



Walker River Paiute Tribe
TRIBAL EMPLOYMENT RIGHTS ORDINANCE OFFICE

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**ORDINANCE OF THE GOVERNING BODY
OF THE
WALKER RIVER PAIUTE TRIBE**

TRIBAL EMPLOYMENT RIGHTS ORDINANCE WR-01-01

Section 1: Declaration of Policy

A Tribal Law on employment rights and opportunities is necessary to implement "Indian Preference" in hiring, promotion, training, layoffs and all other aspects of employment on the Walker River Paiute Reservation. This TERO Ordinance defines the procedures and policies to govern the implementation of these employment rights and opportunities.

Like land, water, air, and minerals, that is of importance to the Walker River Paiute Tribe, employment opportunities are equally important in order that Indian Preference be given to qualified members and other Indians from private sector contracts and subcontracts or other employment entities in accordance with provisions of the ordinance. Indians have unique and special employment, subcontract and contract rights and the Walker River Paiute Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. Indians are also entitled to the protection of the laws that the Walker River Paiute Tribe believes is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians.

Section 2: Definitions

- A. "Employee" means any person employed for wages or salary for work performed.
- B. "Employer" means any person, partnership, corporation or entity that employs, for wages, two or more employees.
- C. "Covered Employer" means any employer employing two or more employees who during any 30 day period, spends, cumulative 40 or more hours performing work within the exterior boundaries of the Walker River Paiute Reservation.
- D. "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other organization. The term "entity" is intended to be as broad and encompassing as possible to ensure the Ordinance's coverage over all employment and contract activities within the Tribe's jurisdiction, and the term shall be so interpreted by the Commission, Tribal Council, legal Counsel, and the courts.

- E. "Commission" means the Walker River Paiute Tribal Employment Rights Commission established by this Ordinance.
- F. "Commercial Enterprise" means any activity by the Walker River Paiute Tribe or of the Federal or State grants this is not a traditional grant function as defined by the IRS.
- G. "Indian" means any member of a Federally Recognized Tribe.
- H. "Local Indian" means any member of a Federally Recognized Tribe who resides within the boundaries of the Walker River Paiute Reservation.
- I. "Tribal Member" means any enrolled member of the Walker River Paiute Tribe.
- J. "TERO" means Tribal Employment Rights Ordinance.

Section 3: Indian Preference in Employment

All covered employers for all employment occurring within the exterior boundaries of the Walker River Paiute Reservation shall give preference to qualified Indians with the first preference to Tribal Members in all hiring, promotion, training, layoffs and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines, and orders of the Walker River Paiute Tribal Employment Rights Commission which set forth the specific obligations of employers in regard to Indian preference and Tribal Indian preference priority as follows:

- Tribal Members
- Local Indians Supporting Tribal Members
- Local Indians
- Indians from surrounding communities (Non-Local Indian)

These requirements shall not apply to any direct employment by the Walker River Paiute Tribe or by the Federal, State, or other Government or their subdivisions. It shall apply to all contractors or grantees of such Governments and to all commercial enterprises operated by such Governments.

Employment Discrimination or unequal treatment of Tribal Members or other Indians is prohibited. Equal treatment in employment includes, without limitation, wage, salary and benefits equality and any other employment action.

Section 4: Indian Preference in Lay-offs and Termination

All non-Indian employees in the same job classification as a Tribal member or Indian must be subject to a lay-off, reduction in work force, or termination before such adverse action is taken against the Tribal member or Indian. Every lay-off, reduction in force or termination must be made in the following order.

1. Non-Indian first
2. Indians who are not Tribal Members
3. Tribal Members Last

Further, if a covered employer lays off workers by crews or other groups, all qualified Tribal members or Indians shall be transferred to crews or other groups to be retained so long as non-Indians in the same job classification are employed.

Section 5: Indian Preference in Contracting

These requirements shall apply to the contracts awarded directly by the Walker River Paiute Tribal Council or by the Federal or State governments or their subdivisions. They shall also apply to any contracts awarded by any commercial enterprises of the Walker River Paiute Tribe, even if said contracts must be submitted to the Walker River Paiute Tribal Council for approval. Tribal programs or divisions other than commercial enterprises shall be required to comply with these requirements when submitting a contract to the Walker River Paiute Tribal Council for approval, to indicate the steps taken to award the contract to a Tribal member contractor. These requirements shall also apply to all subcontracts awarded whether or not the prime contractor is subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission that set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. The Commission shall establish a system for certifying firms as Tribal Member preference and Indian preference eligible.

Section 6: Safety and Training

The employer shall instruct the employee in safe and healthful work practices and shall ensure that the employee is in facilities and other environments that are in compliance with either Occupational Safety and Health Standards promulgated by the Secretary of Labor under Public Law 91-596, dated December 29, 1970 or State Standards that have been found to be at least as effective as the Federal Standards.

Section 7: Union

Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement for such unions(s) stating that the union shall comply with the Walker River Paiute Tribe's Tribal Employment Rights Ordinance (TERO) and TERO rules and regulations. Nothing herein shall constitute official tribal recognition of any union or tribal endorsement of any union activities on the Walker River Paiute Reservation. Such agreement shall be subject to the approval of the Walker River Paiute Tribal Employment Rights Commission.

Section 8: Commission; Members; Compensation; Quorum

- A. There is a created Walker River Tribal Employment Rights Commission.
- B. The Commission shall be composed of five commissioners appointed by the Walker River Paiute Tribal Council. The Commissioners shall be appointed to serve two year staggered terms. Commission members must be Tribal members and reside within the boundaries of the Walker River Paiute Reservation.

- C. Members of the Commission shall be entitled to receive mileage, per diem, travel and meeting pay stipend payments at a rate of \$75.00 per day while attending meetings, conferences, trainings, etc. Regular and/or Special meetings shall be paid at a rate of \$50.00 per commissioner, with the Secretary receiving \$60.00. All travel must meet the standards of the Walker River Paiute Tribe's Travel Policies.
- D. Three members of the Commission shall constitute a quorum to transact business. When a vacancy occurs on the Commission, the Tribal Council shall appoint a Commissioner to fill the unexpired term. The remaining members may exercise all the powers of the Commission until the vacancy is filled.

Section 9: Powers of the Commission

The Commission has the full power, jurisdiction, and authority to:

- A. Implement and enforce the Tribal Employment Rights Ordinance, formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this ordinance. The Commission shall have the right to impose its own requirement in addition to or in lieu of EEOC guidelines necessary to address unique qualification problems confronting Indians.
- B. Enter into agreements with unions to insure union compliance with this ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.
- C. Impose contract and subcontract preference requirements with a first preference to Tribal Member Indian firms and establish and operate a system for certifying firms as eligible for Tribal member preference and Indian preference.

Section 10: Director Qualifications; Staff; Duties

- A. The TERO Director shall be hired in accordance with the Tribe's Personnel Policy and will be required to adhere to those said policies while employed as the TERO Director. The TERO Director must be a member of the Walker River Paiute Tribe.
- B. The TERO Director will be under the direct supervision of the Tribal Chairperson or designee.
- C. The TERO Director shall have such administrative ability, education and training as the Commission determines.
- D. The TERO Director shall have the authority to fill vacancies in the TERO Office by advertising and using Tribal Personnel Policies to hire staff, to extend funds obtained from Federal, State, or other sources to carry out the purposes of the TERO Commission.
- E. The TERO Director shall administer the policies, authorities and duties prescribed for him/her in this ordinance and delegated to him/her by the Commission pursuant to Section 10.

Section 11: Delegation of Authority

The Commission shall delegate the TERO Director the authority to carry out the day to day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of this ordinance.

Section 12: Intergovernmental Relationships

The commission, acting through the TERO Director, is authorized to enter into cooperative relationships with Federal Employment Rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Walker River Paiute Reservation.

Section 13: Employment Rights Fee

An employment rights fee to raise revenue for the operation of the TERO Office and program is imposed as follows:

- A. Every covered employer with a construction contract in the sum of \$25,000 or more shall pay a one-time fee of 3% of the total amount of the contract. The employer prior to commencing work on the Walker River Paiute Reservation shall pay such fee. However, where good cause is shown, the TERO Director may authorize a construction contractor to pay said fee in installments over the course of the contract.
- B. Every covered Employer other than construction contractors with:
 - i. Employees working on or near the Walker River Paiute Reservation.
 - ii. All other contracts entered into by the Walker River Paiute Tribe will be assessed a 3% TERO fee. These will include Professional Services contracts, etc.
 - iii. Entities with gross revenues from the Walker River Paiute Tribe Reservation of \$25,000 annually, shall pay a quarterly fee of 3% of his/her non-Indian employees gross quarterly payroll as certified on payroll records for that quarter, which shall be paid within 30 days after the end of each quarter.
(Amended: 1/10/2008, Resolution WR-10-2008)
- C. The TERO Director shall be responsible for collecting said fees pursuant to any rules and regulations adopted by the Commission. The said fees shall be paid to the Walker River Paiute Tribe and shall be credited to a specific TERO Account.

Section 14: Long Term Projects/Energy, Mining, Renewable Resources and for Other Projects/Programs that will Benefit the Tribe:

Where a proposed contract, lease or subcontract (or combination thereof) involves a significant long-term project that will have a sustained positive impact on the economic development of the Walker River Paiute Tribe; the TERO staff and Commission and/or identified negotiation team may negotiate alternative fee terms consistent with the policy and purpose of this Ordinance. Such terms are subject to the approval of the TERO Commission and where required, the approval of the Walker River Paiute Tribal Council. Negotiations

may take into account the entity's training programs, funding for training programs or other capacity building programs for Walker River Paiutes and Indian employees. The projected payroll, the value of projected contracts and subcontracts, the values of buildings, structures and infrastructure and other economic benefits, that may be or are realized by the Walker River Paiute Tribe and its members, will be considered, reviewed and applied in such an agreement. Negotiated agreements may/will include a clause that would allow for re-negotiation every ten (10) years or at a time period that has been agreed upon in negotiations. The purpose of this Section is too allow long term projects on the Walker River Paiute Reservation, ensure that the TERO Department and Tribe receive fair and equitable fees from such projects, ensure that Tribal members, local Indians and others are employed at such and that adequate training dollars are received by the TERO Department. *(Amended: 7/8/2010, Resolution WR-74-2010)*

Section 15: Complaints

Any individual, group of individuals or organization that believes any covered employer or entity, or the Commission has violated any requirements imposed by this Ordinance or regulations issued pursuant to it, may file a complaint with the TERO Director. The complaint shall be in writing and shall provide such information as is necessary to enable the TERO Director to carry out an investigation. The TERO Director shall investigate every complaint filed with him/her. If upon investigation he/she has reason to believe a violation has occurred, he/she shall proceed pursuant to the provisions of Section 16. Within 20 days after receipt of the complaint, the TERO Director shall provide the complaining party with a written report on the status of the complaint.

Section 16: Investigation

The TERO Director shall conduct such public or private investigations within the Walker River Paiute Reservation as he/she or the Commission deems necessary to determine whether any covered employer or other covered entity has violated any provision of this ordinance. The TERO Director or his designee may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations. The TERO Director may require the covered employer or entity to submit such reports and information as necessary to complete investigation as well as monitor compliance with the requirements of this ordinance.

Section 17: Power to Require Testimony & Production of Records

For the purposes of investigations or hearings, the TERO Director or the Commission may require testimony and production of records for the enforcement of this ordinance. The TERO Director, a designated Commissioner, or any field compliance officer, designated by the TERO Director, may administer oaths of affirmations, subpoena witnesses, take evidence and require, by citations, the production of books, papers, contracts, agreements or other documents, records or information which the TERO Director or the Commission deems relevant to the inquiry.

Section 18: Enforcement

- A. After conducting an investigation initiated by a complaint pursuant to Section 15, or an investigation pursuant to Section 16, the TERO Director has reason to believe a violation of this ordinance has occurred, the TERO Director shall notify the covered employer or entity in writing, specifying the alleged violations. The TERO Director may withhold name(s) of the complaining party if he/she has reason to believe such party shall be subject to retaliation. The TERO Director shall seek to achieve an informal settlement of the alleged violation. If the TERO Director is unable to do so, he/she shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his/her right to request a hearing.
- B. A formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the covered employer or entity with a reasonable time, which shall be no less than five days from the date of receipt of such notice, to comply. If the TERO Director has reason to believe irreparable harm will occur during that period, he/she may require that compliance occur within fewer than five days. If the party fails or refuses to comply, he/she may request a hearing before the Commission, which shall be held no sooner than five days and no later than 30 days after the date for compliance as set forth in the TERO Director's notification. An expedited hearing may be deemed necessary by the TERO Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to Subsection E.
- C. If the TERO Director has good cause to believe that there is a possibility that the party requesting the hearing, will remove itself or its property from the jurisdiction of the Tribe prior to the hearing, he/she may require the party to post a bond with the TERO Commission. The amount must be sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the TERO Director may proceed pursuant to Subsection E. The TERO Director may also petition the Walker River Paiute Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the hearing proceedings.
- D. Hearings conducted by the TERO Commission shall be governed by the rules of practice and procedure which may be adopted by the TERO Commission. The TERO Commission shall not be bound by technical rules of evidence in the conducting of hearing under ordinance. No informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the TERO Commission. No stenographic record of the proceedings and testimony shall be required, except upon arrangement by, and at the expense of the party charged.
- E. If after the hearing the TERO Commission determines that the alleged violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the TERO Commission may:
 1. Deny such party the right to commence business on the Walker River Paiute Reservation.
 2. Suspend such party's operation on the Walker River Paiute Reservation.

3. Terminate such party's operation on the Walker River Paiute Reservation.
4. Deny the right of such party to conduct any further business within the boundaries of the Walker River Paiute Reservation.
5. Impose a civil fine on such party in an amount not to exceed \$15,000 per violation, per day.
6. Order such party to make payment of back pay to any aggrieved employee.
7. Order such party to dismiss any employees hired in violation of the Walker River Paiute Tribe Employment Rights requirements.
8. Order the party to take such action as is necessary to ensure compliance with this ordinance or to remedy any harm caused by a violation of this ordinance.

The TERO Commission's decision shall be in writing and served on the charged party by registered mail or in person, no later than 30 days after the close of the hearing. The party's failure to comply immediately with the TERO Commission's orders will be turned over to the Tribal Court for injunctive relief. The court will be requested to grant such injunctive relief, as is necessary to preserve the rights of the beneficiaries of this ordinance or to prevent irreparable harm, pending the party's appeal or expiration of the time to appeal.

Section 19: Appeals

- A. An appeal to the Tribal Court may be taken from any final order of the TERO Commission by any party adversely affected thereby. Said appeal must be filed no later than 20 days after the party receives a copy of the Commission's decision. The Tribal Court shall uphold the decision of the Commission unless it is capricious or in excess of the authority of the TERO Commission. The appeal shall be taken by serving a written notice of appeal with the Tribal Court, with a copy to the TERO Director within 20 days after the date of entry of the order. The notice of appeal shall:
 1. Set forth the order from which appeal is taken.
 2. Specify the grounds upon which reversal of modification is sought.
 3. Be signed by appellant.
- B. The Order of the Commission shall abate, pending the determination of the Tribal Court. The TERO Director or TERO Commission may petition the Walker River Paiute Tribal Court to order the party, requesting a hearing, to post a bond sufficient to cover monetary damages that the TERO Commission assessed against such party. The Court shall specifically direct the TERO Commission as to further action in the matter. If the TERO Commission's order is upheld on appeal or if no appeal is sought within 20 days from the date of party's receipt, the TERO Commission shall petition the Court to grant such orders as are necessary to enforce the decision of the TERO Commission and the sanctions imposed by it.

- C. If at any stage in the enforcement process the TERO Commission has reason to believe there is a possibility that a party will remove itself or its property from the jurisdiction of the Tribal Court, the TERO Commission may petition the Tribal Court, to attach and hold sufficient property of the party, in order to secure compliance.

Section 20: Confiscation and Sale

If after 21 days of the TERO Commission's decision, no appeal has been filed, or 30 days after the decision by the Tribal Court on an appeal, a party has failed to pay monetary damages imposed on it or otherwise failed to comply with an order of the TERO Commission or the Tribal Court, the TERO Commission may petition the Court to order the Tribal Police to confiscate and hold for sale, such property of the party as is necessary to ensure payment to achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the TERO Commission has reason to believe is within the jurisdiction of the Tribal Court. If the Court finds the petition to be valid, it shall order the Tribal Police to confiscate and hold said property. The Tribal Police shall deliver in person, or by Registered Mail, a notice to the party informing it of the confiscation and of its rights to redeem said property by coming into compliance with the order outstanding against it. If the party has not come into compliance within 30 days after receiving the notice, the Court shall order the TERO Commission to sell said property and use the proceeds to pay outstanding monetary damages imposed by the TERO Commission and all costs incurred by the Court and Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

Section 21: Severability

The act by which any section or provision of this ordinance is declared invalid by a court of competent jurisdiction, the remaining sections or provisions are capable of maintaining a complete and independent existence.

Section 22: TERO Ordinance

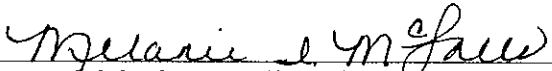
The adopted TERO Ordinance shall supersede any regulations or ordinances previously adopted by the Walker River Paiute Tribal Council.

Section 23: Amendments

This TERO Ordinance will be reviewed annually or on an as needed basis. Any amendments to such Ordinance will be presented to the Tribal Council via a Tribal Resolution for official action. Amendment(s) will then be forwarded to the Bureau of Indian Affairs (BIA) for inclusion into their official records. Such amendments will be in effect immediately upon approval by the Tribal Council.

CERTIFICATION OF AMENDMENT
Per Tribal Council Resolution No.: WR-74-2010

It is hereby certified that the following ordinance of the Walker River Paiute Tribal Council, composed of seven members of whom 7 constitute a quorum were present at a meeting held on the 8th day of July, 2010, and that the foregoing Ordinance was amended by the affirmative vote of 6 FOR, 0 AGAINST, and 0 ABSTENTIONS, pursuant to the authority contained in Article VI, Section I(e), of the Constitution and By-laws of the Walker River Paiute Tribe of Nevada, approved on March 26, 1937.



Melanie McFalls, Tribal Council Secretary
WALKER RIVER PAIUTE TRIBAL COUNCIL

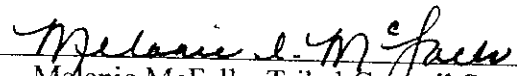
Amendment as per Tribal Council Resolution No. WR-74-2010 included the inclusion of the following section:

Section 14: Long Term Projects/Energy, Mining, Renewable Resources and for Other Projects/Programs that will Benefit the Tribe

BE IT FINALLY RESOLVED, that the attached TERO amendment will be in effect immediately upon approval and that such will be submitted to the Bureau of Indian Affairs for inclusion into their official records.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Walker River Paiute Tribal Council, composed of seven members, of whom 7 constituting a quorum were present at a Tribal Council meeting on the 8th day of July, 2010, and that the foregoing Resolution was adopted by the affirmative vote 6 **FOR**, and 0 **AGAINST**, and 0 **ABSTENTIONS**, pursuant to the authority contained in Article VI, Section 1(h) and (q), of the Constitution and Bylaws of the Walker River Paiute Tribe of Nevada, approved on March 26, 1937.



Melanie McFalls, Tribal Council Secretary
Walker River Paiute Tribe

