

# TRIBAL EMPLOYMENT RIGHTS ORDINANCE



*Shoshone-Bannock Tribes*

*Fort Hall Reservation*

*Fort Hall, Idaho*

**Ordinance #TERO-08-S1**

**SHOSHONE-BANNOCK TRIBES  
TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

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**SHOSHONE-BANNOCK TRIBES  
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**CHAPTER 1  
GENERAL PROVISIONS**

**SECTION 101            TITLE.**

This Ordinance shall be known and cited as the Shoshone-Bannock Tribes Tribal Employment Rights Ordinance (“TERO”).

**SECTION 102            DECLARATION OF POLICY AND FINDINGS.**

A. The public policy of the Shoshone-Bannock Tribes is declared to be as follows:

Like land, water, and minerals, jobs, subcontracts and contracts on or near the Fort Hall Reservation are a vital resource for Indian people and Indians must utilize their inherent rights to obtain their rightful share of such employment opportunities as they become available. The Fort Hall Business Council has the inherent sovereign power to pass laws to protect, preserve and enforce the employment rights of Indians. Such a Tribal law is fully consistent with the federal laws adopted to combat employment discrimination and empower Tribal people and businesses on or near the Fort Hall Reservation. The Shoshone-Bannock Tribes find it is critical to establish an employment rights program and office in order to use this law to increase employment of Indian workers and businesses, and to eradicate discrimination against Indians.

B. The Shoshone-Bannock Tribal Government has the inherent sovereign power to pass laws to protect the interests, health, and general welfare of Indian people. The Fort Hall Business Council also has authority to protect these interests pursuant to Article VI, Section I (a), (g), (h), (i), (k), (l), (m), and (r) of the Shoshone-Bannock Tribes Constitution and Bylaws of the Fort Hall Reservation. The Fort Hall Business Council has determined that the Shoshone-Bannock Tribes have a compelling interest in adopting TERO to combat the high rate of unemployment on the Reservation and for the purposes set forth below.

**SECTION 103            PURPOSES.**

The purposes of the TERO Ordinance include, but are not necessarily limited to:

- A. To ensure that no covered employer discriminates against any Tribal member or Indian in any aspect of employment, including but not limited to, hiring, promotion, demotion, transfer, change in work status, lay-offs, and termination from employment.
- B. To require that all covered employers give preference to qualified Indians in all aspects of employment, including but not limited to, hiring, promotion, demotion, transfer, changes in work status, lay-offs, and termination from employment.
- C. To require that all entities awarding contracts give preference to Certified Indian Preference Contractors for contract and subcontract work on the Reservation.

- D. To require all covered employers to utilize the TERO Hiring Hall in all hiring with respect to work to be performed on the Reservation.
- E. To require, in appropriate cases, that covered employers establish needed training programs intended to combat the effects of discrimination.
- F. To provide services to covered employers to assist them in meeting their requirements under this Ordinance, in locating qualified Indians to fill employment needs, establish needed training programs and meet federal requirements guarding against discrimination.
- G. To require all covered employers to contribute to the services provided by and the enforcement of this Ordinance by the fees established herein.
- H. To authorize agreements between the Tribes and the United States or any of its agencies or departments to enforce federal laws prohibiting discrimination as set out and limited in this Ordinance.
- I. To provide for staff support, travel and training of TERO Commissioners.
- J. To provide training and/or funding for training of Indians and Indian-owned businesses contingent upon the availability of funds.

**CHAPTER 2  
DEFINITIONS**

**SECTION 201            DEFINITIONS.**

As used in this Ordinance:

- A. **“Business for Profit”** means any business, enterprise, or operation, which is not defined as a 501(c)(3) nonprofit or not-for-profit organization by the Internal Revenue Service.
- B. **“Contract”** means an agreement or promise, written or unwritten, between two or more persons which creates an obligation enforceable by law to perform work, supply service, labor, or material(s).
- C. **“Contractor”** means any person, employer, or entity that enters a contract as defined herein to perform work, services, or other obligations where the person, employer, or entity has the primary responsibility for providing the work or services under the contract.
- D. **“Commission”** means the Shoshone-Bannock Tribal Employment Rights Ordinance Commission as established by this Ordinance.
- E. **“Commissioner”** means a Commissioner or member of the Shoshone-Bannock Tribes Tribal Employment Rights Ordinance Commission.
- F. **“Covered Employer”** means any employer employing two or more employees who, during any given period of time, perform work, or render services on or near the Reservation. Covered employers shall include units, departments, and divisions of the Shoshone-Bannock Tribal government, Tribal enterprises and the gaming operation.
- G. **“EEOC”** means the United States Equal Employment Opportunity Commission.
- H. **“Entity”** means any person, partnership, corporation, joint venture, vendor, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be broadly interpreted to further the purposes of the Ordinance.
- I. **“Employee”** means any person employed for remuneration, compensation, or other value.
- J. **“Employer”** means any person, partnership, corporation, or other entity that employs, for wages, two or more employees. An Employer under this Ordinance does not include a private individual who contracts or subcontracts work on his or her own private residence.
- K. **“Fort Hall Business Council”** means the elected governing body of the Shoshone-Bannock Tribes of the Fort Hall Reservation as established and defined by the Shoshone-Bannock Tribes’ Constitution.
- L. **“Indian”** means any person that is an enrolled member of a Federally-recognized Tribe.
- M. **“Indian Preference Contractor”** means a business firm, contractor, or subcontractor that is 51% or more Indian owned, controlled, and managed, as recognized by the TERO Commission.
- N. **“Ordinance”** means the Tribal Employment Rights Ordinance.

- O. **“Qualified Indian”** means an enrolled Shoshone-Bannock Tribal Member, a non-enrolled member or descendant of the Shoshone-Bannock Tribes, or an enrolled member or descendant of another Federally-recognized Indian Tribe who meets minimum qualifications for a specific job or other employment position.
- P. **“Regulations”** means administrative rules and guidelines established by the Commission to further the provisions and administration of this Ordinance. The Ordinance governs the content and interpretation of the regulations.
- Q. **“Regulatory Fee”** means fees collected by the TERO for the direct and indirect administration of the Ordinance and regulations; including but not limited to workforce development, Indian-owned and small business support activities.
- R. **“Reservation”** means all lands and waters within the present confines of the Fort Hall Reservation, notwithstanding the issuance of any patent, easement, or rights-of-way running through the Reservation, ceded lands, and such other lands without such boundaries as may be added by purchase, exchange, transfer, gift or grant, or which are under the jurisdiction of the Tribes.
- S. **“Subcontractor”** means any entity, usually a third party, hired or retained by a contractor, to perform work, supply services, or provide materials under a contract.
- T. **“TERO”** means the Tribal Employment Rights Ordinance.
- U. **“Tribes”** means the Shoshone-Bannock Tribes of the Fort Hall Reservation.
- V. **“Tribal Court”** means the Shoshone-Bannock Tribal Court of the Fort Hall Reservation.
- W. **“Tribal Member”** means an enrolled member of the Shoshone-Bannock Tribes.

**CHAPTER 3  
COVERAGE AND SCOPE**

**SECTION 301            COVERAGE AND SCOPE.**

All covered employers shall comply with the regulations and orders of the Shoshone-Bannock Tribal Employment Rights Ordinance and Commission, which set forth the specific obligations of covered employers in regard to Indian Preference.

**SECTION 302            DISSEMINATION.**

TERO shall make good faith efforts, through direct contact and general public information to inform all covered employers, contractors, and any other entity on or near the Reservation of the requirements of the TERO. All bid announcements issued by any Tribal, Federal, State, or other private or public entity for work within the exterior boundaries of the Reservation shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and that a bidder shall contact the TERO to obtain information regarding their obligation to comply with this Ordinance. It shall not be a defense in any enforcement action for a covered employer, contractor, or other entity to allege that the Tribes failed to notify the covered entity of the requirements of this Ordinance.

**SECTION 303            INDIAN PREFERENCE IN EMPLOYMENT ACTIONS.**

All covered employers, for all employment activities occurring on or near the Reservation, shall give preference in hiring, training, advancements, promotions, and lay-offs to qualified Indians, with preferences in the following order:

- A. First preference to enrolled members of the Shoshone-Bannock Tribes in all hiring, promotion, training, layoffs, and all other aspects of employment;
- B. Second preference to non-enrolled members or descendants of the Shoshone-Bannock Tribes;
- C. Third preference to enrolled members or descendants of other Federally-recognized Indian Tribes;
- D. Fourth preference to non-Indians who have successful work experience with Indian Tribes; and
- E. Fifth preference to non-Indians.

Preference in lay-offs means that qualified members of the Shoshone-Bannock Tribes shall be given preference for retention when lay-offs occur. As between qualified Indians subject to lay-offs, retention preference shall be given to qualified Indians in accordance with the above-listed preference order unless the lay-off is based upon significant employee performance and/or qualifications.

**SECTION 304            INDIAN PREFERENCE IN CONTRACTING.**

- A. All covered employers awarding contracts or subcontracts for supplies, services, labor, and/or materials in an amount of \$5,000.00 or more shall give preference in contracting and subcontracting to qualified entities that are certified by the Commission as 51% or more Indian owned and controlled

with a first preference to qualified entities that are 51% or more owned and controlled by qualified Indians in the preference order set forth in Section 303.

- B. These Indian Preference requirements shall apply to the award of contracts awarded directly by the Shoshone-Bannock Tribes, its programs and divisions on any contract or subcontract of which work occurs off the Reservation and involves work related to protection and preservation of treaty rights and in which the Shoshone-Bannock Tribes or its programs and divisions have a direct interest.
- C. The Indian Preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors of covered employers and will be deemed to be part of and incorporated into any contract or subcontract covered by this Ordinance. The covered employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements.
- D. The above Indian Preference requirements apply in all cases except where specific percent of ownership or preference requirements are established by Tribal law for particular types of employment or contracting.
- E. Any exception from these Indian Preference in Contracting compliance requirements, or Indian preference provisions in this Ordinance must be negotiated with and approved by the TERO Commission prior to any action being taken by the Fort Hall Business Council.

**SECTION 305                    REGULATORY FEE.**

- A. The regulatory fee shall not apply to the daily operation of schools, churches, hospitals, health clinics, nursing homes, veterans' centers, or the Tribal government, its enterprises and gaming operation. The Tribal government and entities are exempt from the regulatory fee, but all contractors or subcontractors working for the Tribal government or its entities are assessed the regulatory fee.
- B. The regulatory fee is imposed as follows:
  - 1. Every contractor, or subcontractor awarded a contract by a covered employer in the sum of \$25,000 or greater shall pay a one-time fee of 2.5% of the total amount of the contract. The fee shall be paid prior to commencing work. However, where good cause is shown, the TERO Director may authorize a covered employer, contractor, or subcontractor to pay said fee in installments over the course of the contract with the consent of the Commission.
  - 2. Every covered employer, except building or construction contractors, with two (2) or more employees working on the Reservation shall pay a quarterly fee of 1% of its employees quarterly payroll which shall be paid within thirty (30) calendar day after the end of each quarter.
  - 3. TERO shall be responsible for collecting Regulatory Fees pursuant to the rules and regulations adopted by the Commission. The fees shall be paid to the "Shoshone-Bannock TERO Department" and shall be credited to the TERO Revenue line item in a restricted TERO fund of the Shoshone-Bannock Tribes. Regulatory Fees collected shall be used for the direct and indirect administration of this Ordinance and regulations; including but not limited to, workforce development, Indian-owned and small business support activities.

4. In the event a contract or subcontract terminates or cancels and is at least 85% complete, the contract or subcontract is deemed 100% complete for purposes of imposing the Regulatory Fee.
5. Any exceptions from the regulatory fee or Indian preference provisions in this Ordinance must be negotiated with and approved by the TERO Commission prior to any action being taken by the Fort Hall Business Council.

**SECTION 306            UNIONS.**

Prior to entering a collective bargaining agreement with any union(s), a covered employer must obtain a written agreement from such union(s) stating that the union shall comply with this Ordinance and other applicable Tribal laws and regulations. Any such agreement shall be subject to the review of the TERO Director and approval of the Commission. Failure to comply with this requirement shall constitute a violation of this Ordinance.

**CHAPTER 4**  
**TERO COMMISSION ESTABLISHED**

**SECTION 401            COMMISSION; MEMBERS; COMPENSATION; QUORUM.**

- A. There is created a Shoshone-Bannock Tribal Employment Rights Commission.
- B. The Commission shall be comprised of five (5) Commission Members and one (1) Alternate. Commissioners shall be appointed by the Fort Hall Business Council by Resolution. The Fort Hall Business Council should make a substantial effort to appoint one (1) Commissioner who resides in and will represent each district within the Reservation (Bannock Creek, Fort Hall, Gibson, Lincoln Creek, and Ross Fork Creek). The Fort Hall Business Council should make an effort to appoint Commissioners who possess work experience with a covered employer and/or a level of knowledge regarding this Ordinance and related matters. The Council should solicit appointee recommendations from the Commission and applications from the Tribal membership.
- C. The Commission shall designate one of such Commissioners as Commission Chairperson, Vice-Chairperson, and Secretary. The Commissioners shall serve three-year, staggered terms. The Commission shall adopt by-laws in accordance with this Ordinance to govern its activities and operating procedures.
- D. Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such mileage and per diem payments as determined by the Fort Hall Business Council and budgetary allowances.
- E. A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled, provided that a quorum is met.

**SECTION 402            POWERS OF THE COMMISSION.**

The Commission shall have the power, jurisdiction, and authority to:

- A. Enforce this Ordinance in accordance with Section 504 herein, and institute civil penalties for non-compliance as provided in this Ordinance.
- B. Formulate, promulgate, amend, and/or rescind rules, regulations, and guidelines necessary to carry out the provisions of this Ordinance.
- C. Review the decisions of the TERO Director in accordance with the enforcement provisions of this Ordinance.
- D. Require each covered employer or entity to submit to the Commission an acceptable compliance plan indicating how it will comply with this Ordinance, before a covered employer or entity may commence work on or near the Fort Hall Reservation.
- E. Impose numerical hiring goals and timetables that specify the minimum number of Indians a covered employer must hire, by craft or skill level.

- F. Establish training programs to further the purposes of this Ordinance and establish fees to cover the cost of such programs.
- G. Require covered employers to establish or participate in such training programs, as the Commission determines necessary in order to increase the pool of qualified Indians on the Reservation as quickly as possible.
- H. Establish in conjunction with the Tribal employment and training programs, a Tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a Non-Indian until the Tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference to qualified Indians in accordance with Section 303 of this Ordinance.
- I. Prohibit covered employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this requirement, the Commission shall review and consider the EEOC guidelines on these matters to the extent that they are appropriate. The Commission shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians.
- J. To enter into agreements with unions to insure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.
- K. Impose contract and subcontract preference requirements in accordance with Section 303 and Section 304 of this Ordinance, and establish and operate a system for certifying firms as eligible for Indian preference.

**SECTION 403                    TERO DIRECTOR; QUALIFICATIONS; STAFF; DUTIES.**

- A. The Fort Hall Business Council shall have the exclusive authority to hire the TERO Director.
- B. The Executive Director of the Shoshone-Bannock Tribes shall have the authority to direct, suspend, or remove the TERO Director for cause.
- C. The TERO Commission or the Executive Director may recommend to the Fort Hall Business Council the suspension or removal of the TERO Director for cause.
- D. The TERO Director shall have such administrative ability, education, and training as determined by the Executive Director.
- E. The TERO Director shall have authority to hire staff and to expend funds appropriated by the Fort Hall Business Council. The TERO Director shall also have the authority to obtain and expend funding from federal, state, and other sources to carry out the purposes of the Commission, subject to approval by the Fort Hall Business Council.
- F. The TERO Director shall administer the policies, authorities, and duties prescribed to him or her by the Commission pursuant to Section 402.

- G. The TERO Director shall have authority to issue notices of hearings and notices for witnesses to appear at Commission hearings and to secure any documents or items for such hearings.
- H. The TERO Director has authority to commence Tribal Court action to obtain injunctive relief and other civil remedies as necessary to preserve the rights of the beneficiaries of this Ordinance.

**SECTION 404                    DELEGATION OF AUTHORITY.**

The Commission may delegate to the TERO Director the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of this Ordinance, except that the Commission may not delegate its power or duty to:

- A. Adopt, amend, and rescind rules, regulations, or guidelines; or
- B. To conduct hearings or to impose sanctions pursuant to Section 504.

**SECTION 405                    INTERGOVERNMENTAL RELATIONSHIPS.**

The TERO Director, acting under the direction of the Fort Hall Business Council, is authorized to enter into cooperative memoranda of agreement or memoranda of understanding with federal employment rights agencies (e.g. Equal Employment Opportunity Commission (EEOC) and Office of Federal Contract Compliance Program (OFCCP)) in order to eliminate discrimination against Indians on and off the Fort Hall Reservation.

**CHAPTER 5  
COMPLAINTS, APPEALS AND HEARINGS**

**SECTION 501            COMPLAINTS.**

Any individual, group of individuals, or organization that believes any covered employer, other entity, or the Commission has violated any provision of this Ordinance or TERO regulation, may file a complaint with the TERO Director within thirty (30) calendar days of the event or incident upon which the complaint is based. The complaint shall be in writing and shall provide such information that will reasonably enable the TERO Director to understand the general nature of complaint and carry out an investigation of the complaint.

**SECTION 502            INVESTIGATIONS.**

- A. The TERO Director or any TERO Field Compliance Officer designated by the TERO Director may conduct an investigation under this Section on his or her own initiative where he or she has reason to believe that a violation of this Ordinance or TERO regulation has occurred. The TERO Director or designated Field Compliance Officer shall investigate every complaint filed with the TERO Director within a reasonable time. Within twenty (20) calendar days after receipt of the complaint, the TERO Director shall provide the complaining party with a written report on the status of the complaint.
  
- B. The TERO Director and designated TERO Compliance Officer shall have the authority to conduct investigations on the Reservation in accordance with this Ordinance and Tribal laws to determine whether any covered employer or other covered entity has violated any provision of this Ordinance or any rule or order hereunder, and to aid in prescribing regulations pursuant to this Ordinance. The TERO Director or his/her delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such reports as the TERO Director deems necessary to monitor compliance with the requirements of this Ordinance or any rule or order hereunder. The TERO Director, designated TERO Compliance Officer, and any TERO staff person conducting valid investigation related activities under this Ordinance shall not be personally liable for such activities. The Commission may adopt regulations regarding the handling and treatment of proprietary and financial information obtained by TERO under this Ordinance.
  
- C. If after investigation the TERO Director finds reason to believe a violation of the Ordinance or TERO regulation has occurred, the TERO Director shall proceed in accordance with the provisions of Section 504.

**SECTION 503            POWER TO REQUIRE TESTIMONY & PRODUCTION OF RECORDS.**

For the purpose of investigations or hearings which, in the opinion of the TERO Director or the Commission, are necessary or required for the enforcement of this Ordinance, a Commissioner, the TERO Director, or any field Compliance Officer designated by the TERO Director may administer oaths or affirmation, take evidence, and request the production of books, papers, contracts, agreements, or other documents, records, or information which the TERO Director or the Commission deems relevant or material to the inquiry. The TERO Director and the Commission may seek assistance from the Tribal Attorneys Office to obtain a Tribal Court subpoena or subpoena duces tecum to compel the attendance of witnesses and production of documents pursuant to this section.

**SECTION 504                      ENFORCEMENT.**

- A. Notice of Noncompliance. When, after conducting an investigation, initiated by a complaint pursuant to Section 501 or a self-initiated investigation pursuant to Section 502, the TERO Director has reason to believe a violation of this Ordinance or TERO regulation has occurred, the TERO Director shall notify the covered employer in writing specifying the alleged violation(s). The TERO Director may withhold the name(s) of the complainant(s) if the TERO Director has reason to believe the complainant could reasonably be subjected to retaliation. The TERO Director shall seek to achieve an informal settlement of the alleged violation. If an informal settlement of the complaint is unsuccessful, the TERO Director shall issue a formal notice of noncompliance in the form set forth below.
- B. Contents of Notice of Noncompliance. The formal notice of noncompliance shall:
1. Set forth the general nature of the alleged violation and the steps that must be taken to come into compliance; and
  2. Provide the covered employer with a reasonable time, but not longer than five (5) working days from the date of receipt of such notice, to comply, unless the TERO Director has reason to believe irreparable harm will occur during that period, in which case the TERO Director may require that compliance occur within fewer than five working days.
- C. Voluntary Compliance; Request for Administrative Hearing. If a covered employer voluntarily complies with the terms of the notice of noncompliance, the TERO Director may consider the complaint resolved and notify the complaining party. If a covered employer fails or refuses to comply with the terms of a notice of noncompliance, the covered employer or the TERO Director may request a hearing before the Commission which shall be held no sooner than five (5) working days and not later than thirty calendar (30) days after the date for compliance set forth in the TERO Director's notice of noncompliance, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and a hearing is not requested, the Commission may proceed pursuant to subsection F.
- D. Security given where Administrative Hearing requested. If a covered employer requests a hearing pursuant to subsection C, and the TERO Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Shoshone-Bannock Tribes prior to the hearing, the TERO Director may require the party to post a bond with the Commission in an amount sufficient to cover such costs and damages as may be incurred or suffered by any complaining party. A surety on a bond or undertaking under this subsection submits the surety to the jurisdiction of the Commission and Shoshone-Bannock Tribal Court. If a covered employer fails or refuses to post a required bond, the Commission may proceed pursuant to subsection F. The TERO Director may also petition the Shoshone-Bannock Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other complaining parties during the pendency of the enforcement proceedings.
- E. Administrative Hearing Procedure Before Commission. Any hearing held pursuant to this Section shall be conducted by the Commission. The Commission shall adopt particular rules of procedure to govern administrative hearings before the Commission. The hearing procedures shall provide due process as required by Tribal law. The Commission may adopt particular rules of procedure. Neither the Commission nor a hearing under this Section is subject to the Rules of Evidence unless the

Commission otherwise orders. No stenographic record of a hearing under this Section is required unless specifically arranged in advance, and at the cost of the requesting party.

- F. Penalties for noncompliance. If after the hearing, the Commission determines that the violation(s) alleged in the complaint occurred and that the covered employer charged has failed to comply and otherwise has no adequate defense in law or fact, or, if no hearing is requested, the Commission may:
1. Deny such covered employer the right to commence business on the Reservation;
  2. Suspend such covered employer's operation within the Reservation;
  3. Terminate such covered employer's operation within the Reservation;
  4. Deny the right of such covered employer to conduct any further business within the Reservation;
  5. Impose a civil fine on such covered employer in an amount no less than \$400 but not to exceed \$1,500 for each violation and for each day that such violation continues;
  6. Order such covered employer to make payment of back pay to the complaining party;
  7. Order such covered employer to dismiss any employees hired in violation of the Shoshone-Bannock Tribes' employment right requirements;
  8. Order the covered employer to take such other action as in necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation with this Ordinance.
- G. Commission Decision. The Commission's decision shall be in writing and shall be served on the charged covered employer by registered mail or in person no later than thirty (30) calendar days after the close of the hearing described in subsection E.
- H. Judicial Enforcement of Commission Decision. Where the covered employer fails to comply immediately with the Commission's orders, the TERO Director, acting under the direction of the Commission, may institute a civil enforcement action in Shoshone-Bannock Tribal Court for such relief as necessary to preserve the rights of the beneficiaries of this Ordinance.

## **SECTION 505            RIGHT TO APPEAL.**

- A. Any party who participated in the administrative hearing and is adversely affected by a final Commission decision or order may appeal to the Shoshone-Bannock Tribal Court, pursuant to the Rules and Procedures of the Tribal Court. The Shoshone-Bannock Tribal Court shall have original jurisdiction to hear and adjudicate appeals and other claims arising under this Ordinance. An appeal under this section must be filed in the Tribal Court no later than twenty (20) calendar days from the date of the Commission's final administrative decision, with a copy of the notice of appeal served on the TERO Director and the Commission. The notice of appeal shall:
1. Set forth the order from which appeal is taken;
  2. Specify the grounds upon which reversal or modification of order is sought;
  3. Be signed by appellant.

Within fourteen (14) calendar days of receiving a copy of the notice of appeal, the Commission shall forward to the Tribal Court a copy of the Commission's decision, the record before the Commission, and any transcripts of the hearing.

- B. Failure to file a timely appeal bars any right judicial review of the Commission's decision and renders the Commission's decision final and binding. The Tribal Court shall uphold the decision of the

Commission unless it is demonstrated by the appealing party that the decision of the Commission is arbitrary, capricious, or an abuse of discretion. In reviewing a Commission decision under this Ordinance, the record reviewed by the Tribal Court shall consist only of the record presented to the Commission. Any party who participated in the administrative hearing may move the Tribal Court to augment or modify the record by motion or stipulation of all parties. Such motion shall be accompanied by a statement setting forth the specific grounds and reasons for the request and attaching a copy of any documents sought to be added to the record. The motion should be granted only where the moving party demonstrates good cause why the requested document(s) or other evidence was not presented to the Commission at the hearing. The motion must be served on all parties, and any party may file a brief in opposition thereto within fourteen (14) calendar days of service. The filing of a motion to augment the Commission record shall not stay the Tribal Court review process.

- C. Except as provided below or in subsection B, the order of the Commission shall abate pending the determination of the Tribal Court. However, the TERO Director may petition and, for good cause shown, the Tribal Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's Order if that Order is upheld by the Tribal Court. If the order of the Commission is reversed or modified, the Tribal Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.
- D. 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 TERO fees: 1) that are owed by that party pursuant to any outstanding order of the Commission or Tribal Court, or; 2) that may be owed if the charges set out in the notice of noncompliance or other notice of violations are upheld, the Commission may petition the Tribal Court pursuant to the rules and procedures of the Tribal Court to provide relief necessary to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

## **SECTION 506                    CONFISCATION AND SALE.**

If, twenty-one (21) calendar days after a decision by the Commission pursuant to subsection G of Section 504, no appeal has been filed, or thirty (30) calendar days after a decision by the Tribal Court on an appeal from a decision by the Commission pursuant to Section 505 a party has failed to comply with an order of the Commission or the Tribal Court, the Commission may petition the Tribal Court to order the Tribal Police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages caused by the covered employer's noncompliance. If the Tribal Court finds the petition to be valid, it shall order the Tribal Police to confiscate and hold said property or as much as is available. The Tribal Police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If the party subject to the property seizure has not come into compliance within thirty (30) after confiscations, the Tribal Court shall order the Tribal Police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all costs incurred by the Tribal Court and Tribal Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

**CHAPTER 6  
MISCELLANEOUS**

**SECTION 601 SEVERABILITY.**

If any provision of this Ordinance shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Ordinance, but such other provisions shall continue in full force and effect.

**SECTION 602 ORDINANCE AMENDMENTS AND ADMINISTRATIVE REGULATIONS.**

- A. The Fort Hall Business Council has the sole authority to approve and amend provisions of this Ordinance. The Commission is authorized to establish regulations in accordance with the Ordinance to carry out its provisions and administration.
  
- B. Prior to establishing any final regulation, the Commission shall submit a proposed regulation for public comment for at least thirty (30) calendar days. Following the comment period, the Commission shall hold a hearing to consider and discuss public comments and allow members of the public an opportunity to make oral comments on the proposed regulation. Where an emergency exists, the Commission may temporarily establish a regulation provided that the Commission, within thirty (30) calendar days, submits the regulation to the public for comment and a hearing prior to final establishment.

**SECTION 603 NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing herein shall be interpreted as empowering the TERO Commission or TERO Director to waive the Tribes' or the TERO Commission's immunity from suit. Any contract or other agreement that provides for such waiver shall be void unless ratified by the Fort Hall Business Council.

**SECTION 604 REPEAL.**

All TERO Ordinances previously enacted or amended by the Fort Hall Business Council are repealed.

**SECTION 605 EFFECTIVE DATE.**

This Ordinance shall take effect on January 1, 2008.