council, any TERO Commissioner, Employee of the Permanent Fund, the Growth Fund, Sky Ute Casino, a Tribal entity, or SUSS, shall disclose to the TERO any interest in, or employment with any Person that has entered into or is seeking to enter into a Contract FOR CONSTRUCTION WORK with the Tribe.
- (3) Any member of Tribal Council, TERO Commissioner, Employee of the Permanent Fund, Growth Fund, Sky Ute Casino, SUSS, or a Tribal entity must comply with any applicable Tribal laws, policies, or procedures when seeking to enter into a Contract and under Contract with the Tribe.

**Article 6. CERTIFICATION OF ~~INDIAN~~ NATIVE AMERICAN OWNED BUSINESSES**

An applicant for certification as an ~~Indian~~ Native American-Owned Business must satisfy all of the criteria prescribed under this Article.

**17-6-101. Ownership.**

- (1) **Formal Ownership.**
  - (a) The applicant must demonstrate that a Local ~~Indian~~ Native American or Local ~~Indians~~ Native Americans own(s) 51% or more of the partnership, corporation, joint venture, or other business arrangement for which certification is sought.
  - (b) Such ~~Indian~~ Native American ownership must be embodied in the organizational documents of the business.

- (c) The ~~Indian~~ Native American ownership must have a majority of the voting rights or employ a decisional mechanism for making all decisions of the business.
- (d) The ~~Indian~~ Native American ownership must be entitled to receive at least a majority of the business' assets upon dissolution.
- (2) **Value.** To obtain a majority ownership of the business, the ~~Indian~~ Native American ownership must have provided real value, such as capital, equipment, real property, or similar assets, commensurate with the value of the ownership share. Purchase of the ~~Indian~~ Native American ownership through a promissory note, the holder of which is the non-~~Indian~~ Native American owner of the business or an immediate relation thereof or through any similar arrangement is not real value unless: a) the applicant makes a convincing showing that the ~~Indian~~ Native American ownership brought special skills or similar benefits to the business; and b) that there is good reason to believe the arrangement would have been entered into even if there were no ~~Indian~~ Native American preference program in existence.
- (3) **Profits.** The ~~Indian~~ Native American ownership must be entitled to receive at least 51% of all business profits. If the non-~~Indian~~ Native American ownership is entitled to a share of the profits greater than 50%, under whatever agreement or arrangement, including but not limited to management fees, equipment rental fees, or bonuses tied to profits, certification will be denied.

#### 17-6-102. Management Control.

- (1) The business must demonstrate that one or more of the ~~Indian~~ Native American owners is substantially involved as a senior level official in the day-to-day management of the business as his primary employment activity. Although the ~~Indian~~ Native American owner does not have to be the Chief Executive Officer, he must, through prior experience or training, have substantial occupational ties to the business and therefore be qualified to serve in a senior level position. He must also be sufficiently knowledgeable about the business to be accountable to the Tribe for the business' activities.
- (2) Any joint venture applicant must also demonstrate that the ~~Indian~~ Native American business is, in fact, the controlling partner in the joint venture; that the ~~Indian~~ Native American partner has the experience and expertise

to manage the entire operation; and that the non-~~Indian~~ Native American partner is providing specialized resources or expertise to the joint venture and is not, in fact, the manager.

**17-6-103. Integrity of Structure.** The applicant must show that the business was not established primarily to take advantage of ~~Indian~~ Native American preference. In evaluating the applicant, TERO shall consider the factors set out below and shall exercise broad discretion in applying these criteria ~~in order~~ to preserve the integrity of the ~~Indian~~ Native American preference program:

- (1) Whether the history of the firm demonstrates it was established primarily to take advantage of the ~~Indian~~ Native American preference program, particularly in cases where the firm was originally a non-~~Indian~~ Native American owned business, or associated with a non-~~Indian~~ Native American owned business, which gained little in terms of capital, expertise, and equipment by adding ~~Indian~~ Native American ownership or merging with the ~~Indian~~ Native American business.
- (2) Whether key non-~~Indian~~ Native American Employees of the applicant are former Employees of a non-~~Indian~~ Native American firm with which the ~~Indian~~ Native American firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-~~Indian~~ Native American firm is controlling the applicant.
- (3) Whether the experience, expertise and resources of the non-~~Indian~~ Native American ownership are so much greater than those of the ~~Indian~~ Native American ownership that there is little sound business reason for the non-~~Indian~~ Native American ownership to accept a junior role in the business other than to be able to take advantage of the ~~Indian~~ Native American preference program.

**17-6-104. Probationary Certification.**

- (1) Probationary certification may be granted for up to 6 months, and ~~Indian~~ Native American-Owned Business certification expires at the end of this period unless the business applies for final certification and is granted full certification or the probationary certification period is extended.
- (2) During the probationary period, TERO staff shall monitor the business' activities to ensure that the business is operating consistent with the description in its application. During the probationary period, the business

shall provide TERO updated information and documents necessary to evaluate the business operation.

- (3) Within 30 days of the end of the probationary period, the business with probationary certification shall file an updated application for final certification.

**17-6-105. Certification Procedures.**

- (1) The applicant shall submit to TERO a completed application on forms provided by TERO, accompanied by an application processing fee as established by the Commission.
- (2) **Probationary Certification Determinations.**
  - (a) Within 30 days after receipt of a completed application and the processing fee, TERO shall review the application and request such additional information as it believes appropriate, conduct any required investigations, and conduct the analysis necessary to make a determination on probationary certification.
  - (b) Computation of the 30-day period shall be stayed for the time a new request for additional information is outstanding, and the Director of TERO may extend the processing period by an additional 30 days by sending notification of the extension to the applicant.
  - (c) If the applicant meets all of the requirements set forth in this Article for ~~Indian~~ Native American Owned Business certification, the Director shall issue the applicant a probationary certification for up to 6 months as ~~an Indian-a~~ Native American Owned Business. If the TERO Director determines that the applicant fails to meet one or more of the requirements for ~~Indian~~ Native American Owned Business certification, the TERO Director shall notify the applicant in writing of the denial of certification together with the reasons for the denial.
  - (d) If the applicant wishes to challenge the TERO Director's probationary certification decision, it may file a formal complaint with TERO within 30 calendar days of receipt of the TERO Director's probationary certification decision.
- (3) **Final Certification Determinations.**

- (a) The Commission shall review an application for full certification within 30 days of receiving an application.
- (b) The Commission shall review the application with its supporting documents, as well as the performance of the business during the probationary period, and take action to:
  - (i) Grant full certification;
  - (ii) Continue the probationary period for an additional 6 months; or
  - (iii) Deny certification.

**17-6-106. Hearings.**

- (1) The Commission shall hold hearings on challenges to TERO decisions on probationary certification and on Commission decisions concerning final certification, decertification or suspension after providing notice to the ownership of the business, to TERO, and to the public through a published notice in The Southern Ute Drum and posting on the Tribe's website no less than 21 days prior to such hearing.
- (2) Only principals of the business, the TERO Director, and witnesses who have been granted an opportunity by the Commission to participate shall be entitled to present evidence at the hearing.
- (3) Any interested Person, other than an owner, wishing to present information to the Commission shall be entitled to do so by requesting in writing an opportunity to participate, no less than 5 days prior to the hearing.
- (4) Hearing procedures shall be governed by Article 10 herein.

**17-6-107. Suspension or Revocation of Final Certification.**

- (1) TERO may initiate proceedings to suspend or revoke the certification of any business based upon information provided to TERO by the business or any Covered Employer, on the basis of a written complaint filed by any Person, including a Covered Employer, or on its own initiative.
- (2) TERO shall prepare an analysis, together with a recommended disposition, and shall notify the business by certified mail that its certification is being

re-examined. The grounds for such re-examination shall be included in the notice.

- (3) The Commission shall then set a date for hearing, which shall be held within 30 days after receipt of the analysis and recommended disposition from TERO.
- (4) The hearing shall be conducted in accordance with Article 10 herein. At the hearing TERO staff shall present the case for suspension or revocation and any interested Person, having submitted a timely written request to participate, may also present information to the Commission.
- (5) If the complaint is substantiated at the hearing, the Commission may take any of the following actions:
  - (a) suspend certification for up to one year;
  - (b) revoke certification;
  - (c) place the business on probationary certification and order that corrective action be taken within a fixed period, if warranted by the evidence.
- (6) A business that has had certification revoked may not reapply for a period of one year.

## **Article 7. REGISTRATION, COMPLIANCE AGREEMENT, AND REPORTING REQUIREMENTS**

**17-7-101. Covered Employers.** ~~Every Covered Employer doing business within the exterior boundaries of the Reservation shall submit employment information reports to TERO. Such reports shall include all information necessary to determine compliance with the provisions of this Code. Reports shall be filed on a quarterly basis no later than 10 business days after the end of each calendar quarter.~~

- (1) **Business registration and Compliance agreement.** Every Employer performing Construction work shall submit a business registration to TERO, and a Compliance agreement if required by TERO, on forms provided by TERO prior to beginning work on Tribal land and prior to beginning any work that may take place on Tribal land.

- (2) Covered Employers or Tribal entities paying fees on behalf of Covered Employers shall provide copies of executed Contracts prior to the beginning of Construction work.

**17-7-102. ~~Indian~~ Native American-Owned Businesses.**

- (1) Each ~~Indian~~ Native American-Owned Business shall report to TERO, in writing, any changes in its ownership or control within 30 calendar days of such changes.
- (2) Each ~~Indian~~ Native American-Owned Business shall also update the information provided in its initial application on a report form provided by TERO, which update shall be given annually on the anniversary of its receipt of final certification.
- (3) Failure to provide information pursuant to these requirements shall constitute grounds for suspension or revocation of certification.

**Article 8. EMPLOYMENT RIGHTS FEE**

**17-8-101. Establishment of Fee.** The Tribe hereby establishes an employment rights fee for the funding, administration and operation of training programs for Southern Ute ~~tribal~~ Tribal members, First Descendants OF ENROLLED MEMBERS OF THE TRIBE, and Native Americans, as well as for the operational expenses of TERO AND OTHER TERO PURPOSES.

- (1) ~~Every Covered Employer performing a construction, roustabout or maintenance contract in connection with building construction or oil and gas field work, including a contract for services, labor or materials or any combination thereof, for such work, a majority of which will occur on lands subject to the jurisdiction of the Tribe, shall pay a fee of 4% of the cumulative amount of the contract, which shall be calculated on a per contract basis and paid before final payment is made to the contractor but after any and all change orders that may affect the contract price have been processed.~~
- (2) ~~Every Covered Employer, with 20 or more employees or gross revenues of \$500,000 or more, other than the contractors referenced above, shall pay an annual fee of 4% of the annual payroll of those employees of the Covered Employer who perform work principally within the exterior boundaries of the Reservation subject to the jurisdiction of the Tribe. Such fee shall be paid within 30 calendar days of the end of each calendar year.~~

- (3) ~~The Tribe, state and federal governments, including their political subdivisions; and non-profit organizations shall be exempt from payment of TERO fees.~~
- (4) ~~TERO fees shall be deposited in the Tribe's General Fund as a separate line item to be used to fund training for Southern Ute tribal members, enrolled members of the Ute Mountain Ute and Northern Ute Tribes and Local Indians, including apprenticeship programs and on-the-job training.~~

**17-8-102. Fee Rates.**

- (1) All Covered Employers shall pay the following fees for that portion of CONSTRUCTION work that occurs on Tribal land on a quarterly schedule determined by TERO and included in the Compliance agreement:

<u>Contract Amount, Invoice Amount, or Total Costs of Construction Work</u>	<u>TERO Fee</u>
<u>\$9,999 or less</u>	<u>2%</u>
<u>\$10,000-\$99,999</u>	<u>3%</u>
<u>\$100,000 or more</u>	<u>4%</u>
<u>Master Services Agreement</u>	<u>4% annual costs.</u>

- (2) TERO fees shall be deposited in the TERO Fund as a separate line item to be used to fund training for Southern Ute tribal members, First Descendants, enrolled members of the Ute Mountain Ute and Ute Indian Tribes, Local Native Americans, and Non-Local Native Americans including apprenticeship programs, temporary TERO workers, the TERO Internship Program, and on-the-job training.

**17-8-103. Exemptions.**

- (1) Homeowners that are building their own home are exempted from the construction contracting requirement. The definition of "home" as it applies in this section is defined as the main residence of an individual.  
~~Homeowners building secondary or multiple homes will not be eligible for the exemption.~~

- (2) The Tribe, state, and federal governments, including their political subdivisions; and non-profit organizations shall be exempt from payment of TERO fees.
- (3) Native American allottee property owners hiring Contractors for residential or agricultural improvement work on their allotments. This exemption ~~does not apply~~ APPLIES to lease activities or businesses doing any other type of work on Native American allotments.

**17-8-104. Fee Payments.**

- (1) **Payment date.** The Covered Employer ~~or the Tribal entity~~ (OR A TRIBAL ENTITY ON BEHALF OF A COVERED EMPLOYER AS NECESSARY) shall ~~pay~~ REMIT TERO fees on the dates specified in the TERO Compliance agreement.
- (2) **Payment Details.** The Tribal entity or the Covered Employer shall provide:
  - (a) Invoice copies showing the full amount of the costs charged for that Contract or project; and
  - (b) Each invoice must contain the Compliance agreement name and date.
- (3) **Payment submittal.** Covered Employers shall submit payments to TERO by mail or electronically along with the invoice.
- (4) **Payment Report.** Covered Employers shall submit an electronic report to TERO with each payment containing the total amount of the payment, a copy of the invoice submitted with the payment, and the name and date of the Compliance agreement that covers the activities for which payment was made.
- (5) **Payment Obligation.** Covered Employers or Tribal entities paying on behalf of Covered Employers shall pay TERO fees according to this Code.
- (6) **Late payments.** All late payments will be charged three percent interest calculated on a monthly basis.

- (7) **Fee Enforcement.** Fee collection enforcement and property seizure provisions shall be pursuant to enforcement provisions in Article 11.
- (8) **Recordkeeping.** Tribal entities shall maintain Contracts and all documents related to fee amounts and payments for at least seven years after the completion of the project or Contract. Tribal entities shall make the Contract and supporting documents available for inspection on request by TERO. If the documents are not kept on Tribal land, Tribal entities shall make the documents available for inspection at their place of business or bring the documents to the TERO office for inspection within seven business days after the request.

## Article 9. COMPLAINTS

- 17-9-101. Complaints by TERO.** If TERO believes that a Covered Employer or a Contractor that has been awarded a Contract for work on ~~Reservation lands subject to the jurisdiction of the Tribe~~ Tribal land has failed to comply with this Code or any rules, regulations, or order of TERO or the Commission, it may, after notifying the alleged violator and attempting to achieve informal settlement of the matter, file a complaint with the Commission.
- 17-9-102. Complaint by Individual.**
- (1) If ~~an Indian~~ a Native American Employee, employment applicant, Native American Owned Business, or other Contractor believes that a Covered Employer has violated the express provisions of this Code, he may file an informal complaint with TERO that states with specificity the alleged violation under Article 4 or Article 5 of this Code.
  - (2) Upon receipt of the complaint, TERO shall investigate the allegations of the complaint. Covered Employers shall turn over requested documentation to TERO no later than 15 business days from the date of the request. If TERO determines there is good cause to believe that an identified section of Article 4 or 5 of this Code has been violated, it shall attempt to reach an informal settlement of the matter. If there is no substantial evidence that a specific section of this Code has been violated, TERO shall dismiss the informal complaint and the matter shall be closed.
  - (3) If settlement of the informal complaint cannot be achieved, or the requested documents are not provided by the Covered Employer, the ~~Indian~~ Native American Employee, applicant, Native American-Owned

Business, or other Contractor may file a formal complaint with the Commission. The formal complaint is a separate document from the informal complaint and must identify with specificity the section of Article 4 or 5 of this Code that has been violated and provide evidence supporting the alleged violation. If the ~~Indian~~ Native American Employee, applicant or Contractor fails to file a formal complaint or files a formal complaint that fails to state a claim for violation of this Code, TERO shall dismiss and close the matter.

**17-9-103** ~~**Time Limitation.** An informal complaint must be filed within 90 calendar days of the occurrence of the incident that constitutes the alleged violation of this Code or within 90 calendar days of discovery of the alleged violation. A formal complaint must be filed within 90 calendar days of the determination by TERO that a settlement of the informal complaint cannot be achieved.~~ **Complaints by Covered Employers.** If a Covered Employer believes that TERO failed to comply with this Code or any rules, regulations, or orders of TERO or the Commission is in error, the Covered Employer shall file a written informal complaint with TERO containing sufficient information and any relevant documentary or other evidence the Covered Employer believes supports its claim. If the matter cannot be resolved through the informal complaint and settlement process with TERO, the Covered Employer may file a formal complaint with the Commission.

**17-9-104.** **Time Limitation.** An informal complaint must be filed within 90 calendar days of the occurrence of the incident that constitutes the alleged violation of this Code or within 90 calendar days of discovery of the alleged violation. A formal complaint must be filed within 90 calendar days of the determination by TERO that a settlement of the informal complaint cannot be achieved.

#### **Article 9.5. INSPECTIONS AND PENALTIES**

**17-9.5-101.** **Inspections.** TERO may conduct inspections to ensure compliance with this Code, either with or without notice, during regular business hours, either at the work site or in meetings with Covered Employers while on Tribal land. TERO representatives will identify themselves and provide credentials prior to conducting an inspection and will follow all reasonable safety and compliance directions as long as, in the determination of the inspector, those directions are not intended to prevent TERO from conducting an inspection.

**17-9.5-102.** **Audits.**

- (1) Covered Employers shall make all records required to be kept by this Code available for examination by TERO or its authorized agent. TERO may use information obtained and copies of documents obtained in an audit in an enforcement action to the extent necessary to provide evidence of a violation.
- (2) Covered Employers may request a determination of confidentiality for any documents that the Covered Employer believes should be protected as Nondisclosable Confidential Business Information. TERO, or its authorized agent, will determine if the documents meet the requirements for Nondisclosable Confidential Business Information under this Code. A determination of Nondisclosable Confidential Business Information does not preclude TERO from using relevant information from the documents in an enforcement action, only that TERO will not disclose any confidential information in the documents that is not relevant to the enforcement action and will handle and dispose of the documents to ensure that their confidentiality is maintained. Any Person involved in an administrative or Court proceeding involving Nondisclosable Confidential Business Information shall maintain the confidentiality of the information and documents and dispose of them as directed by TERO, an administrative hearing officer, or Court.

**17-9.5-103. Penalties.**

- (1) The following penalties shall apply to violations of the Code provisions:
  - (a) Failure to comply with business registration, Compliance agreement, and Employee identification code regulations - \$500 (first notification); \$1,000 (second notification).
  - (b) Failure to obtain an approved Compliance agreement prior to commencing work – \$1,000 (first notification); \$2,000 (second notification); suspension and revocation of business registration (third notification).
  - (c) Failure to comply with a reasonable request for inspection during regular work hours at the work site - \$1,000 (first notification); \$1,500 (second notification)
  - (d) Failure to comply with an audit - \$1,500 (first and second notifications) \$1,750 (third notification).
  - (e) Failure to comply with recordkeeping requirements - \$1,500 (first and second notifications) \$1,750 (third notification).

- (f) Failure to report Contract changes - \$1,000 (first notification); \$1,500 (second notification)
  - (g) Failure to pay a TERO fee on the quarterly date specified in the Compliance agreement- \$1,000 (first notification); \$2,000 (second notification); suspension and revocation of business registration (third notification).
- (2) **Citations.** To assess a penalty, TERO shall issue a citation stating the name of and contact information for the Covered Employer, date and location of the violation, a description of the facts related to the violation, and any other relevant information along with the signature of a compliance officer or other authorized TERO representative. Covered Employers may contest a TERO citation to TERO in accordance with Article 9.
- (3) **Additional Remedies.** In addition to the penalties included in this section, TERO may also issue a stop work order to the Covered Employer, a stop payment order to the Tribe, or request a Court order to secure equipment at the worksite located on Tribal land.

**17-9.5-104. Records.** All records, documents, and information obtained by any Person pursuant to this Code shall be confidential and maintained and stored in confidential files by TERO. Confidential material shall be available only to TERO, the TERO Commission, the Tribal Council, Tribal Court, or any Person authorized under this Code or for other lawful Tribal purposes as determined by the Tribal Council.

## Article 10. HEARINGS AND APPEALS

**17-10-101. Notice.** If a formal complaint is filed with the Commission, the following notice procedures shall apply:

- (1) The Commission shall review the formal complaint to determine whether it states a claim for violation of a provision ~~of Article 4 or Article 5~~ of the TERO Code. If the Commission determines that the formal complaint fails to state a claim, notwithstanding any prior determination of TERO to the contrary, it shall dismiss the formal complaint and close the matter. If the Commission determines that the formal complaint states a claim for violation of a specifically identified section ~~of Article 4 or Article 5~~ of the TERO Code, it shall set the matter for hearing.

- (2) The alleged violator, the complainant and TERO shall be given notice of the hearing at least 30 calendar days prior to the hearing. A copy of the formal complaint shall be given to the alleged violator at the same time as the notice of hearing.
- (3) Notice shall be given pursuant to the Tribal Civil Procedure Code.

**17-10-102. Hearing Procedure.** Hearings shall be governed by the following rules of procedure and such other rules as may be adopted by the Commission:

- (1) The Commission, in its sole discretion, may refer the conduct of a hearing on any formal complaint to the Southern Ute Administrative Appeals and Hearings Office (AAHO). Upon referral, the AAHO shall conduct the hearing in accordance with these rules, such other rules as have been adopted by the Commission and those AAHO rules of procedure that are not inconsistent with these rules and other rules adopted by the Commission. When a referral is made, references in Sections 17-10-102, 17-10-103, 17-10-104, 17-10-105 and 17-11-101 to the “Chairman of the Commission” or the “Commission” shall be deemed to apply to the AAHO. TERO shall refer the matter to the AAHO and the AAHO shall conduct the hearing when there is not a full serving quorum of the Commission available within the time frame set for conducting the hearing.
- (2) The Chairman of the Commission shall preside over the hearing and shall have the authority to administer oaths and affirmations to witnesses.
- (3) All parties may be represented by counsel at their own expense.
- (4) The Commission may have the advice and assistance of legal counsel for the Tribe at the hearing.
- (5) The Chairman of the Commission shall have the authority to sign and issue subpoenas.
- (6) The Commission may, in its sole discretion, hold a pre-hearing conference to narrow the issues in the matter, schedule hearings, identify witnesses, ensure that subpoenas are issued in a timely manner and take any other actions that will simplify the hearing and increase the overall efficiency of the hearing process.

- (7) All parties have the right to testify, present testimony of witnesses and other relevant evidence, and to ask questions of witnesses. Prior to giving testimony, witnesses may be excluded from any hearing at the sole discretion of the Commission.
- (8) Formal rules of evidence and procedure need not be followed, but the Commission shall determine the facts in a fair, reasonable and orderly fashion and may exclude evidence that is irrelevant or cumulative.
- (9) Prior to the commencement of a hearing, the Commission may require the parties to meet to discuss whether a settlement can be reached.
- (10) The initial burden of proof shall be on the complainant to establish a violation of a provision of Article 4 or 5 of the TERO Code. Once facts have been established that would constitute a violation, the burden of proof shall be on the Employer or Contractor to prove compliance with this Code.
- (11) All matters at issue must be proven by a preponderance of the evidence.
- (12) In the event a party does not make an appearance at the date and time set for hearing, the Commission shall enter a default judgment against that party, provided, however, that proper notice has been given and such proof of notice is on file.
- (13) A record of the hearing shall be kept by audio recording.
- (14) Hearings may be continued for good cause.
- (15) A written decision shall be issued within 30 calendar days after the hearing with copies mailed to all parties.
- (16) Notice of the right to appeal to the Tribal Court shall be included with the Commission's decision.

**17-10-103. Commission Order.** If after a hearing, the Commission finds that an Employer or Contractor has violated this Code, the Commission shall enter an order which may include any of the following:

- (1) Denial of the right to commence or continue business on Tribal land ~~subject to the jurisdiction of the Tribe, provided~~, however, that this

provision shall not apply to any governmental or business entity of the Southern Ute Indian Tribe.

- (2) Issuance of one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of non-~~Indian~~ [Native American](#) Employees, injunctive relief, and mandated corrective action to cure the violation; provided, however, that liability for back pay or other forms of compensatory damages shall not accrue from a date more than 90 calendar days prior to the date of the filing of the complaint.
- (3) Imposition of civil penalties, upon a finding of intentional violation.
- (4) Mandated corrective action to ensure compliance with this Code or to remedy any harm caused by the violation of the Code, consistent with the requirements of the Indian Civil Rights Act.
- (5) An award of attorney's fees and costs in the case of an individual suit initiated pursuant to § 17-9-102, if either the respondent's or complainant's position lacked substantial justification.
- (6) Other provisions deemed necessary by the Commission.

**17-10-104. Appeal to Tribal Court.**

- (1) Any Person adversely affected by an order of the Commission may seek judicial review within 30 calendar days of such order by filing for review in accordance with the Tribal Appellate Code. Except as otherwise stated herein, the procedures stated in the Appellate Code shall be applied by the Tribal Court in the conduct of this review.
- (2) Review by the Tribal Court shall be limited to the record made at the Commission hearing. The Tribal Court shall not substitute its judgment for that of the Commission as to the weight of the evidence on any disputed finding of fact.
- (3) The Tribal Court may reverse a Commission decision and remand the case to the Commission for an additional hearing if it finds that the decision is not supported by the record or if it finds a material error in procedure.
- (4) The Tribal Court shall reverse or modify the Commission order if it finds an error of law or if it finds the decision to be arbitrary and capricious.

- (5) Unless the Tribal Court finds cause for reversing, modifying or remanding the Commission's order, it shall affirm the Commission's action and enter an order directing its enforcement.

**17-10-105. Relief Pending Appeal.**

- (1) The commencement of appeal proceedings shall not, unless specifically ordered by the Tribal Court, operate as a stay of the Commission's order.
- (2) An application for stay shall be filed within the period prescribed for judicial review in § 17-10-104. No stay shall be granted unless the appellant demonstrates that the requirements for a stay stated in the Appellate Code at § 3-1-105 have been met.

**Article 11. TRIBAL COURT ENFORCEMENT**

**17-11-101. Enforcement by Tribal Court.**

- (1) If the Commission enters an order pursuant to § 17-10-103 that is not appealed, and there is no compliance with the order, the Commission may petition the Tribal Court for an order compelling compliance with the Commission order.
- (2) The Tribal Court shall issue an enforcement order if it appears from the petition that the Commission order was lawfully entered pursuant to a written decision following a hearing, was within the scope of the authority granted to the Commission under this Code, and that the non-complying party received notice of the Commission order.
- (3) If at any stage in the enforcement process, the Commission 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 Tribal Court will not be able to collect monetary damages or fees that are (a) owed by that party pursuant to an outstanding order of the Commission or Tribal Court, or (b) which may be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Tribal Court for a writ of attachment to secure compliance.

- 17-11-102. Enforcement by Officers.** Tribal peace officers are hereby authorized and directed to carry out the provisions of enforcement orders entered by the Tribal Court pursuant to this Article.
- 17-11-103. Penalties.** Any Person who violates an enforcement order issued by the Tribal Court shall be liable, in addition to the remedial measures contained in the Commission order, for one or more of the following:
- (1) A civil money penalty.
  - (2) A civil remedial forfeiture of any property used in the commission of a violation of an enforcement order.
  - (3) ~~Suspension or revocation of any license or permit issued to the violator by the Tribe.~~ Suspension or revocation of any business registration or Compliance agreement issued to the violator by the Tribe.
  - (4) Court costs and attorney's fees.

## **Article 12. TRIBAL COUNCIL WAIVER**

- 17-12-101. Waiver.** After notification and consultation with TERO, the Tribal Council may waive provisions of this Code if such waiver is deemed to be in the best interest of the Tribe. The waiver must be explicitly stated and authorized pursuant to a tribal resolution approved by the Tribal Council.
- 17-12-102. Emergency Waiver.** Upon declaration by the Tribal Chairman that an emergency exists that threatens the public health or safety, and which requires an immediate response, this Code may be temporarily waived, and a Covered Employer, including the Tribe, the Growth Fund, Shared Services or the Casino, may engage the services of any party reasonably necessary to address the emergency. Once the emergency conditions have been addressed, the provisions of this Code shall be fully operational and applicable.

## **TITLE 17**

### **TERO CODE**

#### **History and Amendments<sup>1</sup>**

The Southern Ute Indian Tribal Employment Rights Code adopted by Tribal Resolution No. 93-13 on February 2, 1993, approved by the Bureau of Indian Affairs and effective on June 4, 1993.

Amendments adopted to the Tribal Employment Rights Code regarding employment and contracting preference by Resolution No. 98-141 on September 9, 1998.

Approved revisions to the TERO Code by Resolution No 2006-37 on February 14, 2006.

Revised TERO Code approved by Resolution 2018-152 on August 21, 2018, approved by the Bureau of Indian Affairs and effective on February 13, 2019.

New official Tribal Code adopted with technical amendments to Title 18, TERO Code, among other Codes, by Resolution No. 2021-151, submitted to the Bureau of Indian Affairs on October 20, 2021.

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<sup>1</sup> This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.