

**YUROK TRIBE  
TRIBAL EMPLOYMENT RIGHTS ORDINANCE**



**DATE APPROVED:** October 22, 2003

**DATE AMENDED:** June 9, 2005

**SUBJECT:** Establishment of the Yurok Tribal Employment Rights Office (TERO) and adoption of standards and procedural guidelines for application of Yurok and Indian Preference in Employment.

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## **SECTION 1.0    SHORT TITLE**

The short title of this ordinance shall be the "Yurok Tribal Employment Rights Office Ordinance," or Yurok TERO Ordinance.

### **1.1 AUTHORITY**

This Ordinance is established by the Yurok Tribal Council pursuant to the authority delegated to the Tribal Council by Article IV, Section 5(a) of the Constitution of the Yurok Tribe.

### **1.2 JURISDICTION**

The jurisdiction of the Yurok Tribe to enforce the TERO ordinance shall extend to all Yurok tribal "territory" and the area within the exterior boundaries of the "reservation" as defined in Article I, sections 1 through 3 of the Constitution of the Yurok Tribe. Additionally, the Tribe retains jurisdiction to enforce provisions of the TERO ordinance for all projects initiated or taken over by the Yurok Indian Housing Authority, whether on, or off, the Yurok reservation.

### **1.3 STATEMENT OF PURPOSE**

The Yurok Tribal Council operates under a constitutional mandate to protect the sovereignty of the Yurok Tribe and to provide for the cultural, social, and economic well being of current and future Yurok tribal members. In fulfillment of its duty to guarantee the unique employment rights of all Yurok tribal members and other Indians within its jurisdiction, the Yurok Tribal Council hereby creates a Tribal Employment Rights Office, (TERO) and establishes standards and procedural guidelines to assure 1) equal and effective application of this Ordinance; and 2) due process for all individuals affected by the application of its requirements.

#### **1.4 CONSISTENCY WITH FEDERAL LAWS**

Indians have unique and special employment rights, and are entitled to the protection of laws established by the federal government to combat employment discrimination on or near Indian reservations, including the following:

- 1.4.1 Title VII of the Civil Rights Act, including Section 703(i), which makes Indian preference in employment permissible.
- 1.4.2 Executive Order 11246 of the Federal Office of Contract Compliance, which exempts from the general requirements policies extending preference in employment for Indians living on or near an Indian Reservation, and which further prohibits discrimination among Indians as a group on the basis of religion, sex, or tribal affiliation. E.O. 11246 applies only to employers working under federal contracts.
- 1.4.3 The Indian Self-Determination Act, Section 7(b) of Public Law 93-638 which provides for Indian Preference in employment and training, and contracting or subcontracting on all contracts negotiated or let on behalf of an Indian Tribe.
- 1.4.4 The Indian Civil Rights Act of 1968 (ICRA) which prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights similar to those individual rights guaranteed under the Bill of Rights of the United States Constitution.

#### **SECTION 2. DEFINITIONS**

- 2.1 "**CHAIRPERSON**" means the Chairperson of the Yurok Tribal Council.
- 2.2 "**COMMERCE**" means the exchange or provision of goods, services and/or property, or the offer of same, without reference to the locality where transaction is conducted or consummated.
- 2.3 "**COMMUTE**" means the distance in miles, one way, customary for the occupation and region.

- 2.4 **"CORE EMPLOYEE"** means an employee who performs an essential job function and has been identified as an employee who is vital to the success of the endeavor. (Core Employees should be identified in coordination with the TERO Office and employer possesses records of past employment as a supervisor or foreman).
- 2.5 **"TRIBAL COUNCIL" or "COUNCIL"** means the Yurok Tribal Council.
- 2.6 **"COVERED EMPLOYER"** means any person, company, contractor, subcontractor or entity located or engaging in commercial or employment activity on the Yurok Indian Reservation, and which employs two or more persons, including the Yurok Tribe, regardless of where the activity occurs.
- 2.7 **"EMPLOYEE"** means any non-supervisory employee in a non-managerial position working on the Yurok Indian Reservation or its contiguous lands.
- 2.8 **"EXECUTIVE DIRECTOR"** means the administrative officer designated by the Tribal Council as such.
- 2.9 **"Grandfathering"** means providing an exception to a restriction that allows all those already doing something to continue, even though it may be otherwise prevented by the restriction.
- 2.10 **"INDIAN"** means an enrolled member of any federally recognized Indian tribe.
- 2.11 **"INDIAN FIRM"** means a firm or business certified by the TERO Office as eligible for Indian preference in contracting and subcontracting. Indian(s) must hold at least 51% of such a firm or business and exercise majority management control. Verification of proof of ownership shall be provided to the TERO.

- 2.12 **"INDIAN PREFERENCE"** means the policy of extending preference in employment or training opportunities to Yurok Tribal Members and other Indians, regardless of tribal affiliation, over non-Indians; as well as the policy of extending preference in contracting opportunities to Yurok Tribal businesses or firms and Indian owned businesses or firms, regardless of tribal affiliation, over non-Indian firms.
- 2.13 **"LOCATED ON OR NEAR THE YUROK RESERVATION"** means located within what a reasonable, prudent person would construe as the normal commuting distance from a location off the reservation to the exterior boundaries of the Yurok Indian Reservation as defined in Article I, Sections 1 through 3 of the Constitution of the Yurok Tribe.
- 2.14 **"NOTICE"** means that notification required to be given by the Yurok TERO Officer, the appointed tribal judge, the Tribal Council sitting as the interim final appeal body, or the Tribal Court acting as the body of final appeal regarding TERO related activities.
- 2.15 **"PERSON"** means both natural persons and artificial persons including, but not limited to, corporations, trusts, partnerships, unions, agents, societies, and sole proprietorships.
- 2.16 **"QUALIFIED INDIAN"** means an Indian who meets the requirements for a position as determined by the job requirements, the minimum qualifications statements for the position, and, for internal tribal hiring only, the final interview process. No employer may utilize any employment criteria not legitimately-related to the performance of the position.

- 2.17 **"QUALIFIED TRIBAL MEMBER"** means a Yurok tribal member who meets the requirements for a position as determined by the job requirements, the minimum qualifications statement for the position, and, for internal tribal hiring only, the final interview process. No employer may utilize any employment criteria not legitimately-related to performance of the position.
- 2.18 **"SECRETARY"** means the Secretary of the United States Department of the Interior, or his/her duly-authorized and designated representative.
- 2.19 **"TERO OFFICER"** means the administrative officer employed by the Tribe to oversee and ensure compliance with the TERO Ordinance. The TERO Officer shall have the authority, for good cause shown, to impose sanctions and to issue stop work orders for reasons of non-compliance.
- 2.20 **"TRIBE"** means the federally recognized Yurok Tribe of the Yurok Reservation, operating under the authority of the Yurok Constitution.
- 2.21 **"UNION"** or **"LABOR UNION"** means any organization, of any kind, or any agency of employee representation committee or plan, associated or organized for the purposes of collective bargaining for the benefit of employees and that exists for the purpose, in whole or part, of dealing with employers concerning grievances, working conditions, or terms of employment.
- 2.22 **"YUROK RESERVATION"** means all lands within the exterior boundaries of the Yurok Reservation; and any lands outside the exterior boundaries of the Yurok Reservation subsequently acquired, or put into trust, for the Tribe.

**2.23 "YUROK TRIBAL BUSINESS OR FIRM"** means a firm or business certified by the TERO Office as eligible for Indian Preference in contracting and subcontracting; provided that a Yurok tribal member holds at least 51% ownership interest in such a firm or business and exercise majority management control. Verification of proof of ownership shall be provided to the TERO prior to the issuance of any TERO Permit.

### **SECTION 3.0 ROLE OF YUROK TRIBAL COUNCIL**

**3.1 Authority.** Through the sovereign powers vested in the Yurok Tribal Council through the Constitution of the Yurok Tribe, the Council shall be responsible for designating such officers, agents, and employees as it deems necessary to assist in fulfilling Yurok Tribal TERO obligations, duties, and responsibilities. The Tribal Council will oversee TERO implementation; and shall either sit as the TERO Hearing body, or identify the composition of a hearing body

**3.2 Council Expenses.** The Yurok Tribal Council shall not receive compensation of any kind for fulfilling its TERO related duties, obligations, and responsibilities.

**3.3 Duties of the Council.** Within the scope of overseeing the Yurok TERO, the Council is authorized to prevent any person, whether an individual or an entity, from engaging in any unlawful Indian preference in employment practices as set forth in the Yurok Tribe's TERO Ordinance.

**3.4 Powers of the Council.** As the oversight body for TERO, the Council has jurisdiction and authority to:

**3.4.1** Formulate, adopt, amend and rescind rules, regulations and guidelines reasonably necessary to implement the provisions of this ordinance.

**3.4.2** To conduct hearings or appoint alternate hearing bodies and to subpoena witnesses and documents in accordance with this ordinance.

- 3.4.3 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 an essential business necessity, and receives written approval from the TERO Officer that such qualifications are essential.
- 3.4.4 Engage in discussion, and enter into agreements, with unions to ensure compliance with this ordinance. Such agreements shall in no way constitute recognition or endorsement of any union or union-related activity, including formation thereof.
- 3.4.5 Require employers to submit reports and take all actions deemed necessary for the fair and vigorous implementation of this Ordinance.

**3.5 Delegation of Authority.** The Tribal Council shall delegate such authority to the TERO administrative officer (hereinafter "TERO Officer") as is convenient or necessary for the efficient administration of this ordinance, except that the Council will not delegate its powers or duties to:

- 3.5.1 Adopt, amend or rescind rules, regulations or guidelines; or
- 3.5.2 Conduct hearings or impose sanctions outside the scope of Section 12 of this Ordinance; or
- 3.5.3 Appropriate funds and/or approve budgets; or
- 3.5.4 Waive the collection of TERO taxes.

#### **SECTION 4. THE YUOK TRIBAL EMPLOYMENT RIGHTS OFFICE**

##### **4.1 Establishment of Office and Hiring of TERO Officer(s)**

The Yurok Tribal Council hereby establishes the Yurok Tribal Employment Rights Office (hereinafter TERO OFFICE). The TERO Office is vested with the authority to implement the provision of this Ordinance. The Yurok Tribe Executive Director shall both hire the TERO Officer(s), and serve as his/her/their direct supervisor.

**4.2 Coverage.** All employers are required to give preference to Indians in hiring, promotion, training, temporary reductions in work force and all other aspects of employment, contracting, and subcontracting, and must comply with this Ordinance and the rules, regulations and orders of the Tribal Council.

**4.3 Duties of the TERO Administrative Officer**

The TERO Officer shall be charged with the overseeing the implementation and enforcement of this Ordinance, as well as day-to-day operations of the TERO office. The TERO Officer's duties include, but are not limited to, ensuring that Indian preference in employment is fully implemented by covered employers; and preventing any person from engaging in any unlawful practice that would interfere with application and/or enforcement of the provisions of this Ordinance.

**4.4 TERO Officer Authority**

The TERO Officer shall administer the policies and rules promulgated and adopted by the Tribal Council, and hold the powers and authorities prescribed by Council, including, but not limited to:

- 4.4.1 The authority to expend funds appropriated or obtained from various sources to carry out requirements of this Ordinance.
- 4.4.2 The authority to impose numerical hiring goals and timetables on an employer specifying the minimum numbers of qualified Tribal members and qualified Indians to be hired by occupation, craft, or skill level.
- 4.4.3 The authority to require employers to participate in such training programs as the Council, or its designee, deems necessary to further the goals of this Ordinance.
- 4.4.4 The duty to create and maintain a Tribal skills bank for all eligible Tribal members and other Indians residing in the administrative area covered by this Ordinance.

- 4.4.5 The ability to restrict or prevent the hiring of non-Tribal members or non-Indians until the TERO Officer certifies that qualified Tribal members or qualified Indians, as appropriate, are not available to fill the position in question.
- 4.4.6 The authority to enforce the Indian preference requirements of this Ordinance for Indian-owned businesses or firms, and Yurok Tribal businesses or firms in the awarding of contracts and subcontracts.
- 4.4.7 The ability to facilitate support programs to assist eligible Yurok Tribal members, the Yurok Tribal community and other Indians in obtaining and keeping employment.
- 4.4.8 The duty to recommend amendments or changes to the rules and regulations adopted by Council, or other actions necessary to achieve the purpose and objectives of the Yurok TERO established by this Ordinance.
- 4.4.9 The duty to locate training opportunities and programs designed to teach Yurok Tribal Members and other Indians skills and qualifications needed to obtain employment.
- 4.4.10 The TERO Officer shall have the authority to issue stop work orders and mandatory compliance orders when necessary either to achieve the goals of this Ordinance, or to compel compliance therewith. When necessary, the TERO Officer is also authorized to request assistance from the Yurok Tribe Office of Public Safety in enforcing any stop work order where circumstances in existence at the time of inspection reasonably warrant such intervention. The standard for whether assistance by Public Safety Officers is warranted is that of the reasonable person under the same or similar circumstances.

## **SECTION 5. APPLICABILITY AND COVERAGE**

### **5.1 Applicability**

Unless specifically prohibited by federal or Yurok Tribal law, this Ordinance shall apply to all employers, including but not limited to: the Tribal Council, (its programs, departments, entities, or enterprises); private employers; and independent contractors and subcontractors, including those performing work for the Council, the State of California, or the United States.

All employers shall extend an employment preference to qualified Indians, as provided in Section 5.4, in all aspects of employment, including but not limited to recruitment, hiring, promotion, lateral transfers, retentions, training, contracting, and subcontracting. No employer may recruit, hire, or otherwise employ any non-Indian for any employment position covered by this Ordinance, unless and until the TERO Officer has furnished written notice to such employer that no qualified Indians are available for such position.

### **5.2 Covered Positions**

The Yurok Tribe Indian Employment Preference Policy, Section 5.4, shall apply to every job classification, skill area, or craft recognized or utilized by an employer, including administrative, supervisory, and professional classifications.

### **5.3 Qualified Indians and Employment Criteria**

An Indian shall be deemed qualified for employment in a position if he/she meets the minimum requirements for such position. Any qualified Indian shall be afforded the preference to which he/she is entitled under Section 5.4 of this Ordinance. No employer may utilize any employment criteria that is not legitimately related to the performance of the position; and that has not been approved by the Yurok TERO Officer.

#### **5.4 Eligible Indians**

To the extent allowed by law, the Yurok Tribe and its entities shall extend a preference in hiring according to the following priorities:

- (1) Members of the Yurok Tribe;
- (2) Indian Spouses of members of the Yurok Tribe;
- (3) Other Indians;
- (4) Non-Tribal Spouse of members of the Yurok Tribe;
- (5) Other

The priorities listed above, however, shall not apply to any project subject to certain procurement processes or funding. With regard to these types of projects, all enrolled members of federally-recognized Indian tribes, whether Yurok Tribal members or not, are eligible for employment equally.

### **SECTION 6. IMPLEMENTATION OF SPECIFIC INDIAN PREFERENCE REQUIREMENTS**

#### **6.1 Employers, Contractors, and Subcontractors**

The requirements set forth in this Ordinance are binding on all employers, contractors, and subcontractors and will be considered a part of all resulting subcontract specifications. The employer bears the primary responsibility for compliance with the requirements of this Ordinance, and for ensuring that all contractors and subcontractors similarly comply.

All employers, contractors, and subcontractors shall be subject to the penalties provided herein for non-compliance with the terms and requirements of this Ordinance. All employers, contractors and subcontractors shall include in their contracts clauses acknowledging the equal opportunity and Indian preference requirements contained in this Ordinance.

## **6.2 Goals and Timetables for Indian Employment**

The TERO Officer will consult with individual employers engaged in commerce on, or near, the Yurok Reservation to establish the minimum number of qualified Tribal members and qualified Indians to be employed by each employer. Goals will be established for all job classifications and skill areas, and will include administrative, supervisory, and professional categories. The goals set will be expressed as:

- 6.2.1** Project hours of Tribal Members and Indian employment as a percentage of the total project hours worked by the regular work force for each specific job classification, skill level, or category.
- 6.2.2** Numerical goals based on surveys of the available Tribal member and Indian labor forces and projections of employment opportunities for each specific job classification, skill level, or category.

## **6.3 Training**

Employers may be required under this Ordinance to participate, or assign interested Yurok Tribal members and other Indians to participate, in training programs designed to assist Tribal members and Indians in becoming qualified in those occupations or job categories specific to the respective employer.

Indian preference requirements under this Ordinance include a mandate for hiring tribal members and Indian trainees or apprentices according to the usual practice of the occupation or trade. The ratio of trainees or apprentices to fully-qualified workers or journeyman in any particular trade may be set by the TERO Officer following consultation with the employer.

Employers having a collective bargaining agreement with a union will be required to obtain an agreement from the union that supports the objectives and goals of the trainee/apprentice hiring plan.

In the event the requirements of this Ordinance create a conflict with any union's seniority rights, the TERO Officer shall have the authority to negotiate such ratios with a prospective employer/contractor.

#### **6.4 Tribal Skills Bank and Referral Process**

The TERO Officer shall, in cooperation with other tribal departments, establish and administer a data bank of Yurok Tribal members and other Indians seeking employment. This data bank shall be called the Tribal skills bank, and shall list all available workers, their respective skills and qualifications, and include documentation of training or other special qualifications and/or needs.

No employer may hire non-tribal members until a reasonable time for referral, as defined in this subsection, has elapsed or the TERO Office has certified, in writing, that no qualified Tribal members or other qualified Indians are available to fill particular job openings.

"Reasonable time for referral" for purposes of this Ordinance means:

- (a) For construction jobs: the TERO Officer will locate and refer qualified Tribal members within 72 hours of the date and time of receiving the initial notice of available opening from the employer.
- (b) All other jobs: the TERO has five (5) working days from the date of receipt of the initial notice of available opening to locate and refer qualified Tribal members.

The TERO Officer may agree to waive or modify these requirements if there is a clear indication that the time limits would impose an undue burden on the project.

Employers with collective bargaining agreements are exempt from the requirements of this subsection if the union agrees to accept direct referrals from the TERO Officer. If the union does not fulfill its obligation to accept referrals, the TERO Officer may require the employer to accept referrals of qualified Tribal members or qualified Indians from other sources.

Employers found to be in violation of this Subsection will be subject to the penalties defined in Section 12 of this Ordinance and may further be required to remove any employees so hired.

#### **6.5 Preference in Employment Contracting and Subcontracting**

Contingent on funding source requirements, all employers shall give preference first to Yurok-owned businesses or firms, and second to Indian-owned businesses or firms in the award of any contract or subcontract. The TERO Officer will register and maintain a list of both Yurok and Indian owned businesses or firms. The TERO Officer shall promulgate regulations for documenting such Yurok and Indian-owned businesses or firms. Employers are not required under this Ordinance to take any extraordinary measure to identify such businesses.

For purposes of establishing eligibility for Indian Preference in contracting and subcontracting, the TERO Officer is authorized to actively recruit and certify Indian firms, whether located within or outside the Yurok Reservation. Any Contractor wishing to claim Indian preference with the Yurok Tribe TERO must complete the TERO Contractors Qualification Questionnaire for Indian Preference Contracting. Once certified by the TERO Officer as either a Yurok Tribal or Indian firm, applicants will be placed on a bidders' eligibility list. The TERO Officer will also register off-reservation and non-Indian firms that complete the Contractors Qualification Questionnaire.

Contingent on funding requirements, preference in contracting or subcontracting shall be accorded first to Yurok Tribal members. For example, if a non-Indian or non-Yurok Indian submits the lowest bid, and a Yurok Tribal member or Yurok-owned business submits a bid that is within five percent (5%) of the non-tribal member bidder, the Yurok Tribal member or Tribal member firm shall be provided the opportunity to match any bids within 5%. The contract shall then be awarded to the Yurok Tribal member or business.

#### **6.6 Indian Preference/Pre-Award Labor Force Projection**

Each Contractor shall include in its bid an Indian Preference Plan for the master contract and any subcontracts. The plan shall indicate the name of the proposed subcontractor; whether it is an Indian-owned firm; and, if not, information on the good faith steps taken to identify Indian firms for the subcontract. A contractor may not refuse to employ an Indian subcontractor on the basis of price, so long as the Indian firm's price is within five percent (5%) of the lowest bid, calculated by multiplying the lowest bid by 105%. A contractor may not refuse to employ an Indian subcontractor on the basis that a non-Indian firm is more qualified, so long as the Indian firm satisfies the threshold requirements for technical qualifications.

#### **6.7 Failure to Submit Indian Preference/Pre-Award Labor Force Projection**

A successful bidder who fails to submit an Indian Preference/Pre-Award Labor Force Projection Form prior to award of the contract shall be considered a non-responsive bidder for the purpose of awarding the contract and will be disqualified.

#### **6.8 Amendments to Plan**

If awarded the bid, the prime contractor can neither amend nor deviate from the Indian Preference Plan, nor add or delete any subcontracts or subcontractors without:

(a) Written consent of the prime contractor or his/her designee; and

(b) Written notice to Yurok TERO at least ten (10) business days prior to the date of the anticipated change; and

(c) Written authorization to proceed with the proposed amendments(s) from the TERO Officer prior to the date of implementation.

## **6.9 Bid Shopping Prohibited**

A contractor is prohibited from engaging in "bid shopping" as a means of avoiding its Indian preference obligations with regard to subcontracts. "Bid shopping" is the use of a low bid already received by a general contractor to pressure other subcontractors into submitting even lower bids.

## **6.10 Layoffs or Reductions in Workforce**

### **6.10.1 Termination of Yurok Tribal Members**

Contingent on funding requirements, no worker who is a Yurok tribal member will be terminated due to a reduction in workforce if a worker who is also Indian is still employed in the same job classification. If an Employer lays off workers by crews, all qualified tribal members must be transferred to other crews to be retained as long as other Indians in the same job classification are employed elsewhere on the job site.

### **6.10.2 Termination of Indians**

No worker who is an Indian will be terminated due to a reduction in workforce if a non-Indian worker in the same job classification is still employed. If an employer lays off workers by crews, all qualified Indians must be transferred to other crews to be retained as long as non-Indians in the same job classification are employed elsewhere on the job site.

## **6.11 Consideration for Promotion**

Every employer shall give Indians preferential consideration for all promotion opportunities, and shall encourage Indians to seek such opportunities. For every supervisory position filled by a non-Indian, the employer shall file a report with the TERO Office expressly indicating:

- (a) What efforts were made to inform Indian workers about the position; and
- (b) How many Indians applied for the position; and
- (c) The reason(s) why each Indian was not hired for the position.

## 6.12 Summer Employment for Students

Employers will make every effort to promote after-school, summer, and vacation employment for Indian students. Contingent on funding source requirements, qualified Yurok tribal members will be given preferential treatment for existing summer student employment programs.

### SECTION 7. TERO PERMIT PROCESS

The TERO Officer will only issue permits to employers conducting work either within the exterior boundaries of the Yurok Reservation, or on tribally-funded projects, whether on- or off-Reservation, that comply with the following terms and conditions:

- (a) Timely completion of a TERO Indian Preference Plan and Pre-Award Labor Force Projection Form; and
- (b) Filing the form with the Yurok TERO before commencing work; and
- (c) Inclusion of an Indian Preference Plan for the prime general contract and any subcontract(s) in each and every bid packet(s) submitted. The plan shall indicate:
  - i. The name of the proposed subcontractor(s); and
  - ii. Whether it is an Indian-owned firm and, if not, information on the good faith steps taken to identify Indian firms for the subcontract.

The employer agrees to comply with the requirements and procedures for the selection of contractors, subcontractor(s) and recruitment of viable Indian applicants pursuant to this Ordinance and through the TERO office. The employer understands that they are required to comply with the Yurok Tribe's TERO Ordinance and all of the requirements regarding "Indian Preference."

The TERO Pre-Award Labor Projection Form constitutes an agreement between the Yurok TERO and any employer engaging in commerce and employment activity pursuant to this Ordinance.

## **SECTION 8. THE YUROK TRIBAL EMPLOYMENT RIGHTS FEE**

### **8.1 Establishment of Tribal Employment Rights Fee**

There is hereby established a TERO fee to be paid to the Yurok Tribe TERO Office by each covered employer. The purpose of the fee is both to raise revenue for operation of the Yurok TERO, and provide educational job training services to Yurok Tribal Members.

### **8.2 Fee Schedule**

**8.2.1** Covered employers with a construction contract must pay a one-time fee of three-percent (3%) of the total gross amount of the contract, where the total contract amount is at least two-thousand dollars U.S. (\$2,000.00 U.S.).

**8.2.2** All other covered employers shall be assessed a fee at the rate of one-half of one-percent (1/2 of 1%) of that covered employer's total gross annual revenue earned directly from engaging in commerce and/or business on the Reservation.

### **8.3 Duties of TERO Officer/Method of Payment**

The TERO Officer shall be responsible for collecting all TERO fees from covered employers.

**8.3.1** The TERO fee shall be paid to the Yurok Tribe; and shall be credited to the account of the Yurok Tribe TERO for use in implementing this Ordinance; and shall be governed by guidelines approved by the Yurok Tribal Council.

**8.3.2** The TERO fee may be paid in incremental payments, subject to prior approval of the Yurok by the Tribe's Finance Department and execution of a written agreement in a form acceptable to same. The agreement to make incremental payments shall be affixed to the contract to which the TERO fee applies.

**8.3.3** The Yurok Tribe Fiscal Department shall be exempt from any TERO Fees.

8.3.4 A contractor or employer that fails to pay the TERO fee pursuant to terms set forth in this Ordinance, shall be subject to sanctions set forth in section 12 herein.

8.3.5 All TERO fees shall be made payable to the Yurok Tribe and forwarded to the following address:

Yurok Tribe  
Fiscal Department  
P.O. Box 1027  
Klamath, CA 95548

## **SECTION 9. COMPLIANCE BY UNIONS**

Every union entering into a collective bargaining agreement with a covered employer must file a written agreement confirming the union's intent to comply with this Ordinance, and the rules, regulations, and orders of the Yurok TERO. Until such agreement(s) is/are on file with the TERO, the employer may not proceed with work on the Yurok Reservation or its defined contiguous lands.

### **9.1 Mandatory Elements of Union Agreements**

Every union agreement filed with the Yurok TERO must include:

- 9.1.1 Contingent on funding requirements, a statement of Yurok Tribal Member Preference, under which the union will give a preference first to qualified Yurok tribal members, and second, to qualified Indians, in job referral, regardless of which union dispatch list they occupy.
- 9.1.2 A statement that the union will cooperate with the Council and the TERO Officer with regard to TERO compliance under this Ordinance.
- 9.1.3 Contingent on funding requirements, the union will establish a mechanism allowing first, qualified Yurok tribal members, and second, qualified Indians, to register for job referral lists by telephone or mail.

9.1.4 Contingent on funding requirements, the Union will first "grandfather" all qualified Yurok tribal members and secondly, all qualified Indians, who qualify for journeyman status and wish to join the Union.

9.1.5 Contingent on funding requirements, the union will grant temporary work permits first, to qualified Yurok tribal members; and second, to qualified Indians, who do not wish to join the Union.

9.1.6 The Union will expressly agree to subject itself to the jurisdiction of the Yurok Tribe and the Yurok Tribal Court for purposes of this Ordinance.

## **9.2 Recognition of Unions**

Nothing provided in this Ordinance, nor any activity authorized by the Council or Yurok TERO, constitutes official tribal recognition of any particular union. The utilization of any such union shall not be construed as an endorsement of any particular union activities on the Yurok Reservation or its contiguous lands.

## **SECTION 10. DUE PROCESS AND HEARINGS**

### **10.1 Right to Hearings**

An individual, employer, union, or the TERO Officer may request a hearing pursuant to either allegation(s) of a violation of this Ordinance; or that any rule, regulation, or order of the TERO Officer is believed to be erroneous or illegal.

### **10.2 Notice of Hearing**

Whenever a hearing is requested by the TERO Officer, an individual, an employer, or a union, written notice thereof must be provided to all involved parties.

**10.2.1** Said notice shall include:

- (a) The names of all parties to an action; and
- (b) Names of those not yet party to an action, whenever known; or whose identity as a potential party or parties would be discovered through the exercise of due diligence; and
- (c) The nature of the hearing; and
- (d) An express statement that the party or parties named have the right to be present at the hearing; and
- (e) An express statement that anyone named in the notice has the right to present testimony of witnesses or other evidence; and
- (f) An express statement that anyone named in the notice has the right to representation by counsel at their own expense; and
- (g) An express statement that the TERO Officer may be represented by General Counsel for the Yurok Tribe.

**10.2.2** Notice shall be published in at least two newspapers of appropriate circulation. If the whereabouts of any party or parties is unknown, then:

- (a) Notice shall be posted in a public place within the Yurok Reservation for not less than ten (10) working days; and
- (b) Notice shall be kept on file in the tribal offices located in Eureka, Weitchpec, and Klamath, available upon request; and
- (c) Notice shall also be posted in the Eureka, Weitchpec, and Klamath tribal offices and therefore, available for public inspection.

**10.3 TERO Office Complaint Procedure**

The TERO Officer may file a complaint on the basis of noncompliance with the requirements of this Ordinance by an employer, contractor, subcontractor, or union.

The TERO Officer may first attempt to resolve the matter informally, but if that is not possible or futile, the TERO Officer may request a hearing pursuant to subsection 10.1 of this Ordinance.

#### **10.4 Individual Complaint Procedure**

- 10.4.1** An individual may file a complaint with the TERO Office regarding any alleged violation on the part of an employer, contractor, subcontractor, or union. To substantiate a verbally-delivered complaint, the TERO Officer must request that the complainant submit the complaint in writing.
- 10.4.2** Upon receipt of a written complaint, the TERO Officer has an affirmative duty to investigate the allegations. Both the party or parties named as violators and the complainant will receive written notice stating that an investigation will be conducted and setting forth with specificity the factual basis for the complaint.
- 10.4.3** Once the investigation is complete, the TERO Officer will issue a written finding either sustaining or not sustaining the alleged violation(s). If the allegations are not sustained, the complaint shall be dismissed and written notice provided to all involved parties within ten (10) business days of the date of the finding. If the allegations are sustained, the TERO Officer shall issue written notice within ten (10) business days of the date of the finding to all involved parties.
- 10.4.4** If an allegation of a TERO violation is sustained, the TERO Officer will then request to meet informally with both the complainant and TERO violator in an attempt to resolve the issue. The request for a meeting can be made either in writing or telephonically. If telephonic, a log shall be kept at the Yurok TERO containing the date, time, and content of the conversation.
- 10.4.5** If the matter cannot be resolved informally, either the parties or TERO Officer may request a hearing pursuant to Subsection 10.1.

**10.4.6** Any employer, contractor, subcontractor, or union that takes retaliatory action against a Yurok tribal member or other Indian employee who has utilized this complaint procedure, or who asserts any rights under this Ordinance, will be subject to the penalties provided in section 12 of this Ordinance.

#### **10.5 Complaint by an Employer or Union**

**10.5.1** Any employer or union may file a complaint with the Yurok Tribal Council alleging that a provision of this Ordinance, or any rule, regulation, or order of the TERO Office is illegal, erroneous, and/or erroneously applied.

**10.5.2** Any such complaint must be in writing, and addressed to both the Tribal Council and TERO Officer. The complaint must specify, in detail, the basis for the complaint.

**10.5.3** Upon receipt of the complaint, the Tribal Council, or its designee, shall schedule a hearing on the merits. To prevail at the hearing, the employer or union must establish prove their allegations by a preponderance of the evidence. Following the hearing, the Council must rule whether the allegation(s) is/are sustained or not sustained. The finding shall be forwarded within ten (10) business days of the date of the decision to all involved parties, along with notice of the right to appeal the decision of the Council to the Yurok Tribal Court.

#### **10.6 Investigations**

The TERO Officer and/or any field compliance officer designated by the Council may conduct such private or public investigations within the jurisdiction of this Ordinance, to determine the facts or the instances of alleged violations of this Ordinance. The TERO Officer and/or field compliance officer may enter the place of business or employment of any employer to conduct such investigations during regular business hours.

Investigations can include, but are not limited to: taking statements of workers on site or at the Yurok Tribal headquarters, whether by hand or recording device; taking photographs or video recordings of work areas and workers on any given site; requesting certified payroll records, proof of liability and workmen's compensation insurance, and any other regularly-kept business records relating to employee attendance and activity; making more than one site visit per day; taking statements, whether by hand or via a recording device, of community members having information about an employer's practices that formed the basis of a written complaint; and interviewing record-keeping staff of any respective employer.

### **10.7 Hearing Procedures**

The following procedures will apply all hearings:

- 10.7.1** All parties may present testimony of witnesses and other evidence; and may be represented by counsel at their own expense.
- 10.7.2** The Tribal Council or TERO Officer, may receive advice and assistance from the Yurok Tribe's in-house legal counsel. Outside counsel, when deemed necessary by the Council, may also be consulted.
- 10.7.3** The hearing shall be governed by the rules of practice and procedure adopted by the Council. The Council shall not be bound by technical rules of evidence while conducting hearings, and no informality in any proceeding, including the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the Council.
- 10.7.4** Depending on the type of hearing, the following person(s) may preside: The Chair or Vice Chair of the Tribal Council or a hearing officer appointed by the Tribal Council.
- 10.7.5** Any finding sustaining an allegation of violation by any party defendant must be supported by a preponderance of the evidence.

**10.7.6** At the close of the hearing, the Council may take immediate action or take the matter under advisement and render a decision on a later date. If rendering of a decision is postponed, all parties shall be so notified, on the record, prior to adjourning the hearing session. If possible, a date by which a final decision will be rendered shall also be provided to all parties.

**10.7.7** Any decision by a hearing officer, or hearing body, must be issued in writing, and submitted no more than thirty (30) days after the date of the conclusion of the hearing. It shall be served on all parties via certified mail, return-receipt requested, or in person. If service is accomplished in person, proof of receipt shall be achieved by having the recipient place their signature in a logbook bearing a brief description of the document(s) received. The logbook shall be kept at the Tribal headquarters in Klamath, California.

**10.7.8** Official transcripts shall be made of every hearing conducted. Said transcript(s) shall be made available to any party wishing to appeal the decision of the Tribal Council or its designee for a fee of two-hundred-fifty-five dollars U.S. (\$250.00 U.S.). From time-to-time, this fee shall be adjusted without prior notice to account for increased market costs and inflation. Should the Yurok Tribal Council contract transcription services outside the Tribal facility, the rate shall be the market rate for that particular service provider. In the event the appellant is the TERO Officer and/or his/her designee, the fee for the transcript shall be waived unless the transcript is provided by a contract transcription services provider.

## **10.8 Appeals**

**10.8.1** Accurate records of all testimony, evidence, and other matters material to the issue on appeal presented at evidentiary hearings conducted by the Council or its designee.

**10.8.2** Any final order of the Tribal Council may be appealed to the Yurok Tribal Court. On appeal, the case will be tried de novo.

**10.8.3** The Notice of Appeal must:

(a) Be filed, in writing, at the TERO Office within fifteen (15) days after the date of entry of the final order.

(b) Identify the order and set forth the grounds upon which the request for a reversal or modification is sought.

**10.8.4** Compliance with any order, which is the subject of a timely appeal, will be held in abeyance pending a decision on the matter by the Tribal Court. If an order under appeal is modified or set aside by the Tribal Court, the decision of the Tribal Court will be sent via certified mail, return-receipt requested, to all parties. Any amendments to this Ordinance ordered as a result of an appeal to the Tribal Court will be sent via certified mail, return-receipt requested, to employers, federal and state agencies, and other interested parties; and will be posted in public places on the Yurok Reservation.

## **10.9 Confidentiality**

**10.9.1** All information collected pursuant to an investigation authorized under this Ordinance shall be kept confidential. Portions of hearings that involve the use or disclosure of confidential documents such as employee records shall be closed to the public, and files containing such confidential information shall be sealed. Such confidential information may only be obtained pursuant to a Tribal Court order following a hearing on an affidavit proving the necessity of disclosure.

10.9.2 Any person whose confidential information is sought shall be given sufficient notice in advance of disclosing such confidential information, so that the person may object to the disclosure.

#### **SECTION 11. TERO COMPLIANCE**

As of the effective date of this Ordinance, no new covered employer may commence work on the Yurok Indian Reservation without consulting with the Tribe through its TERO Office, and filing an acceptable Indian Preference Plan and a TERO Pre-Award Labor Force Projection Form.

#### **SECTION 12. REPORTING AND ON-SITE INSPECTIONS**

Each employer, as part of their compliance activity, shall submit monthly reports to the TERO Office, on a form provided by the TERO Officer, indicating the number of employees - including a separate tally of Indians - on its workforce; monthly hires and terminations and/or lay-offs; and other information as may be identified on the form.

An employer who fails to submit monthly reports shall be subject to sanctions.

The TERO Officer will have the authority to make on-site inspections during regular working hours in order to monitor compliance with this Ordinance, and any other rules, regulations, and/or order of the TERO Officer or Council. The TERO Officer or designated field compliance investigator has the right to inspect and copy all relevant records of any employer, signatory union, contractor, or subcontractor, to interview or speak to workers and otherwise conduct investigations on the job site. All information collected will be kept confidential unless or until disclosure is required during a hearing or appeal as provided in section 10.7.

#### **SECTION 13. PENALTIES FOR VIOLATIONS**

Any employer, contractor, subcontractor, or union who violates this Ordinance or the rules, regulations, or orders promulgated by the TERO Officer or Council will be subject to the following penalties for such violation:

- (a) Denial of the right to begin or continue business or commerce, suspension of all operations; and/or prohibition from engaging in future operations (debarment) on, or within, the Yurok Reservation and its contiguous lands.
- (b) Payment of any back pay and damages to compensate any injured party.
- (c) Removal of any employees hired in violation of this Ordinance or the rules, regulations, and orders pertaining thereto.
- (d) An order requiring the employment, promotion, or training of qualified Tribal members, and other Indians who suffered economic injury as a direct result of the violation.
- (e) Imposition of monetary civil penalties and fines.
- (f) An order mandating changes in procedure or policies necessary to eliminate or correct the violation.
- (g) An order mandating any other provision deemed necessary by the TERO Officer, the Council, or the Tribal Court to alleviate, eliminate, or compensate for any violation.

The maximum penalty that may be imposed is \$500.00 for each occurrence. Every day during which a violation exists shall be deemed a separate occurrence.

#### **SECTION 14. ORDERS OF THE YUROK TRIBAL POLICE**

The Yurok Tribe Office of Public Safety is expressly authorized and directed to enforce any cease and desist or related order issued by the TERO Officer, in-house legal department, or Council only when such order is supported by either a judicial decree, or order, from the Yurok Tribal Court. The Tribal police will not be civilly liable for enforcing such Tribal Court orders or judicial decrees, provided that the order or decree bears the signature of a judge of the Tribal Court.

## **SECTION 15. PUBLICATION OF ORDINANCE**

The Council will notify all Covered Employers regarding the adoption of this Ordinance and their obligation to comply. All bid announcements issued by any tribal, federal, state, or other public or private entity shall contain a statement that the successful bidder will be required to comply with this Ordinance and all rules, regulations, and orders of the TERO Office and Tribal Council within it's jurisdiction. Council will send copies of this Ordinance to every employer operating on, or near, the Yurok Reservation or its contiguous lands, as defined in this Ordinance; and to every covered employer within thirty (30) days of the effective date of this Ordinance.

## **SECTION 16. SEVERABILITY**

If any provision of this Ordinance, or its application to any person or circumstances, is held invalid by a court of appropriate jurisdiction, the remainder of the Ordinance or application of the provision to other persons or circumstances, shall not be affected thereby.

## **SECTION 17. EFFECTIVE DATE**

This Ordinance shall be effective and enforceable from the date of its approval and adoption by the Yurok Tribal Council.

## **SECTION 18. SOVEREIGN IMMUNITY**

Nothing in the enactment, contents, administration, or enforcement of this Ordinance is intended to, nor shall, waive the sovereign immunity from unconsented suit of the Yurok Tribe, its officers, officials, employees, or agents acting within the course and scope of their official duties or authority, including, but not limited, to the following:

- (a) Taking legal action against any person to enforce or otherwise further the purposes of this Ordinance;
- (b) Defending legal action taken by another person to invalidate all or a portion of this Ordinance, or any actions taken under the authority of this Ordinance, for any failure to act under this Ordinance; or
- (c) Acting to enforce any penalties or sanctions under this Ordinance.

**SECTION 19. EXCLUSIVITY OF REMEDY**

The procedures, remedies, and forums set forth in this Ordinance are the sole and exclusive procedures, remedies, and forums for addressing any grievances, claims, or causes of action brought by any person pursuant to this Ordinance. The Tribe specifically does not consent to any grievances, claims, or causes of action other than those set forth in this Ordinance. By enacting this Ordinance, the Tribe is not creating any private causes of action.

**C\*E\*R\*T\*I\*F\*I\*C\*A\*T\*I\*O\*N**

This Yurok Tribal Employment Rights Office Ordinance amendment was passed at a regularly scheduled meeting of the Yurok Tribal Council on **June 9, 2005**, at which a quorum was present and this Ordinance was approved by a vote of 7 FOR 0 OPPOSED 0 ABSTENTIONS in accordance with Article 4, Section 5 (j) of the Constitution of the Yurok Tribe.

**DATED THIS 9<sup>th</sup> DAY OF JUNE, 2005**



Howard McConnell, Chairman  
Yurok Tribal Council

**Attest:**



Cynthia Carlson  
Executive Assistant