

SHOSHONE-BANNOCK TRIBES

WORKER PROTECTION ORDINANCE

(Approved September 7, 2010, Ordinance _____)

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SHOSHONE-BANNOCK TRIBES

WORKER PROTECTION ORDINANCE

CHAPTER 1 GENERAL PROVISIONS

Section 101 Title

This Ordinance shall be known as the Shoshone-Bannock Tribes Worker Protection Ordinance (“Ordinance”).

Section 102 Findings and Authority

- A. The Fort Hall Business Council, governing body of the Shoshone-Bannock Tribes, finds that in order to maximize individual freedom choice in the pursuit of employment and to encourage an employment climate conducive to economic growth, that the right to work shall not be subject to undue restraint and coercion.
- B. The Fort Hall Business Council finds that the right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization or on refusal to join, affiliate with, or financially or otherwise support a labor organization.
- C. The Fort Hall Business Council finds all workers subject to the Shoshone-Bannock Tribes’ jurisdiction are entitled to a workforce environment that is free of employment discrimination, that protects their health and safety, and that provides them with the same rights and protections available to employees located outside the Fort Hall Reservation.
- D. The Fort Hall Business Council finds that the public policy of the Shoshone-Bannock Tribes is that all employees working within the Fort Hall Reservation be treated fairly, there be fair and appropriate employment practices, fair wages and benefits, and fair and impartial procedures resolving employment and labor issues.
- E. The Fort Hall Business Council finds that the National Labor Relations Act and other federal labor and employment laws of general applicability do not apply to the Shoshone-Bannock Tribes as a government or employer given the significant adverse impact their application would have on the Tribes’ exercise of sovereignty and right of self government, and such laws would violate Article 2 of the Fort Bridger Treaty of 1868 and interfere with the Tribes’ treaty right to exclude non-Indians from its territory.
- F. The Fort Hall Business Council finds that employers should maintain minimum standards for living and protection of health, sufficiency and general-well-being of workers.
- G. The Fort Hall Business Council, governing body of the Shoshone-Bannock Tribes, has the inherent sovereign authority to govern activities on the Fort Hall Reservation and to enact laws to protect the economic interests, health, safety and general welfare of Indian people and its members. The Fort Hall Business Council also has the 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 and accordingly govern activities on the Reservation whether the activities are of Tribal members, non-members, Indians or non-Indians, and whether based on consensual relationships with the Tribes or conduct which impacts and affects the health, safety, political and economic integrity of the

Tribes and the Reservation community including members, employees, vendors, patrons and others who enter the Reservation.

Section 103 Purposes

The purposes of the Worker Protection Ordinance include, but are not necessary limited to:

- A. To ensure that no employer discriminates against employees in any aspect of employment, including but not limited to hiring, promotion, demotion, transfer, change in work status, wages, leave, work conditions, layoffs and termination of employment.
- B. To require all employers establish training programs intended to combat the effects of discrimination.
- C. To ensure for all persons on the Reservation the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment of dues, fees, or assessments to a labor organization.
- D. To promote the protection and well-being of workers through regulation.
- E. To designate the Tribal Employment Right Office as the agency to implement the various provisions and requirements of this Ordinance.

Section 104 Construction

In construing the provisions of this Ordinance, save when otherwise plainly declared or clearly apparent from the context;

- A. words in the present tense shall include the future tense;
- B. words in masculine, feminine and neuter genders shall include all genders; and
- C. words in the singular shall include the plural, and in the plural shall include the singular.

Section 105 Applicability

This Ordinance applies to all persons engaging in, operating, employed in or participating in work within the Reservation and shall apply to all persons, whether Tribal or non-Tribal, employment, private or public, including all employees of the Tribes and its departments, subdivisions, enterprises and gaming operations.

CHAPTER 2 DEFINITIONS

Section 201 Definitions

As used in this Ordinance:

- A. "Employee" means any person employed for remuneration by an employer.
- B. "Employer" means any person that employs, for wages, two or more employees who during any 20-day period, cumulatively, perform 16 or more hours of work within the exterior boundaries of the Reservation. Employer shall include the Tribes and any agency, subdivision, arm, department, instrumentality, enterprise or entity thereof located or engaged in work on the Reservation.
1. Employer does not include vendors, distributors, or retailers doing business with the Tribes and its subdivisions.
 2. Employer does not include any individual who volunteers to perform services and receives no compensation or paid expenses.
 3. Employer does not include any beadworkers association.
 4. Employer does not include any federal, state or other local governments.
- C. "Indian" means any member of a federally recognized Indian tribe.
- D. "Labor organization or union" means organization of any kind, or agency or employee representation committee, union or plan, which exists for the purpose, in whole or in part, of dealing with employer or employers concerning wages, rates of pay, hours of work, working conditions or grievances of any kind relating to employment.
- E. "Person" means any individual, labor organization, firm, corporation, partnership, company, association or other legal entity.
- F. "Reservation" means all lands within the exterior boundaries of the Fort Hall Reservation and any other lands that are subject to the jurisdiction of the Shoshone-Bannock Tribes wherever located.
- G. "TERO Office" means the Shoshone-Bannock Tribes Employment Rights Office established pursuant to the Tribal Employment Rights Ordinance, Ordinance #TERO-08-S1.
- H. "TERO Commission" means the five member commission established pursuant to the Tribal Employment Rights Ordinance, Ordinance #TERO-08-S1.
- I. "TERO Compliance Officer" means an employee of the Shoshone-Bannock Tribes Employment Rights Office.
- J. "Tribal Court" means the court established by the Shoshone-Bannock Tribes.
- K. "TERO Director" means the Director of the Shoshone-Bannock Tribes Employment Rights Office.
- L. "Tribes" or "Tribal" means the Shoshone-Bannock Tribes and includes any subdivision, agency, arm, department thereof including the Tribal enterprises and gaming operations.

M. "Union Dues" means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

CHAPTER 3 RIGHT TO WORK

Section 301 Freedom of Choice Guaranteed, Discrimination Prohibited

No person shall be required, as a condition of employment or continuation of employment on the Reservation, to do any of the following:

- A. resign or refrain from voluntary membership, in voluntary affiliation with, or voluntary financial support or a labor organization, or
- B. become or remain a member of a labor organization or be affiliated with a labor organization, or
- C. pay any union dues, fees, assessments, or other charges of any kind or amount to a labor organization, or
- D. be recommended, approved, referred, or cleared by or through a labor organization.

Section 302 Voluntary Payments Protected

- A. It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.
- B. Deductions for political activities shall not be deducted from the wages, earnings or compensation from wages, earnings or compensation of an employee.
- C. Nothing in this ordinance shall prohibit an employee from personally paying contributions for political activities to a labor organization unless such payment is prohibited by law.

Section 303 Agreements in Violation and Strikes

- A. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and employer which violates the rights of employees as guaranteed by provisions of this Ordinance is hereby declared to be unlawful, null and void, and of no legal effect. Any agreement between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for the employer, or whereby such membership is made a condition of employment, continuation or employment, promotion or any other benefits by such employer is hereby declared to be against the public policy and illegal.

B. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce an employer to enter into any agreement prohibited under this Ordinance is hereby declared to be an illegal purpose and is violation of the provisions of this Ordinance.

Section 304 Coercion and Intimidation Prohibited

A. It shall be unlawful for any person, labor organization, or officer or member thereof, or employer, or officer or agent thereof, by any threatened or action intimidation of any employee or prospective employee or his/her parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights guaranteed by provisions of this Ordinance.

B. It shall be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.

Section 305 Established Union Relations

A. The TERO Office has established working relationships with several trade unions or labor organizations relating to construction related trades including journeymen training programs. This Chapter is not intended to interfere with and shall not interfere with any of those established union relationships.

B. Although the Reservation is a Right to Work jurisdiction the Tribes encourage the letting of contracts to union construction companies to enable Tribal member union workers to secure work on the Reservation, and to that end also support the hiring of union workers by nonunion construction companies doing business with the Tribes on the Reservation.

CHAPTER 4

PROHIBITION AGAINST EMPLOYMENT DISCRIMINATION BASED ON RACE, SEX, AGE, DISABILITY, RELIGION OR NATIONAL ORIGIN

Section 401 Prohibitions

Except as provided in the Shoshone-Bannock Tribal Employment Rights Ordinance requiring employment preference to Indians, or when based upon a bona fide occupational qualification, it shall be unlawful to do any of the following acts, wholly or partially for a discriminatory reason based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, or political affiliation of any individual:

A. By an employer for failing or refusing to hire, or to discharge, any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms or condition, or privileges or employment, including promotion, to discriminate in recruiting individuals for employment,

or to limit, segregate, or classify his or her employees in any way which would tend to deprive them of employment opportunities; or

B. By a labor organization for excluding or expelling from its membership, or otherwise to discriminate against, any individual, or to classify, or fail or refuse to refer for employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his or her status as an employee or as an applicant for employment; or

C. By an employer or a labor organization for discriminating against any individual in admission to or the employment in any program established to provide training or retraining, including on the job training.

Section 402 Religious Accommodation

It shall be an unlawful discriminatory practice for an employer to refuse to make a reasonable accommodation for an employee's religious observance by such actions as permitting the employee to make up work time lost due to such observance, unless such an accommodation would cause the employer undue hardship. An accommodation would cause an employer undue hardship when it would cause the employer to incur more than *de minimus* costs.

Section 403 Discrimination Based on Pregnancy

Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related programs, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and this requirement shall include but not be limited to a requirement that an employer must treat an employee temporarily unable to perform the functions of her job because of her pregnancy related condition in the same manner as it treats other temporarily disabled employees.

Section 404 Discrimination Based on Disability

A. It shall be unlawful for an employer or labor organization to discriminate in any aspect of employment against a qualified individual with a disability because of that disability; provided that, employers may use qualification standards, tests or selection criteria that have been shown to be job related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation. Provided further, nothing in this section shall prohibit an employer from refusing to hire or from discharging an individual with a disability, if the individual, because of the disability, is unable to perform the duties or to perform the duties in a manner that would endanger the health and safety of the individual or others or is unable to be at, remain at, or go to or from the place where the duties of employment are to be performed.

B. For purposes of this section, the term "qualified individual with a disability" shall not include an employee or applicant who is currently engaging in the illegal use of drugs, when the employer acts on the basis of such use, provided that nothing shall be construed to exclude an individual who is engaging in or who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or who has otherwise been rehabilitated successfully and is no longer engaging in such use.

C. It shall not be a violation of this section for an employer to hold an employee who engages in the illegal use of drugs or excessive use of alcohol to the same qualification standards for employment or job performance and behavior to which that employer holds other employees, even if any unsatisfactory performance or behavior is related to the drug or alcohol use of the employee; provided that an employer shall make reasonable accommodation to alcohol or drug user who is seeking treatment.

Section 405 Harassment

A. It shall be unlawful employment discrimination to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature as well as unwelcome comments, jokes, acts, and other verbal or physical conduct related to race, color, national origin, sexual orientation, religion, age, or disability when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

B. An employer is responsible for the acts of workplace harassment of its supervisory and non-supervisory employees where the employer, or its agents or supervisory employees, knew or should have known of the conduct. An employer may rebut apparent liability for such acts showing that it took immediate and appropriate corrective action upon learning of the harassment.

Section 406 Exemptions

The provisions of this Chapter shall not apply with respect to:

- A. any employer who employs 15 or less employees in any calendar quarter; or
- B. an employee employed in agricultural if such employee is the parent, spouse, child or other member of his employer's immediate family; or

CHAPTER 5 EMPLOYEE WAGES

Section 501 Minimum Wage

Any employee who, during any workweek, is engaged in commerce or the production of goods for commerce, shall be paid an hourly wage of not less than the Federal Minimum Wage per hour. Such wage may be changed by vote of a Tribal resolution authorized by the Fort Hall Business Council.

Section 502 Maximum Hours

No employer shall employ any of its employees for a workweek longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which the employee is employed. In lieu of compensation an employer may choose to provide compensatory time at a one-for-one hourly rate.

Section 503 Private Right of Action

Any individual aggrieved under this section may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against an employer pursuant to Chapter 8 of this Ordinance.

Section 504 Statute of Limitations

Any action to secure unpaid minimum wages or unpaid overtime compensation must be commenced within one year after the date on which such wages or overtime compensation should have been included in an employee's paycheck.

Section 505 Fair Labor Standards Act

The TERO Commission and Tribal Court may look to the federal Fair Labor Standards Act and its regulations for guidance, provided however, that nothing in this Chapter shall be construed as an adoption by the Tribes, or application of, the Fair Labor Standards Act of 1938, 29 U.S.C. Section 201 et seq. to the Tribes.

Section 506 Davis-Bacon Act

A. The wages to be paid laborers and mechanics employed in construction projects on the Reservation shall not be less than those required by the U.S. Department of Labor under the Davis-Bacon Act, 40 U.S.C. Section 3142 et seq., for the locality in which the work is being performed.

B. If the TERO Director has certified that said employee is participating in a formal or informal training program that will lead to journeyman status an employer engaged in a training project is subject to this Ordinance and may pay laborers and mechanics who are not certified as journeymen at the wage rate established by the U.S. Department of Labor Davis-Bacon Wage Determination for a trainee at that skill level, or, if the employee's skill level has not been rated, a wage that is no less than three-fifths of the minimum wage for a journeyman in that craft as determined under the Davis-Bacon Act for the locality in which the work is to be performed (including any fringe benefit amounts that are included in said wage determination by the Secretary of Labor).

C. For training projects, each employer shall employ one trainee for every three journeymen the employer employs in that craft on the project. This provision does not alter the Indian preference requirements of the Tribal Employment Rights Ordinance.

Section 507 Fringe Benefits

An employee shall have the option of electing to receive any amounts included for fringe benefits in a prevailing wage, whether said determination was made by the U.S. Secretary of Labor under the Davis-

Bacon Act in the form of a direct cash payment that is to be included in the employee's paycheck. Each employer shall offer said option to each employee at the time he or she is first employed. A withholding of fringe benefits may only be allowed if the employer participates in a bona fide trust or program.

Section 508 Exemptions

Sections 501 and 502 shall not apply with respect to:

- A. any employee employed in a bona fide executive, administrative, or professional capacity, or salaried position, or compensated under a contract for services; or
- B. any employer who employs 15 or less employees in any calendar quarter; or
- C. an employee employed in agricultural if such employee is the parent, spouse, child or other member of his employer's immediate family.

CHAPTER 6 FAMILY MEDICAL LEAVE PROTECTION

Section 601 Family Medical Leave Protection

A. Every employee who has been employed by the same employer for at least 1,250 hours during the 12 consecutive month period is entitled to up to 12 consecutive weeks of family medical leave in any 2 years. The following conditions apply to family medical leave granted under this section:

- 1. Family, medical leave may be granted for the following:
 - a. the birth and care of a newborn child of an employee;
 - b. for placement with an employee of a son or daughter for adoption or foster care;
 - c. to care for an immediate family member (spouse, child or parent) with a serious health condition; or
 - d. to take medical leave when an employee is unable to work because of a serious health condition;
- 2. The employee must give at least 30 days notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice;
- 3. The employer may require certification from a physician to verify the amount of leave requested by the employee, except that an employee who is good faith relies on treatment by prayer or spiritual means, in accordance with the tenets of a recognized religious or spiritual practice, may submit certification from an accredited practitioner of those healing methods; and
- 4. The employer and employee may negotiate for more or less leave, but both parties must agree.

B. Family medical leave granted under this Chapter may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 12 weeks, the additional weeks of leave added to attain the total of 12 weeks required maybe unpaid.

Section 602 Employee Benefits

A. Any employee who exercises the right to family medical leave under this Chapter, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent status, employee benefits, pay and other terms and conditions of employment. This section does not apply if the employer proves that the employee was not restored as provided in this section because of conditions unrelated to the employee's exercise of rights under this section.

B. During any family medical leave taken under this Chapter, the employer shall make it possible for employees to continue their employee benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

C. The taking of family medical leave under this Chapter shall not result in the loss of any employee benefit accrued before the date on which the leave commended.

D. Nothing in this chapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this Chapter.

Section 603 Exemptions

The provisions of this Chapter shall not apply with respect to:

A. any employer who employs 15 or less employees in any calendar quarter; or

B. an employee employed in agricultural if such employee is the parent, spouse, child or other member of his employer's immediate family; or

C. an employer who employs 50 or less employees in 20 or more workweeks in the current or preceding calendar year.

CHAPTER 7 TRIBAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION(TOSHA)

Section 701 Duties of Employers and Employees

A. Each employer shall furnish employees with a place and condition of employment that is free from recognized hazards that may cause or are likely to cause death or serious physical harm to the employees, and comply with all occupational safety and health rules promulgated or adopted by the Tribes.

B. Each employee shall comply with all occupational safety and health rules promulgated or adopted by this ordinance that are applicable to the actions and conduct of the employee.

Section 702 Tribal Occupational Safety and Health Administration

The TERO Commission and Tribal Court may look to the federal Occupational Safety and Health Administration (OSHA) of the United States Department of Labor, including its regulations and rules promulgated under the Occupational Safety and Health Act of 1975, 29 U.S.C. § 651 et seq., for guidance, provided however, that nothing in this Chapter shall be construed as an adoption by the Tribes or application of the Occupational Safety and Health Act of 1975 and its rules or regulations to the Tribes.

Section 703 TERO Office Designated TOSHA Office

The TERO Office is hereby designated as the Tribes' TOSHA Compliance and Safety Inspection Office, which shall coordinate and communicate with the federal OSHA office, and provide oversight and monitoring at workplaces.

Section 704 TERO Safety Inspection Officer Established

A. There is hereby established pursuant to this Ordinance a TOSHA Safety Inspection Officer, who shall be under the supervision of the TERO Director.

B. The Fort Hall Business Council shall determine and authorize the compensation to be paid to TERO Safety Inspection Officer shall receive necessary travel expenses and other related business expenses.

C. The TOSHA Safety Inspection Officer shall have the following duties and responsibilities:

1. Ensure all workplaces are in compliance with all applicable health, safety and environmental laws and regulations;

2. Promulgate Tribal regulations to ensure compliance with applicable Tribal and Federal Laws, Codes, Regulations that will protect the safety of workers and integrity of the workplaces within the jurisdiction of the Tribes and ensure compliance with such standards;

3. Be the primary contact for all outside safety regulatory agencies, communicate and work with Tribal, outside law enforcement agencies and regulatory agencies regarding safety regulation, so as to protect the workforce and the integrity of the workplaces and projects within the jurisdiction of the Tribes;

4. Ensure that investigations are performed upon alleged and actual safety violations to ensure that appropriate enforcement actions are taken and appropriate incident reports are made;

5. Be responsible for the on-going inspection of all workplace equipment and all workplace and construction areas;

6. Be responsible for the levying of fines due to safety violations;

7. Inspect, copy, audit, impound and examine any workplace, construction site documents

and records;

8. Apply for injunctive or declaratory relief in order to protect the integrity of the workplace, construction site or project within the jurisdiction of the Tribes;
9. Protect confidentiality of individuals and entities as identified within applicable law;
10. Provide reports, as required to the TERO Commission;
11. Delegate authority as is required and in compliance with applicable law, regulations;
12. Monitor, investigate, act and enforce compliance with this Ordinance, regulations and Compact to prevent any violation(s) thereof;
13. Exercise authority necessary to perform the duties assigned to it by this Ordinance, and is not limited by enumeration of powers in this Chapter;
14. Inspect and examine all premises wherein work, construction is conducted;
15. Seize and remove from an establishment (or wherever located) and impound such equipment and supplies for the purpose of examination, inspection, evidence or forfeiture;
16. Demand access to and inspect, examine and audit all papers, books and records of employers respecting safety and all other matters affecting the enforcement of the policy of or any of the provisions of this Ordinance; and
17. Maintain files and records of monitoring, investigations and compliance actions.

Section 705 Inspections, Investigations and Recordkeeping

- A. In order to provide for occupational safety and health of workers, the TOSHA Safety Inspection Officer, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized –
 1. to enter without delay and at reasonable times any plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and
 2. to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.
- B. In making his inspections and investigations under this chapter the TOSHA Safety Inspection Officer may require attendance and testimony of witnesses and the production of evidence under oath.
- C. Each employer shall make, keep and preserve, and make available to the TOSHA Safety Inspection Officer such records regarding activities relating to this chapter as the Officer, may deem appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses, including reports on work related deaths, injuries and illnesses other than minor injuries, exposure to potentially toxic materials or harmful physical agents.

D. A representative of the employer and representative of employees shall be given an opportunity to accompany the TOSHA Safety Inspection Officer during the physical inspection or any workplace for the purpose of aiding such inspection. Where there is no authorized employee representative, the TOSHA Safety Inspection Officer shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

E. Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the TOSHA Safety Inspection Officer of such violation or danger. Any such notice shall be in writing, shall set forth reasonable particularity the grounds for notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving notice, his name and the names of the individual employees referred to therein shall not appear on such copy or on any record published, released or made available in reports. If upon receipt of such notification the TOSHA Safety Inspection Officer shall make a special inspection as soon as practicable and determine if there is a violation or danger exists. If the TOSHA Safety Inspector Officer determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

F. Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the TOSHA Safety Inspection Officer, in writing, of any health or safety violation which they have reason to believe exists in such workplace.

G. The TOSHA Safety Inspection Officer is authorized to compile either in summary or detailed form all reports or information obtained under this chapter, citations issued and other documentation deemed necessary.

CHAPTER 8 COMPLAINTS, ENFORCEMENT, HEARINGS AND APPEALS

Section 801 Complaints

A. An employee who believes an employer or person has violated any provisions of this Ordinance or regulations promulgated may file a complaint with the TERO Director for determination of whether the prohibited practice alleged has been or is being committed. The complaint must be filed within thirty (30) days of the event or incident upon which the complaint is based, provided however, any complaint under Section 504 must be commenced within two years. The complaint shall be in writing and shall provide such information that will reasonably enable the TERO Director to understand the general nature of the complaint and carry out an investigation of the complaint.

B. This administrative process is a prerequisite that must be exhausted before a complainant can pursue any legal action in Tribal Court.

Section 802 Duty to Investigate and Enforcement

A. The Tribal TERO Compliance Officer or Director is authorized to investigate complaints of violation or threatened violations of this Ordinance. The TERO Director is authorized to enforce the rules adopted pursuant to this Ordinance and to prosecute all persons violating any of its provisions, and to take all means at their command to ensure its effective enforcement. 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. If after investigation the TERO Director finds reason to believe a violation of the Ordinance of regulations has occurred, the TERO Director shall proceed in accordance with the provisions of Section 803.

Section 803 Complaints Against Tribal Offices, Subdivisions, Agencies, Arms, Departments or Commercial Enterprises

A. Any employee who believes any office, subdivision, agency, arm, Department or commercial enterprise of the Tribes has violated any requirements of this Ordinance or regulation may file a complaint with the TERO Director only after the individual has either:

1. filed a complaint with, and exhausted its administrative remedies with that office, subdivision, agency, arm, department or commercial enterprise, or
2. filed a complaint and 60 days has passed since filing the complaint and no action has been taken on the complaint by that office.

B. Prior to the initiation of any investigation of complaints against any office, subdivision, agency, arm, department or commercial enterprise of the Tribes, the TERO Compliance Officer or Director shall contact the Tribal Human Resources Director to ensure there is not any conflict of interest or duplicative investigations.

C. In the event, the Tribal Human Resources Director has initiated an investigation that process will prevail over the TERO investigation, unless the complaint is against the Human Resources Department in which case the TERO Office shall conduct the investigation and the provisions of this Ordinance will apply.

Section 804 Limited Waiver of Sovereign Immunity

To the extent that a complaint filed in the TERO Office is against the Tribes including any arm, subdivision, commission, office, officer, employee, or agent of the Tribes, or a hearing before the TERO Commission concerns claimed violations of this Ordinance against the Tribes, or an appeal to the Tribal Court concerns claims against the Tribes, the Tribes hereby grant a limited waiver of its sovereign immunity from suit for such claims and in such forums for the limited purpose of resolving the action provided under this Ordinance, provided however, that (a) this limited waiver applies only to actions taken to interpret or enforce the provisions of this Ordinance and shall not under any circumstances apply to any other legal action taken by any other person or entity against the Tribes; (b) the relief available pursuant to this limited waiver shall consist of equitable and injunctive relief and monetary damages not

to exceed \$5,000; and (c) in no event shall any judgment or other relief awarded pursuant to this limited waiver result in the encumbrance of any Tribal property or assets. Nothing contained in this Ordinance shall be interpreted as empowering the TERO Commission to waive the Tribes' or the TERO Commission's immunity to suit, or shall be construed to waive the sovereign immunity of the Tribes or any arm, subdivision, commission, office, officer, employee or agent of the Tribes in any other forum or for any other claim, including any claim in state or federal court or in any state or federal agency, or in any other forum or context. Nothing contained is intended to confer any right upon an entity or person who is not covered by this Ordinance.

Section 805 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 TERO Commissioner, the TERO Director, or any field TERO Compliance Officer designated by the 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 TERO Commission deems relevant or material to the inquiry. The TERO Director and the TERO 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 806 Enforcement

A. Notice of Noncompliance. When, after conducting an investigation, initiated by a complaint pursuant to Section 801 or a self-initiated investigation pursuant to Section 802, the TERO Director has reason to believe a violation of this Ordinance or 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 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 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 Director has reason to believe irreparable harm will occur during that period, in which case the Director may require that compliance occur within fewer than five working days.

C. Voluntary Compliance; Request for Administrative Hearing. If an 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 an employer fails or refuses to comply with the terms of a notice of noncompliance, the employer or the TERO Director may request a hearing before the TERO 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 TERO Commission to avoid irreparable harm. If a party fails or

refuses to comply and a hearing is not requested, the TERO 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 TERO 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 TERO Commission and Shoshone-Bannock Tribal Court. If a covered employer fails or refuses to post a required bond, the TERO Commission may proceed pursuant to subsection F. The Director may also petition the Shoshone-Bannock Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the TERO Commission and other complaining parties during the pendency of the enforcement proceedings.

E. Administrative Hearing Procedure Before TERO Commission. Any hearing held pursuant to this Section shall be conducted by the TERO Commission. The TERO Commission shall adopt particular rules of procedure to govern administrative hearings before the TERO Commission. The hearing procedures shall provide due process as required by Tribal law. The TERO Commission may adopt particular rules of procedure. Neither the TERO Commission nor a hearing under this Section is subject to the Rules of Evidence unless the TERO 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.

Section 807 Decision of TERO Commission

A. If after all the evidence is considered and arguments heard, the TERO Commission determines that a prohibited practice has been or is being committed, it shall state its findings and conclusions of law, and it shall issue and serve on the party committing the prohibited practice an order requiring it or him/her to cease and desist from such prohibited practice, and shall take such further action as will effectuate the policies of this Ordinance, including but not limited to:

1. reinstatement of an employee discriminated against in violation of this Ordinance, with or without back pay;
2. ordering relief that will make an individual whole, provided that, nothing herein shall authorize awarding damages for emotional distress or pain and suffering, or attorneys fees;
3. deny such party the right to commence business on the Reservation;
4. terminate such party's business activity within the Reservation;
5. deny the right of such party to conduct any further business within the Reservation;
6. impose a civil fine on such party;

7. order the party to take such other action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation of this Ordinance, consistent with the laws of the Tribes and the Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq.;and/or

8. other civil penalties as provided in Chapter 9 of this Ordinance.

B. The TERO Commission's decision shall be in writing and shall be served on the charged employer by registered mail or in person no later than thirty (30) calendar days after the close of the hearing described in subsection E.

C. **Judicial Enforcement of TERO Commission Decision.** Where the employer fails to comply immediately with the TERO Commission's orders, the TERO Director, acting under the direction of the TERO 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 808 Dismissal

If, after all evidence is considered and arguments heard, the TERO Commission determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and conclusions for law and shall issue an order dismissing the complaint.

Section 809 Right to Appeal

A. The Shoshone-Bannock Tribal Court shall have original jurisdiction to hear and adjudicate appeals arising under this Ordinance.

B. Any party who participated in the administrative hearing and is adversely affected by a final TERO Commission decision or order may appeal to the Shoshone-Bannock Tribal Court, pursuant to the Rules and Procedures of the Tribal Court. An appeal under this section must be filed in the Tribal Court no later than twenty (20) calendar days from the date of the TERO Commission's final administrative decision, with a copy of the notice of appeal served on the TERO Director and the TERO 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 or legal representative.
4. Comply with any other requirements for civil actions filed in the Tribal Court.

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

C. Failure to file a timely appeal bars any right judicial review of the TERO Commission's decision and renders the TERO Commission's decision final and binding.

1. 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 TERO Commission decision under this Ordinance, the record reviewed by the Tribal Court shall consist only of the record presented to the TERO Commission.

2. 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 TERO 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 TERO Commission record shall not stay the Tribal Court review process.

D. Except as provided below or in subsection B, the order of the TERO Commission shall be stayed 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 TERO Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the TERO Commission's Order if that Order is upheld by the Tribal Court. If the order of the TERO Commission is reversed or modified, the Tribal Court shall by its mandate specifically direct the TERO 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.

E. If at any stage in the enforcement process, the TERO 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 TERO 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 TERO 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 TERO Commission and other affected parties.

F. If, by the 20th day after the party's receipt of either:

1. notice of a decision by the TERO Commission from which no appeal to the Tribal Court is taken, or

2. notice of a final decision of the Tribal Court upholding the TERO Commission's decision from which no appeal to the Tribal Appellate Court is taken,

and the party has failed to come into compliance with the decision of the TERO Commission or Tribal Court, the TERO Director shall petition the Tribal Court and the Tribal Court shall grant such orders as are necessary and appropriate to enforce the orders of the TERO Commission or Tribal Court and the sanctions imposed by them.

Section 810 Decisions and Appeals

The decision of the Tribal Court, whether based on the adoption of the decision of the TERO Commission, shall be final and there shall be no appeal to the Tribal Court of Appeals or any other court in any jurisdiction.

CHAPTER 9 REMEDIES, CIVIL PENALTIES

Section 901 Penalties

Any Indian who directly or indirectly violates any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a period not to exceed ninety (90) days, or both such fine and imprisonment.

Section 902 Civil Violations of Ordinance for Construction Related Projects

Any violation of this Ordinance relating to construction projects, pipeline or gas line installation, or projects which require adherence to industry safety standards, shall be subject to a civil fine of not more than ten thousand dollars (\$10,000.00) for each separate count or violation. Each day of violation shall constitute a separate violation under this Ordinance. A violator may also be required to pay TERO Commission costs, storage fees, and auction or sales fees. All property used or which may be used in each and every separate violation of this Ordinance may become the property of the Tribes; persons may be prohibited from trespassing on premises licensed under this Ordinance, licenses may be suspended, revoked, or limited and/or establishments may be forcibly closed. All such action shall be taken at the discretion of the TERO Commission.

Section 903 Sanctions

Any person who engages in activities on property subject to the provisions of this Ordinance or in violation of any regulation, provision, or amendment under this Ordinance shall be in violation of this Ordinance and shall be subject to punishment. Nothing herein shall be interpreted to limit the liability of such individuals in tribal, state or federal court.

CHAPTER 10 MISCELLANEOUS

Section 1001 Severability

The provisions of this ordinance are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, by a court of competent jurisdiction, such declaration shall not affect the remaining provisions of this Ordinance and they shall continue to be in full force and effect.

Section 1002 Amendments

All provisions of this Ordinance are subject to amendment and approval by the Fort Hall Business Council.

Section 1003 Regulations

A. The TERO Commission is authorized to establish regulations pursuant to this Ordinance to carry out its provisions and administration thereof.

B. Prior to establishing any final regulation, the TERO Commission shall submit a proposed regulation for public comment for at least thirty (30) calendar days. Publication of the availability to comment on any proposed regulations shall be published in the Sho-Ban Newspaper for at least three weeks. Following the comment period, the Commission may hold a hearing to consider public comments and allow members of the public an opportunity to make verbal comments on the proposed regulation.

C. 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 comments and a hearing prior to final establishment of the regulation.

All regulations promulgated are subject to proper revisions, repeal or amendment by the TERO Commission.

Section 1004 Conflict With Other Laws or Policies

To the extent that any provision of this Ordinance conflicts with any other law or any policy or procedures issued by any person, employer or Tribal entity, this law shall govern, except if expressly provided otherwise herein, provided however, if a Tribal law is more stringent then that law shall govern.

Section 1005 Effective Date

The Ordinance shall take effect upon approval by the Fort Hall Business Council, and unless disapproved by the Secretary of Interior or his duly authorize