

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 (“TERO Code” or “Code”).

17-1-102. **Purpose.** The purpose of this Code is to ~~promote the employment of Indians, in accordance with federal law, on or near the Southern Ute Indian Reservation; to provide for Indian preference in employment in accordance with federal law; to assist employers, contractors and subcontractors in the fair employment of Indians on or near the Reservation; to provide a contracting preference for Indian-owned businesses; to prevent discrimination against Indians in the employment practices of employers within the jurisdiction of the Tribe; and to establish a Tribal Employment Rights Commission and Office to further these objectives.;~~

(1) promote the employment of Native Americans and Native American family members on or near the Southern Ute Indian Reservation;

(2) to provide employment preference according to tribal law;

(3) to assist employers, contractors and subcontractors in the fair employment of Native Americans and Native American family members on or near the reservation;

(4) to provide a contracting preference for TERO-certified businesses;

(5) to prevent discrimination, unlawful, or unfair hiring practices against Native Americans by employers on tribal land; and

(6) 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~~ 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:

(a) services or labor or a combination provided for development, construction, or maintenance work for residential, commercial, industrial, oil and gas operations, and infrastructure;

(b) construction work includes doing one or more of the following:

(i) engineering or erecting any new structure, dwelling, or building;

(ii) remodeling, converting, renovating, altering, assembling, fitting-out, commissioning, de-commissioning, removing, dismantling, demolishing, repairing, or maintaining, including painting, decorating, and landscaping;

(iii) 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; or

(iv) 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~~ agreements, including those characterized as contracts or subcontracts, including; but not limited to, ~~contracts~~ agreements for supplies, services and equipment.

(4)(6) “Contractor” means a ~~Person~~ person performing work pursuant to ~~Contracts~~ contracts or subcontracts.

(5)(7) “Covered ~~Employer~~ employer” means an ~~Employer~~ 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 or persons, as defined in this Code, with 5 or more employees, doing business with the Tribe including:~~

(a) the Permanent Fund;

(b) the Growth Fund;

(c) Sky Ute Casino and Resort;

(d) Southern Ute Shared Services (SUSS);

(e) Housing Authority; and

(e) any other tribal entity, on tribal land within the exterior boundaries of the reservation.

(f) The term “covered employer” excludes:

(i) federal, state, county, and municipal governmental entities;

(g) For Articles 4 (Preference in Employment), 5 (Preference in Contracting), and 7 (Reporting), the term “covered employer”, regardless of the federal employer identification number used for particular employment positions within their organization includes:

(i) the Permanent Fund;

(ii) the Growth Fund,

(iii) Sky Ute Casino and Resort;

(iv) SUSS;

(v) Housing Authority; and

(vi) any other tribal entities.

(h) Article 8 (Fees), the term "covered employer" includes:

(i) Any covered employer doing construction work for the Tribe, the Permanent Fund, the Growth Fund, Sky Ute Casino and Resort, Housing Authority, SUSS, and any other tribal entities.

(ii) The Tribe, the Permanent Fund, the Growth Fund, Sky Ute Casino and Resort, Housing Authority, and SUSS are not "covered employers" when performing construction work itself.

(i) This Code does 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~~ person 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~~ 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~~ covered employer or not less than 6 months prior to application as ~~an Indian a Owned TERO-certified Business~~ 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~~ person who is an enrolled member of a federally recognized ~~Indian Native American~~ Tribe and, for purposes of this Code, First Descendants.

(13) "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 including;

(a) trade secrets, processes, operations, or apparatus that have commercial value;

(b) identification of customers;

(c) inventories;

(d) amount or source of income, profits, losses, or expenditures; or

(e) 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.

(14) “Non-local Native American” means a Native American residing within a 500-mile radius from the TERO office.

~~(12)~~(15) “Person” means both natural persons (human beings) and artificial persons, including but not limited to, corporations, partnerships, limited liability companies, unions, societies, sole proprietorships, joint ventures and trusts.

~~(13)~~(16) “Qualified ~~Indian Applicant~~ applicant” means ~~an Indian 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 or unlawful discriminatory impact on Indian applicants.:~~

(a) a Native American applicant or a non-Native American spouse of a Southern Ute Tribal member applicant for employment that:

(i) meets the minimum mandatory requirements of a position;
and

(ii) 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.

(iii) Factors for determination of general suitability are minimum mandatory requirements including previous employment job history and criminal history.

(iv) Established requirements may not include non-job-related requirements that have an unfair or unlawful discriminatory impact on Native American applicants or non-Native American spouses of Southern Ute Tribal member applicants.

~~(14)~~(17) “Reservation” means the Southern Ute Indian Reservation.

~~(15)~~(18) “TERO” means the Tribal Employment Rights Office.

~~(9)~~(19) “~~Indian Owned~~ TERO-certified Business-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 or Local Indians~~ TERO-preference recipients and which is ~~so~~ certified in accordance with Article 6 ~~herein of~~ this Code.

(20) “TERO-preference recipient” means enrolled Southern Ute Tribal members, First Descendants, enrolled members of the Ute Mountain Ute and Ute Indian Tribes, Native American spouses of Southern Ute Tribal members, non-Native American spouses of Southern Ute Tribal members, local Native Americans, and non-local Native Americans.

~~(16)~~(21) “Tribal Council” means the Southern Ute Indian Tribal Council.

~~(17)~~(22) “Tribal Court” means the Southern Ute Tribal Court.

(23) “Tribal entity” means a business or person (as defined in this Code), that is at least 51% owned and controlled by the Tribe.

(24) “Tribal land” for the purposes of this Code, means when a covered employer performs any work on the following:

(a) tribal trust land;

(b) tribal fee land;

(c) allotments within the exterior boundaries of the reservation;

(d) any right-of-way bounded on either side by tribal trust land, tribal fee land, or allotments.

~~(18)~~(25) “Tribe” means the Southern Ute Indian Tribe, and each of its departments and divisions, including the Permanent Fund, the Growth Fund, Southern

Ute Shared Services (“SUSS”), Sky Ute Casino and Resort, and the Housing Authority, as well as all wholly or majority owned tribal entities.

(26) “Undue burden” means causing significant difficulty or expense on the business or service of the covered employer.

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

17-1-104. Scope of Applicability.

(1) The Tribe has chosen to apply this Code to the lands and properties described in this Code solely for administrative purposes.

(2) The Tribe may amend the Code to include additional lands and properties subject to the Tribe’s jurisdiction in the future.

(3) 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~~ TERO-preference requirements on ~~lands subject to the Tribe's jurisdiction~~ tribal lands.
- (4) To process requests by ~~Employers~~ employers for ~~Indian~~ TERO-preference-recipient ~~Employees~~ 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~~ commission, ~~from against~~ any ~~Indian Owned~~ TERO-certified Business business or ~~Covered Employer~~ covered employer who fails to comply with the reasonable instructions of TERO.
- (7) To issue probationary certifications and to make recommendations to the ~~Commission~~ commission concerning final certification or decertification of businesses as ~~Indian Owned~~ TERO-certified Businesses businesses.
- (8) To maintain a list of ~~TERO-certified Indian Owned~~ certified Businesses businesses and to review their status with the ~~Commission~~ commission on an annual basis.
- (9) To advise the ~~Director~~ TERO division head and recommend review of ~~Indian-Owned~~ TERO-certified businesses whose eligibility for certification becomes questionable based on ownership or performance on ~~Contracts~~ contracts.
- (10) To establish and maintain a skills bank to assist ~~Employers~~ employers by referring ~~Qualified Indian Applicants~~ qualified applicants for available job positions.
- (11) To file formal complaints with the ~~Commission~~ commission as set forth herein.
- (12) To coordinate with the ~~Personnel/Human Resource Departments~~ human resource departments of the Tribe, including the Permanent Fund, the Growth Fund, SUSS, and Sky Ute Casino and Resort, as well as the Tribal Higher Education Department, to determine and address training needs for ~~Indians~~ Native Americans and ~~Indian Owned~~ TERO-certified Businesses 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.~~

(a) [Formerly the second sentence of 17-2-102(13)] ~~Provided, however, that no~~ 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.~~ TERO Division Head. The ~~Director of~~ TERO division head shall be hired in accordance with Southern Ute Tribal Personnel Policies and Procedures. The TERO ~~Director~~ division head shall have the following responsibilities:

- (1) To administer all TERO programs.
- (2) To hire and supervise TERO ~~Employees~~ staff pursuant to the Southern Ute Tribal Personnel Policy and Procedures.
- (3) To process ~~Indian Owned~~ TERO-certified Business 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~~ commission for decertification of a listed ~~Indian -Owned~~ TERO-certified Business 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~~ covered employers in pursuing whatever corrective actions are necessary for such ~~Covered Employers~~ covered employers to come into compliance with the requirements set forth in this Code or with ~~Commission~~ commission rules and regulations.

Article 3. TRIBAL EMPLOYMENT RIGHTS COMMISSION

17-3-101. Establishment of Commission.

- (1) The ~~Commission~~ commission is hereby established to carry out the powers and duties set forth in this Code.
- (2) ~~Commission members~~ Commissioners shall be appointed by the Tribal Council and shall serve until resignation or replacement. ~~The membership shall be composed of the following 5 regular members and one alternate who shall each be enrolled members of the Southern Ute Indian Tribe:~~
- (3) **[Similar to the second sentence of 17-3-101(2)]** The commission shall be composed of the following:
- (a) 5 regular commissioners;
 - (b) one ex officio Tribal Council member; and
 - (c) one alternate.
- (4) At least 3 commissioners shall be enrolled Southern Ute Indian Tribal members.
- (5) **[Similar to the second sentence of 17-3-101(2)]** The commission must make best efforts to include:
- (a) one person with tribal regulatory knowledge and experience;
 - (b) one person with knowledge and experience in tribal energy resource development;
 - (c) one person with knowledge and experience in tribal economic development;
 - (d) two commissioners who are not currently employed by the Tribe or a tribal entity or division;
 - (e) one person that does not have an ownership interest in or is employed by a TERO-certified business;

- (f) a Tribal Council member who may serve as an ex officio commissioner; and
- (i) The Tribal Council member may not serve as TERO commission chairman, and cannot vote on matters before the commission.
- (ii) The Tribal Council member shall:
- (A) be selected by the Tribal Council;
- (B) shall serve for the duration of their Tribal Council term, unless the Tribal Council removes them from the commission before their Tribal Council term expires.
- (iii) The Tribal Council ex-officio member is not subject to the term or removal provisions of § 17-3-103.
- (g) at least one First Descendant of an enrolled member of the Tribe.

~~(3)~~(4) The ~~Chairman~~ chairman of the ~~Commission~~ commission shall be designated by the ~~Commission~~ commission and shall preside over all meetings of the ~~Commission~~ commission. The ~~Commission Chairman~~ commission chairman shall be entitled to vote on all matters before the ~~Commission~~ commission the same as other members.

~~(4)~~(5) Three ~~members of the Commission~~ commissioners shall constitute a quorum.

~~(5)~~(6) ~~Commission Commissioners~~ members shall disqualify themselves from proceedings in cases that present a conflict of interest.

~~(6)~~(7) When a ~~Commissioner~~ commissioner has been disqualified with regard to a matter before the ~~Commission~~ commission, the ~~Chairman~~ chairman of the ~~Commission~~ commission may substitute an alternate with similar qualifications to serve as a ~~Commissioner~~ commissioner for that particular matter.

~~(7)~~(8) Commissioners who are not otherwise compensated by the ~~tribe~~ Tribe by ~~Contract~~ contract or through employment shall be compensated at the same daily rate as ~~Gaming Commissioners~~ gaming commissioners.

(9) 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~~ 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~~ commissioner serves less than a full 3-year term.

17-3-103. Removal. A ~~Commissioner~~ 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~~ commissioner's unfitness for continued service.

17-3-104. Powers of the Commission. The ~~Commission~~ 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~~ 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.~~

(a) [Formerly the second sentence of 17-3-104(1)] ~~provided, however, with the sole exception of~~ Except for rules or regulations governing hearing proceedings before the ~~Commission~~ commission, 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.

(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~~ TERO-certified ~~Owned Businesses~~ business;

(4) To approve de-certification for any business no longer meeting the requirements for certification as ~~an Indian Owned~~ a TERO-certified Business ~~business~~, including requirements related to the ownership or

management structure of the ~~Indian Owned~~ TERO-certified Business
business or the performance history and qualifications of the ~~Indian~~
~~Owned~~ TERO-certified Business-business;

(5) To regulate collective bargaining agreements of any ~~Covered Employer~~
covered employer, as well as to regulate collective bargaining by
~~employees~~ employees of a ~~Covered Employer~~ covered employer;

(6) To impose appropriate sanctions and grant any relief authorized by this
Code; and

(7) To take such other lawful actions as are necessary to achieve the purposes
and objectives inherent in the policy of ~~Indian~~ TERO preference in
employment and contracting.

Article 4. ~~INDIAN~~ TERO PREFERENCE IN EMPLOYMENT

17-4-101. Preference Policy.

(1) Every ~~Covered Employer~~ covered employer is required to give
employment preference to ~~Qualified Indian Applicants~~ qualified applicants
~~in accordance with~~ according to this Code ~~in when~~ 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) Covered employers must give preference to qualified Native American
applicants when promoting, lay-offs, and training for work performed on
tribal land.

(a) Preferences for promotion, lay-offs, and training for work
performed on tribal land does not extend to non-Native American
spouses of Tribal members.

~~(2)~~(3) A ~~Covered Employer~~ 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~~ covered employer may not hire any ~~Person~~ person not entitled to preference ~~pursuant to~~ under this Code for work on ~~land~~ subject to the jurisdiction of the Tribe tribal land until the ~~Covered Employer~~ covered employer has given TERO a reasonable time to locate a ~~Qualified Indian Applicant~~ qualified applicant or to communicate to the ~~Covered Employer~~ covered employer that no ~~Qualified Indian Applicant~~ qualified applicant is available to fill the job.
- (2) For purposes of this section, “reasonable time” ~~shall be~~ is defined as follows:
 - (a) For ~~construction~~ construction jobs, TERO shall have 72 hours to refer a ~~Qualified Indian Applicant~~ qualified applicant.
 - (b) For all other kinds of employment, TERO shall have 5 working days to refer a ~~Qualified Indian Applicant~~ qualified applicant.
 - (c) TERO may reduce these time periods if they would impose an undue burden upon the ~~Covered Employer~~ 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~~ covered employer may set the job requirements for ~~employee~~ employee hiring; ~~provided, however, that such requirements may not include non-job-related qualifications that have a discriminatory impact on Indian applicants. but cannot set requirements that:~~
 - (a) have non-job-related qualifications;
 - (b) have a discriminatory impact on qualified applicants;
 - (c) are unlawful;
 - (d) have an unfair impact on qualified applicants; or
 - (e) require qualifications that are not critical to performing the job.
- (5) Every ~~Covered Employer~~ 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~~ covered employer is setting discriminatory job qualifications, it shall first attempt to meet with the ~~Covered Employer~~ covered employer and resolve the matter informally. If informal resolution is unsuccessful, TERO may file a complaint against the ~~Covered Employer~~ covered employer pursuant to § 17-9-101.

(7) A ~~Covered Employer~~ covered employer may recruit and hire ~~Employees~~ employees or trainees from whatever source and by whatever process the ~~Covered Employer~~ covered employer chooses; however, the ~~Covered Employer~~ covered employer must notify TERO and provide a list of ~~Employees~~ employees hired.

(a) A covered employer must report to TERO within 10 business days after the position has been filled by whatever tier is applicable.

(b) This report must include the applicant's name, position, date of hire, and rate of pay.

(b) To ensure compliance with Article 4, covered employers shall provide wage scales for all positions annually.

(8) A ~~Covered Employer~~ covered employer shall advertise and announce all job vacancies 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~~ following methods and according to their policies:

(a) the print and online versions of the Southern Ute Drum;

(b) on KSUT;

(c) on the Tribal member portal; and

(d) on at least one locally available online job listing service.

(9) **[Formerly 17-4-102(8)(a)] Postings for Promotion of Existing Employees.** A ~~Covered Employer may~~ covered employer must post a job vacancy internally to allow promotion of existing ~~Employees-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 when there are Tribal member employees that are qualified for the vacancy.

(10) A covered employer must announce and advertise the vacancy externally, according to this section, when:

(a) there are no Tribal member employees qualified for the vacancy; or

(b) no Tribal member is selected for the position.

(11) [Formerly 17-4-102(8)(b)] A Covered Employer 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 when:

(a) a Tribal member that is a current employee of the covered employer is selected for the employment opportunity; or

(b) a Tribal member that is a participant in an internship, trainee program, or apprenticeship program is selected for the employment opportunity.

17-4-103. Promotions.

(1) Each Covered Employer covered employer must give preference to Qualified Indian Applicants Native American applicants in all promotion opportunities.

(2) Covered Employers employers shall provide adequate advance notice of promotion opportunities to their current Indian Native American Employees employees.

17-4-104. Lay-Offs.

(1) Each Covered Employer 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~~ covered employer may not lay-off or terminate ~~an Indian~~ a Native American ~~Employee~~ employee as a result of lay-off or reduction in work force if a ~~non-Indian~~ non-Native American ~~Employee~~ employee in the same job classification and with the same seniority is still employed.

17-4-105. Training. Each ~~Covered Employer~~ covered employer must give preference to ~~Qualified Indian~~ qualified Native American ~~Applicants~~ applicants in existing training or apprenticeship programs. Every ~~Covered Employer~~ 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 First Descendants of enrolled members of the Southern Ute Indian Tribe.

- ~~(2)~~(3) ~~Second~~ Third preference shall be given to ~~Indians~~ Native Americans who are legally married to enrolled members of the Southern Ute Indian Tribe.

- (4) Fourth preference shall be given to non-Native Americans who are legally married to enrolled members of the Southern Ute Indian Tribe.

- ~~(3)~~(5) ~~Third~~ Fifth preference shall be given to enrolled members of the Ute Mountain Ute and ~~Northern~~ Ute Indian tribes.

- ~~(4)~~(6) ~~Fourth~~ Sixth preference shall be given to ~~Local Indians~~ local Native Americans.

- ~~(5)~~(7) ~~Fifth~~ Seventh preference shall be given to non-~~Local~~ local ~~Indians~~ Native Americans.

17-4-107. Collective Bargaining Agreements.

- (1) All transaction documents, including without limitation, leases, subleases, ~~Contracts~~ contracts, subcontracts, permits, and collective bargaining agreements between ~~Covered Employers~~ covered employers and labor organizations that are entered into by or issued to any ~~Covered Employer~~ covered employers 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~~ covered employers 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~~ employee of the Tribe, ~~including Employees of the Tribe, at the Permanent Fund, the~~ Growth Fund, ~~Shared Services~~ SUSS or the Sky Ute Casino and Resort, may enter into a collective bargaining agreement.

Article 5. PREFERENCE IN CONTRACTING AND SUBCONTRACTING

17-5-101. Contract Preference Policy.

- (1) All ~~Covered Employers~~ covered employers awarding ~~Contracts~~ contracts shall give preference to ~~certified Indian Owned~~ TERO-certified Businesses 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 work under the ~~Contract~~ contract will occur on tribal lands ~~subject to the jurisdiction of the Tribe~~.
- (2) If a qualified ~~Indian Owned~~ TERO-certified Business business participates in the bidding process, then the contracting entity shall give preference to such bidder if the ~~Indian Owned~~ TERO-certified Business' business' initial bid or resubmitted bid is no more than 5% higher than the lowest bid received.
- (3) Before a ~~Covered Employer~~ covered employer can reject a qualified ~~Indian Owned~~ TERO-certified Business business on the basis of its bid, it must offer the ~~Indian Owned~~ TERO-certified Business business a single opportunity to resubmit a revised bid. In requesting and/or receiving revised bids from ~~Indian Owned~~ TERO-certified Businesses businesses, the ~~Covered Employer~~ covered employer shall not, in any circumstance, disclose any other bids received.

17-5-102. Determination of Technical Qualifications.

- (1) All ~~Covered Employers~~ covered employers awarding ~~Contracts~~ contracts under this Article shall have the discretion to determine technical qualifications for the recipients of the awarded contract. However, if the ~~Covered Employer~~ covered employer determines that there are no ~~Indian Owned~~ TERO-certified Businesses businesses that are technically qualified, the ~~Covered Employer~~ covered employer must provide to each

~~Indian Owned~~ TERO-certified Business business it rejects a written description of areas in which it believes the business is weak and steps the ~~Indian Owned~~ TERO-certified Business business could take to upgrade its qualifications. A ~~Covered Employer~~ covered employer may also be required to cooperate in establishing a ~~tribal~~ Tribal member or ~~Indian Owned~~ TERO-certified Business business training program, coordinated with and fully funded by TERO.

(2) If a ~~Covered Employer~~ covered employer determines that ~~an Indian Owned~~ a TERO-certified Business business lacks the technical qualifications to perform all of the work required under the proposed ~~Contract~~ contract, the ~~Covered Employer~~ covered employer shall make a good faith effort to divide the scope of work requirement into small ~~Contracts~~ contracts or components, so that the ~~Indian Owned~~ TERO-certified Business business can qualify for a portion of the work or provide a written explanation as to why the ~~Contract~~ contract cannot be so divided. Such written explanation shall be provided to the disqualified ~~Indian Owned~~ TERO-certified Business business.

(3) If ~~an Indian~~ a Owned TERO-certified Business business disqualified on technical qualification grounds believes that the disqualification was the result of an improper effort by a ~~Covered Employer~~ covered employer awarding the ~~Contract~~ contract to circumvent its preference responsibilities under this Article, the ~~Indian Owned~~ TERO-certified Business business may file a written complaint pursuant to § 17-9-102.

17-5-103. Priority of Contract Preference. The ~~Indian Contract~~ contract preference for TERO-certified businesses provided for in this Code shall be given in the following priority:

(1) First preference shall be given to ~~Indian~~ Native American-Owned Businesses owned businesses controlled by enrolled members of the Southern Ute Indian Tribe.

(2) Second preference shall be given to First Descendant-owned businesses controlled by First Descendants of enrolled members of the Southern Ute Indian Tribe.

~~(2)~~(3) ~~Second~~ Third preference shall be given to ~~Indian-Native American-Owned Businesses~~ owned businesses controlled by ~~Indians~~ Native Americans who are legally married to enrolled members of the Southern Ute Indian Tribe.

(4) Fourth preference shall be given to businesses owned and controlled by non-Native Americans who are legally married to enrolled members of the Southern Ute Indian Tribe.

~~(3)~~(5) ~~Third~~ Fifth preference shall be given to ~~Indian~~ Native American-Owned Businesses owned businesses controlled by enrolled members of the Ute Mountain Ute and ~~Northern~~ Ute Indian tribes.

~~(4)~~(6) ~~Fourth~~ Sixth preference shall be given to ~~Indian~~ Native American-Owned Businesses owned businesses controlled by ~~Local Indians~~ local Native Americans.

(7) Seventh preference shall be given to Native American-owned businesses controlled by non-local Native Americans.

~~(5)~~(8) In the event that there are 2 or more businesses entitled to preference within ~~any of the above listed~~ the same preference category, ~~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~~ the preference must be given as follows:

(a) a 100% Native American owned business gets preference over a less than 100% Native American owned business;

(b) a business located within the exterior boundaries of the reservation gets preference over a businesses located off the reservation.

17-5-104. Applicability.

(1) These bid award procedures shall not apply to the award of ~~Contracts~~ 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~~ tribal department, division, entity or enterprise selects a ~~Contractor~~ contractor other than in accordance with the priorities listed in § 17-5-103, it must indicate the steps taken to award the ~~Contract~~ contract in accordance with those priorities and the reasons for its selection when submitting a ~~Contract~~ contract to the Tribal Council for approval.

17-5-105 Conflict of Interest.

- (1) **Conflict of Interest for Construction Work.** Any member of Tribal Council, the commission, or an employee of the Tribe, that has entered into or seeks to enter into a contract for construction work with the Tribe must get Tribal Council approval before work begins.
- (2) **Disclosure to TERO.** Any member of Tribal Council, the commission, or employees of the Tribe must disclose to TERO any interest in or employment with any person that has or seeks to enter a construction contract with the Tribe.
- (3) **Tribal Laws and Policies Apply for Other Contracts with the Tribe.** Tribal Council members, commissioners, or employees of the Tribe must follow applicable tribal laws and policies when entering into any contracts with the Tribe, whether acting in their personal capacities or on behalf of a business that may create a conflict of interest.

Article 6. CERTIFICATION OF ~~INDIAN OWNED~~ TERO-CERTIFIED BUSINESSES

TERO-Certified Business Requirements. An applicant for certification as ~~an Indian a~~ TERO-certified ~~Owned-Business~~ 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 or Local Indians~~ TERO-preference recipient own(s) 51% or more of the partnership, corporation, joint venture, or other business arrangement for which certification is sought.
 - (b) Such ~~Indian~~ TERO-preference-recipient ownership must be embodied in the organizational documents of the business.
 - (c) The ~~Indian~~ TERO-preference-recipient ownership must have a majority of the voting rights or employ a decisional mechanism for making all decisions of the business.
 - (d) The ~~Indian~~ TERO-preference-recipient 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~~ TERO-preference-recipient 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 ownership through a promissory note, the holder of which is the non-Indian 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 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 preference program in existence.~~

(a) [Formerly the second sentence of 17-6-101(2)] Purchase of the ~~Indian~~ TERO-preference-recipient's ownership through a promissory note, the holder of which is ~~the non-Indian~~ not a TERO-preference-recipient owner of the business or an immediate relation thereof or through any similar arrangement is not real value unless:

(i) [Formerly the second sentence of 17-6-101(2)] ~~a)~~ the applicant makes a convincing showing that the ~~Indian~~ TERO-preference-recipient ownership brought special skills or similar benefits to the business; and

(ii) [Formerly the second sentence of 17-6-101(2)] ~~b)~~ that there is good reason to believe the arrangement would have been entered into even if there were no ~~Indian~~ TERO-preference program in existence.

(3) **Profits.** The ~~Indian~~ TERO-preference-recipient ownership must be entitled to receive at least 51% of all business profits. If the non-~~Indian~~ TERO-preference-recipient 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~~ TERO-preference-recipient owners is substantially involved as a senior level official in the day-to-day management of the business as ~~his~~ their primary employment activity. ~~Although the Indian 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) [Formerly the second sentence of 17-6-102(1)] Although the Indian TERO-preference-recipient owner does not have to be the ~~Chief Executive Officer~~ chief executive officer, ~~he~~ the TERO-preference-recipient owner must, through prior experience or training, have substantial occupational ties to the business and therefore be qualified to serve in a senior level position.

(3) [Formerly the third sentence of 17-6-102(1)] ~~He~~ The TERO-preference recipient-owner must also be sufficiently knowledgeable about the business to be accountable to the Tribe for the business' activities.

~~(2)~~(4) Joint Venture Applicants. Any joint venture applicant must also demonstrate that the ~~Indian~~ TERO-certified business is, in fact, ~~the controlling partner in the joint venture; that the Indian partner has the experience and expertise to manage the entire operation; and that the non-Indian partner is providing specialized resources or expertise to the joint venture and is not, in fact, the manager.~~

(a) [Formerly the first part of 17-6-102(2)] the controlling partner in the joint venture;

(b) [Formerly the second part of 17-6-102(2)] that the ~~Indian~~ TERO-preference-recipient partner has the experience and expertise to manage the entire operation; and

(c) [Formerly the last part of the 17-6-102(2)] that the non ~~Indian~~ TERO-preference-recipient 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 TERO 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 TERO preference program:

(1) Whether the history of the ~~firm~~ business demonstrates it was established primarily to take advantage of the Indian TERO-preference program, particularly in cases where the ~~firm~~ business was originally ~~a non-Indian~~ not a TERO-preference-recipient-owned business, or associated with a non-Indian TERO-preference-recipient-owned business, which gained little in

terms of capital, expertise, and equipment by adding ~~Indian~~ TERO-preference-recipient ownership or merging with the ~~Indian~~ TERO-preference-recipient business.

(2) Whether key non-~~Indian~~ TERO-preference-recipient ~~Employees~~ employees of the applicant are former ~~Employees~~ employees of a non-~~Indian~~ TERO-preference-recipient firm with which the ~~Indian~~ TERO-preference-recipient firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-~~Indian~~ TERO-preference-recipient-firm is controlling the applicant.

(3) Whether the experience, expertise and resources of the non-~~Indian~~ TERO-preference-recipient ownership are so much greater than those of the ~~Indian~~ TERO-preference-recipient ownership that there is little sound business reason for the non-~~Indian~~ TERO-preference-recipient ownership to accept a junior role in the business other than to be able to take advantage of the ~~Indian~~ TERO-preference program.

17-6-104. Probationary Certification.

(1) Probationary certification may be granted for up to 6 months, and ~~Indian~~ TERO-certified ~~Owned Business~~ 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~~ 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 division head 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 Owned Business certification~~ TERO-certified businesses, the ~~Director~~ TERO division head shall issue the applicant a probationary certification for up to 6 months as ~~an Indian-a Owned TERO-certified Business-business~~. If the TERO ~~Director~~ division head determines that the applicant fails to meet one or more of the requirements for ~~Indian Owned Business TERO-business~~ certification, the TERO ~~Director~~ division head 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~~ division head's probationary certification decision, it may file a formal complaint with TERO within 30 calendar days of receipt of the TERO ~~Director's~~ division head's probationary certification decision.

(3) **Final Certification Determinations.**

- (a) The ~~Commission~~ commission shall review an application for full certification within 30 days of receiving an application.
- (b) The ~~Commission~~ 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~~ grant full certification;
- (ii) ~~Continue~~ continue the probationary period for an additional 6 months; or
- (iii) ~~Deny~~ deny certification.

17-6-106. Hearings.

- (1) The ~~Commission~~ commission shall hold hearings on challenges to TERO decisions on probationary certification and on ~~Commission~~ 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~~ division head, and witnesses who have been granted an opportunity by the ~~Commission~~ commission to participate shall be entitled to present evidence at the hearing.
- (3) Any interested ~~Person~~ person, other than an owner, wishing to present information to the ~~Commission~~ 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~~ of this Code.

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~~ covered employer, on the basis of a written complaint filed by any ~~Person~~ person, including a ~~Covered Employer~~ 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~~ 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~~ of this Code. At the hearing TERO staff shall present the case for suspension or revocation and any interested ~~Person~~ person, having submitted a timely written request to participate, may also present information to the ~~Commission~~ commission.
- (5) If the complaint is substantiated at the hearing, the ~~Commission~~ commission may take any of the following actions:

LS-24-02.v.6.5 for BIA review. Includes technical revisions such as underlining additions and proper capitalization.

- (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. EMPLOYER REGISTRATION, COMPLIANCE AGREEMENTS, AND TERO-CERTIFIED BUSINESS 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. Business Registration and Compliance Agreements.

- (1) Every employer performing construction work on tribal land must submit a business registration to TERO before beginning any work on tribal land.
- (2) Every employer performing construction work must sign a compliance agreement if required by TERO, on forms provided by TERO, before beginning any work on tribal land.

17-7-102. ~~Indian Owned TERO-Certified~~ Businesses Reporting.

- (1) Each ~~Indian Owned~~ TERO-certified ~~Business~~ business shall report to TERO, in writing, any changes in its ownership or control within 30 calendar days of such changes.
- (2) Each ~~Indian Owned~~ TERO-certified ~~Business~~ 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

LS-24-02.v.6.5 for BIA review. Includes technical revisions such as underlining additions and proper capitalization.

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, ~~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)~~ **[Relocated to 17-8-103(2)].**

~~(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 or as agreed to 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) The Tribe may pay fees on behalf of covered employers doing construction work for the Tribe.
- (3) **[Similar to 17-8-101(3)]** TERO fees shall be deposited in the TERO fund as a separate line item to be used to fund training, apprenticeship programs, temporary TERO workers, the TERO Internship Program (for Tribal members), and for on-the-job training for the following:
- (a) Southern Ute Tribal members;
 - (b) First Descendants;
 - (c) local Native Americans; and
 - (d) non-local Native Americans.

17-8-103. Exemptions.

- (1) Homeowners building their own home are exempt from the construction contracting requirement. “Home” for the purposes of this section means the following:
- (a) the individual’s main residence;
 - (b) garages;
 - (c) sheds;
 - (d) barns; or
 - (e) outbuildings connected with the main residence.
- (2) **[Formerly 17-8-101(3)]** The Tribe, state, and federal governments, including their political subdivisions~~;~~₂ and non-profit organizations ~~shall~~ be are exempt from payment of TERO fees.

(3) Allottee-property owners hiring contractors for residential or agricultural improvement work on their allotments are exempt from TERO fees.

(a) This exemption applies to lease activities or businesses doing any other type of work on Native American allotments.

17-8-104. Fee Payments.

(1) **Executed Contracts Required Before Beginning Work.** Covered employers or the Tribe, if paying fees ~~FOR~~ covered employers, shall provide copies of executed contracts ~~TO~~ TERO before beginning construction work.

(2) **Payment date.** The covered employer or the Tribe paying for a covered employer, must pay TERO fees quarterly or on the dates specified in the TERO compliance agreement.

(3) **Payment Details.** The covered employer or the Tribe, if paying fees for covered employers, shall provide:

(a) invoice copies showing the full amount of the costs charged or compensation owed for that contract or project; or

(b) if invoices have not been received, a copy of the applicable work order or section in the contract showing the costs and compensation owed.

(4) **Compliance Name and Date Required on Invoice.** Each invoice or applicable document showing cost and compensation owed must contain the compliance agreement name and date.

(5) **Payment submittal.** Covered employers, or the Tribe when paying fees for covered employers, shall submit payments to TERO by mail, journal entry, or electronically along with the invoice.

(6) **Payment Report.** Covered employers or the Tribe, when paying fees for covered employers, shall submit an electronic report to TERO with each payment containing:

(a) the total amount of the payment;

(b) a copy of the invoice submitted with the payment; and

- (c) the name and date of the compliance agreement that covers the activities for which payment was made.
- (3) **Payment Obligation.** Covered employers, or the Tribe when paying fees for covered employers, shall pay TERO fees according to this Code.
- (4) **Late payments.** All late payments will be charged 3% interest calculated on a monthly basis.
- (5) **Fee Enforcement.** Fee collection enforcement and property seizure provisions shall be pursuant to enforcement provisions in Article 11.
- (6) **Recordkeeping.**
- (a) Covered employers shall maintain copies of contracts, invoices, and records of payments for at least 7 years after the completion of the project or contract.
- (b) Covered employers shall make these documents available for inspection on request by TERO.
- (c) If the documents are not kept on tribal land, covered employers shall make the documents available for inspection at their place of business or bring the documents to the TERO office for inspection within 7 business days after the request.

Article 9. COMPLAINTS

17-9-101. Complaints by TERO. If TERO believes that a ~~Covered Employer~~ covered employer or a ~~Contractor~~ contractor that has been awarded a ~~Contract~~ 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~~ orders of TERO or the ~~Commission~~ commission, it may, after notifying the alleged violator and attempting to achieve informal settlement of the matter, file a complaint with the ~~Commission~~ commission.

17-9-102. Complaint Complaints by ~~Individual~~ Individuals.

- (1) If ~~an Indian~~ a TERO-preference-recipient ~~Employee~~ employee, a TERO-preference-recipient employment applicant, a TERO-certified business, or ~~other~~ Contractor contractor believes that a ~~Covered Employer~~ covered employer has violated the express provisions of this Code, ~~he~~ they 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. ~~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) Covered employers or the Tribe must turn over requested documentation to TERO no later than 15 business days from the date of the request.

(4) [Formerly the second sentence of 17-9-102(2)] 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.

(5) [Formerly the third sentence of 17-9-102(2)] 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)~~(6) If settlement of the informal complaint cannot be achieved, or the requested documents are not provided by the covered employer or the Tribe, the Indian TERO-preference-recipient Employee-employee, applicant, TERO-certified business, or other Contractor contractor may file a formal complaint with the ~~Commission~~ commission.

(7) [Formerly the second sentence of 17-9-102(3)] 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.

(8) [Formerly the third sentence of 17-9-102(3)] If the ~~Indian~~ TERO-preference-recipient Employee-employee, applicant, TERO-certified business, or ~~Contractor~~ 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. Complaints by Covered Employers.

(1) A covered employer or the Tribe may file a written informal complaint if the covered employer believes that:

(a) TERO failed to comply with the Code or any rules, regulations or orders; or

(b) that the commission made an error.

(2) The covered employer or the Tribe 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.

(3) If the matter cannot be resolved through the informal complaint and settlement process with TERO, the covered employer or the Tribe may file a formal complaint with the commission.

17-9-104. Time Limitation for Complaints. ~~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.~~

(1) [Similar to 17-9-103] Time Limit for Informal Complaints.

(a) An informal complaint must be filed within 90 calendar days of the occurrence of the incident that created the alleged violation of this Code; or

(b) within 90 calendar days of discovery of the alleged violation.

(2) Time Limit for Formal Complaints. 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.

- (1) TERO may conduct inspections to ensure compliance with this Code.
- (2) TERO may inspect covered employers or the Tribe, with or without notice, during regular business hours, at the work site or in meetings while on tribal land.
- (3) TERO representatives must identify themselves and provide credentials prior to conducting an inspection.
- (4) TERO must 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 and the Tribe shall make all records required to be kept by this Code available for examination by TERO or its authorized agent.
- (2) 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.
- (3) Covered employers and the Tribe may request a determination of confidentiality for any documents that the covered employer believes should be protected as nondisclosable confidential business information.
- (4) TERO, or its authorized agent, will determine if the documents meet the requirements for nondisclosable confidential business information under this Code.
- (5) A determination of nondisclosable confidential business information does not prevent TERO from using relevant information from the documents in an enforcement action.
- (6) TERO cannot 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.
- (7) Any person involved in an administrative or court proceeding involving nondisclosable confidential business information shall:
 - (a) maintain the confidentiality of the information and documents; and
 - (b) dispose of them as directed by TERO, an administrative hearing officer, or the court.

17-9.5-103. Penalties.

- (1) Any person or covered employer that commits any of the following violations is subject to the penalties in the amount set by the commission and adopted by Tribal Council in the table of penalties:
 - (a) failure to comply with business registration, compliance agreement, and employee identification code regulations;
 - (b) failure to obtain an approved compliance agreement prior to commencing work;
 - (c) failure to comply with a reasonable request for inspection during regular work hours at the work site;
 - (d) failure to comply with an audit;
 - (e) failure to comply with recordkeeping requirements;
 - (f) failure to report contract changes; or
 - (g) failure to pay a TERO fee on the quarterly date specified in the compliance agreement.
- (2) **Violations.** To assess a penalty, TERO shall issue a notice of violation stating the following:
 - (a) the name of and contact information for the covered employer;
 - (b) the date and location of the incident;
 - (c) a description of the facts related to the violation; and
 - (d) any other relevant information along with the signature of a compliance officer or other authorized TERO representative.
- (3) Covered employers may contest a TERO violation to TERO in accordance with Article 9.
- (4) **Additional Remedies.** In addition to the penalties included in the table of penalties, TERO may also:
 - (a) issue a stop work order to the covered employer;
 - (b) issue a stop payment order to the Tribe;

(c) request a revocation of a crossing permit; or

(d) request a court order to secure equipment at the worksite located on tribal land.

17-9.5-104. Records.

(1) All records, documents, and information obtained by any person under this Code is confidential and maintained and stored in confidential files by TERO.

(2) Confidential material is available only to TERO or the commission.

(3) Records held by TERO may only be released by a determination made by the commission, valid subpoena, or a Tribal Court order.

Article 10. HEARINGS AND APPEALS

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

(1) The ~~Commission~~ 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~~ 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~~ 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~~ commission:

- (1) The ~~Commission~~ 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~~ commission and those AAHO rules of procedure that are not inconsistent with these rules and other rules adopted by the ~~Commission~~ 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~~ chairman of the ~~Commission~~ 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~~ commission available within the time frame set for conducting the hearing.
- (2) The ~~Chairman~~ chairman of the ~~Commission~~ 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~~ commission may have the advice and assistance of legal counsel for the Tribe at the hearing.
- (5) The ~~Chairman~~ chairman of the ~~Commission~~ commission shall have the authority to sign and issue subpoenas.
- (6) The ~~Commission~~ 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~~ commission.
- (8) Formal rules of evidence and procedure need not be followed, but the ~~Commission~~ 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~~ 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~~ employer or ~~Contractor~~ 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~~ 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~~ commission's decision.

17-10-103. Commission Order. If after a hearing, the ~~Commission~~ commission finds that an ~~Employer~~ employer, covered employer, or ~~Contractor~~ contractor has violated this Code, the ~~Commission~~ 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-TERO-preference-recipient ~~Employees~~ 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~~ commission.

17-10-104. Appeal to Tribal Court.

- (1) Any ~~Person~~ person adversely affected by an order of the ~~Commission~~ 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~~ commission hearing. The Tribal Court shall not substitute its judgment for that of the ~~Commission~~ commission as to the weight of the evidence on any disputed finding of fact.
- (3) The Tribal Court may reverse a ~~Commission~~ commission decision and remand the case to the ~~Commission~~ 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~~ 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~~ commission's order, it shall affirm the ~~Commission's~~ 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~~ 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~~ commission enters an order pursuant to § 17-10-103 that is not appealed, and there is no compliance with the order, the ~~Commission~~ commission may petition the Tribal Court for an order compelling compliance with the ~~Commission~~ commission order.
- (2) The Tribal Court shall issue an enforcement order if it appears from the petition that the ~~Commission~~ commission order was lawfully entered pursuant to a written decision following a hearing, was within the scope of the authority granted to the ~~Commission~~ commission under this Code, and that the non-complying party received notice of the ~~Commission~~ commission order.
- (3) If at any stage in the enforcement process, the ~~Commission~~ 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~~ 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~~ 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~~ 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~~ person or covered employer who violates an enforcement order issued by the Tribal Court shall be liable, in addition to the remedial

measures contained in the ~~Commission~~ commission order, for one or more of the following:

- (1) civil money penalty;
- (2) ~~A~~ a civil remedial forfeiture of any property used in the commission of a violation of an enforcement order;
- (3) ~~Suspension~~ suspension or revocation of any ~~license or permit~~ business registration or compliance agreement issued to the violator by the Tribe;
or
- (4) ~~Court~~ court costs and attorney's fees.

Article 12. TRIBAL COUNCIL WAIVER

17-12-101. Waiver.

- (1) [Formerly the first sentence of 17-12-101] 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.
- (2) After consultation, TERO must provide a written recommendation to Tribal Council that states the following:
 - (a) a recommendation approving or denying any waiver of any provisions of this Code; and
 - (b) reasons for the approval or denial of any waivers.
- (3) [Formerly the second sentence of 17-12-101] The waiver must be explicitly stated and authorized pursuant to a tribal resolution approved by the Tribal Council.

7-12-102. 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~~ covered employer, including the Tribe, the Growth Fund, Shared Services or the Casino and Resort, 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 Amendments¹

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.

¹ 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.