

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

I. General Provisions

1. Authority

The authority for this Tribal Employment Rights Ordinance is found in the Constitution of the Quileute Indian Tribe Article VI, Sections 1 and 3.

2. Background and Intent

The Quileute Tribal Council finds that employment discrimination against Quileute Tribal Members and other Indians persists. The Quileute Tribal Council further finds that jobs and other economic opportunities on or near the Quileute Reservation are important resources to which Quileute Tribal Members and other Indians have unique preferential rights. To implement these rights, the Quileute Tribal Council hereby establishes a Tribal Employment Rights Ordinance and Tribal Employment Rights Office to achieve its goals and policies.

3. Definitions

For purposes of this Ordinance, the following words and phrases will have the following meanings:

- (a) “Business entity” means any entity providing goods or services for payment or otherwise engaged in commerce.
- (b) “Commission” means the Quileute Tribal Employment Rights Commission established pursuant to this Ordinance to administer this Ordinance.
- (c) “Commissioner” means a member of the Commission appointed by Tribal Council.
- (d) “Covered Employer” means any business entity that employs one or more individuals and:
 - (i) Is located or engaged in commerce on Tribal land within the exterior boundaries of the Reservation, or on off-Reservation land held by the United States in trust for the Tribe;
 - (ii) Contracts with the Tribe to provide goods or services on or near the Reservation that a Tribal Employer will pay for using Tribal funds; or
 - (iii) Voluntarily submits to Tribal jurisdiction under this Ordinance.

Notwithstanding the foregoing, the term “Covered Employer” does not include:

- (i) A Tribal Employer;
- (ii) A federal, state, or local government employer who has not voluntarily submitted to Tribal jurisdiction under this Ordinance when work is performed by its regular, permanent workforces (but its contractors and subcontractors are Covered Employers);
- (iii) A private individual who contracts or subcontracts work on the individual’s own primary residence; or

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

- (iv) An employer granted an exemption by Tribal Council.
- (e) “Entity” means any sole proprietorship, partnership, company, corporation, joint venture, association, government, governmental enterprise, natural or artificial person, or other entity.
- (f) “Immediate family member” means spouse, parents, children, grandparents, grandchildren, siblings, or any member of the immediate household. Step, half, adoptive, and in-law relationships are equivalent to blood relationships for purposes of this definition.
- (g) “Indian” means an enrolled member of a federally recognized Indian tribe.
- (h) “Indian-Owned Business” or “IOB” means a business entity that the TERO Office has certified to be at least 51% owned, operated, and controlled by one or more Indians and/or an Indian tribe.
- (i) “Indian tribe” means a federally recognized Indian tribe.
- (j) “Near the Reservation” means within an area where a person seeking employment could reasonably be expected to commute to and from the Reservation in the course of a work day.
- (k) “Ordinance” means this Tribal Employment Rights Ordinance.
- (l) “Procurement” means a request for proposals, request for bids, formal or informal invitation to bid or submit a proposal, or similar solicitation.
- (m) “Qualified” means having the requisite education, experience, and/or skills for a position, job assignment, or task.
- (n) “Quileute-Owned Business” or “QOB” means a business entity that the TERO Office has certified to be at least 51% owned, operated, and controlled by one or more Tribal Members and/or the Tribe.
- (o) “Reservation” means the Reservation of the Quileute Indian Tribe.
- (p) “Spouse” means a legally married husband or wife, a husband or wife married in accordance with Tribal custom, or a legal domestic partner, but does not include a person living separately who has filed in an appropriate court a petition for legal separation or dissolution of marriage or domestic partnership.
- (q) “TERO fee(s)” means the fee(s) imposed by this Ordinance.
- (r) “TERO Office” means the Quileute Tribal Employment Rights Office.
- (s) “TERO Director” means the director of the TERO Office.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

- (t) “Tribal Council” means the Quileute Tribal Council, which is the governing body of the Tribe.
- (u) “Tribal Employer” means the Tribe and all Tribal governmental agencies, Tribal businesses, and other Tribal entities (including joint ventures in which the Tribe holds an interest of more than 50%), regardless of whether the employment or contract activity is on the Reservation.
- (v) “Tribal land” means land owned by the Tribe or an individual Indian in fee or held for the Tribe or an individual Indian in trust by the United States government.
- (w) “Tribal Member” means an enrolled member of the Quileute Indian Tribe.
- (x) “Tribe” means the Quileute Indian Tribe.

4. Purpose

The purpose of this Ordinance is:

- (a) To build the workforce capacity of Tribal Members and other Indians and enhance their health and economic wellbeing;
- (b) To prevent employment discrimination against Indians;
- (c) To maximize the employment of Tribal Members and other Indians for all employment, contracting, and subcontracting opportunities within the Tribe’s jurisdiction; and
- (d) To provide clarity to Indians, Tribal Employers, Covered Employers, and business entities regarding Indian preference requirements, and greater efficiency in the Indian preference process.

5. Retaliation

Retaliation against any individual or business entity for exercising any right under this Ordinance, filing a complaint, participating in an investigation or proceeding, or serving as a witness in a hearing, is strictly prohibited. A Tribal Employer or Covered Employer who takes any adverse action against, harasses, attempts to intimidate, or otherwise retaliates in any manner against, such individual or business may be subject to remedies and penalties as provided in Part VIII, below. An individual or business entity who believes it has been the subject of retaliation may file a complaint with the TERO Director as provided in Part VII, below.

6. Federal Requirements

Employers subject to this Ordinance must ensure compliance with applicable federal laws and regulations for projects using federal funds. Such laws and regulations may supplement or restrict the procurement process or preference requirements of this Ordinance. To the extent such laws or regulations conflict with this Ordinance, the federal laws or regulations will govern.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

7. Unions

Covered Employers with collective bargaining agreements with a union are responsible for informing the union of, and obtaining the union's compliance with, this Ordinance, any regulations, policies, or rules promulgated hereunder, and any requirements of a compliance plan. Indians who do not wish to become members of a union must not be barred from employment, required to join a union, or pay union dues or fees. Nothing herein constitutes the Tribe's recognition of any union or endorsement of any union activity, and unions have no jurisdiction or authority over any activities operated pursuant to the sovereign authority of the Tribal government.

II. Tribal Employment Rights Commission

1. Establishment and Composition of Commission

Tribal Council hereby establishes the Tribal Employment Rights Commission to administer this Ordinance. Until Tribal Council determines that a separate Commission is necessary and appoints Commissioners to serve on such separate Commission, Tribal Council will function as the Commission. Thereafter, the Commission will consist of five Tribal members appointed by Tribal Council.

2. Powers of Commission

Tribal Council hereby delegates to the Commission the power, responsibility, jurisdiction, and authority to:

- (a) Promulgate regulations, policies, and rules necessary to implement the provisions of this Ordinance;
- (b) Make recommendations to Tribal Council for amendments to this Ordinance;
- (c) Review other Tribal regulations, policies, and rules for potential conflicts with the provisions of this Ordinance and make recommendations to Tribal Council for the resolution of any such conflicts;
- (d) Establish regulations, policies, and rules governing all activities of the Commission;
- (e) Hire and supervise the TERO Director;
- (f) Issue subpoenas, hold hearings, and order appropriate relief or sanctions in accordance with the provisions of this Ordinance;
- (g) Assist in presentations to educate the public on Indian preference requirements for employment and contracting;
- (h) Attend and participate, as required, in Tribal Council meetings;
- (i) Coordinate and provide reports for Tribal Council meetings;
- (j) Review and recommend the annual TERO Office budget for Tribal Council approval; and
- (k) Take all other appropriate action necessary to implement the provisions of this Ordinance.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

3. Commissioner Qualifications

Every Commissioner appointed to the Commission must:

- (a) Be an enrolled Quileute Tribal member eligible to vote under the Tribe's Constitution;
- (b) Not have been found guilty of any felony, or of a misdemeanor (including a gross misdemeanor) involving controlled substances or dishonesty, in any tribal, state, or federal court within three years immediately preceding the appointment or at any time during service on the Commission; and
- (c) Pass a background check and drug tests to the satisfaction of Tribal Council in its sole discretion.

4. Term of Office

Appointed Commissioners will serve staggered three-year terms. For the first five Commissioners appointed, two Commissioners will serve three-year terms, two Commissioners will serve two-year terms, and one Commissioner will serve a one-year term. Upon expiration of those initial terms, all terms will be three-year terms.

5. Quorum; Action by Majority Vote

A quorum of at least three Commissioners is required in order to conduct Commission business. The Commission will make decisions by majority vote, unless only a quorum of three Commissioners is present, in which case there must be a consensus.

6. Election of Executive Officers

Appointed Commissioners will elect executive officers consisting of a Chairperson, Vice-Chairperson, and Secretary. Elected executive officers will serve until the following year when one or more new Commissioners are appointed.

7. Duties of Executive Officers

- (a) Chairperson. The Chairperson has the duty to:
 - (i) Call Commission meetings to order;
 - (ii) Preside over Commission meetings and hearings;
 - (iii) Sign all approved minutes and action items as needed;
 - (iv) In urgent situations, call for a special meeting;
 - (v) Recognize speakers with their hands raised to maintain order;
 - (vi) Limit the time for a certain topic in order to stay on task; and
 - (vii) Maintain order in the event a speaker or topic is out of order or inappropriate.
- (b) Vice-Chairperson. In the absence of the Chairperson, the Vice-Chairperson is responsible for fulfilling the duties of the Chairperson.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

- (c) **Secretary.** The Secretary has the duty to:
- (i) Prepare the agenda for Commission meetings;
 - (ii) Take notes and keep minutes of all Commission meetings;
 - (iii) Record motions verbatim;
 - (iv) Maintain records of Commissioners' attendance, late arrivals, and early departures;
 - (v) In the absence of the Chairperson and Vice-Chairperson, fulfill the duties of the Chairperson;
 - (vi) Prepare and circulate draft minutes for approval at the next Commission meeting;
 - (vii) Record or arrange for the recording of Commission hearings; and
 - (viii) Draft Commission hearing decisions and orders agreed to in principle by the Commission and circulate them for final approval by the Commission.

8. Recusal of Commissioners

- (a) **Improper Contact.** Commissioners must not have contact with a party, witness, or other interested party regarding a complaint hearing request outside of the formal hearing process. If a Commissioner is approached by a party, witness or other interested party outside the formal hearing process, the Commission must explain that the Commissioner is prohibited from discussing all aspects of the complaint or hearing request. If information pertaining to a complaint, hearing request, or matters at issue in a hearing is shared with a Commissioner outside the formal hearing process, the Commissioner must disclose the information shared to the Commission on the record before the hearing begins. If the information shared involved evidence or argument pertaining to the complaint or hearing request, the Commissioner must recuse themselves from participating in the hearing.
- (b) **Conflict of Interest; Immediate Family Members.** A Commissioner must recuse themselves from participating in an action, hearing, or decision when the Commission or an immediate family member of the Commissioner has a financial or business interest (contractual or otherwise) in a transaction or entity involved in the matter, or is an employee of such entity. Notwithstanding the foregoing, in matters involving the Tribe or a Tribal Employer, a Commissioner who is a Tribal employee may participate unless employed by the department or division of the Tribe involved in the matter at hand, or unless the Commissioner had other involvement in the actions that are the subject of the matter at hand, in which cases recusal is required. A Commissioner must also recuse themselves from participating in an action, hearing, or decision directly involving the Commissioner or an immediate family member of the Commissioner.
- (c) **Other Relatives.** A Commissioner may, but is not required to, recuse themselves from an action, hearing, or decision if any person with an interest in, or directly involved in, the matter is, by blood or marriage, related to the Commissioner in the third or fourth degree (*i.e.*, uncles, aunts, nieces, nephews, great-grandparents, great-grandchildren, first cousins, great uncles and aunts, great nieces and nephews, great-great-grandparents, and great-great-grandchildren). In such event, if the Commissioner does not recuse themselves, the Commissioner must disclose the relationship to the Commission on the record before the action, hearing, or decision.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

-
- (d) **Other Circumstances.** Even if not specifically required, a Commissioner should also recuse himself if the Commissioner believes that:
- (i) The Commissioner cannot act fairly or without bias; or
 - (ii) There is, or may be, a perception that the Commissioner cannot act fairly or without bias.
- (e) **Request for Recusal.** A Commissioner, the Commission as a whole, or any other interested party may request recusal of a Commissioner if they believe that the Commissioner is unable to act impartially and fairly due to a conflict of interest or relationship of any kind. In such event, the Commission may (without the participation of the Commissioner whose recusal is requested) hear arguments and review evidence, including testimony, and make a determination on recusal. The Commission's determination is final and not subject to appeal.

9. Vacancies

If a Commissioner's position becomes vacant before the end of the Commissioner's term, whether because of removal, resignation, or any other reason, Tribal Council will appoint a successor to serve for the remainder of the term.

10. Resignation

A Commissioner may resign at any time by delivering a written resignation to the Chairperson of the Commission or, if the Chairperson is resigning, to the Vice-Chairperson. The Commission must promptly provide notice of the resignation to the Tribal Council Chairperson and to the TERO Director. The resignation will be effective upon receipt, unless otherwise provided by its terms and agreed to by the Commission.

11. Removal

- (a) **Recommendation by Commission.** The Commission may recommend to Tribal Council that it remove a Commissioner for one or more of the following reasons:
- (i) Inefficiency, negligence, or carelessness in the performance of duty;
 - (ii) Being found guilty of any felony, or of a misdemeanor (including a gross misdemeanor) involving controlled substances or dishonesty, in any tribal, state, or federal court;
 - (iii) Failing or refusing to submit to a required drug test;
 - (iv) Conduct bringing disrepute to the Tribe;
 - (v) Soliciting or accepting bribes or quid pro quos;
 - (vi) Missing three or more consecutive regular meetings without good cause (in the determination of the other Commissioners);
 - (vii) Violation of applicable laws, regulations, or policies;
 - (viii) Breach of confidentiality or conflict of interest; or
 - (ix) Violation of the Quileute Tribal Code of Ethics.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

-
- (b) **Notice of Intent to Remove.** If Tribal Council concurs with the Commission's recommendation, Tribal Council will send written notice to the Commissioner advising the Commissioner of Tribal Council's intent to remove the Commissioner and of the Commissioner's right to request a hearing within 10 days after the date the notice was mailed. If no written request for a hearing is received within 10 calendar days after the date the notice was mailed, the removal will become final.
- (c) **Request for a Hearing.** A request for a hearing must be received by the Tribal Council Chairperson in writing no later than 10 calendar days after the date the notice of intent to remove the Commissioner was mailed. If a timely written request for a hearing is received, a hearing will be scheduled within 30 calendar days and conducted in accordance with such procedures as Tribal Council may determine are appropriate.

12. **Stipend**

Tribal Council may authorize payment of a stipend to Commissioners for their service on the Commission.

III. Tribal Employment Rights Office

1. **Establishment; TERO Director**

Tribal Council hereby establishes the Tribal Employment Rights Office to carry out the day-to-day administrative operations necessary to implement and enforce this Ordinance. A TERO Director will have supervisory authority for the TERO Office (including any TERO Office staff). Until such time as the Commission determines that a separate TERO Director is necessary, and appoints such separate TERO Director, the Tribe's Human Resources Director (or, in the absence of a Human Resources Director, the Human Resources employee who is second in command) will serve as the TERO Director, and will designate Human Resources personnel to serve as TERO Office personnel. The TERO Director will report to the Commission.

2. **Authority and Duties**

The TERO Director will have the authority and responsibility to take the day-to-day administrative actions reasonably necessary to implement and enforce this Ordinance, including the following, subject to applicable laws, regulations, and policies:

- (a) Administer the Indian preference program and the TERO Office budget approved by Tribal Council;
- (b) Make recommendations to the Commission for new and revised Tribal laws, regulations, policies, and rules relating to this Ordinance or Indian preference requirements generally;
- (c) Make recommendations regarding agreements that the Tribe may enter into with other governmental agencies, employers and contractors subject to this Ordinance, unions, and vendors providing goods and services necessary to implement and enforce this Ordinance;
- (d) Hire and supervise TERO Office staff;
- (e) Develop, implement, and enforce TERO Office policies and procedures;
- (f) Process and investigate complaints alleging violations of this Ordinance;

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

- (g) Conduct audits, investigations, and inspections upon its own initiative;
- (h) Issue notices of non-compliance and citations which may include remedies and sanctions as provided in this Ordinance;
- (i) Certify, decertify, and maintain a list of QOBs and IOBs;
- (j) Make determinations regarding the sufficiency of documentation of tribal membership for individuals and of the qualifications for certification of QOBs and IOBs;
- (k) Attend, and participate as required in, Tribal Council meetings, Commission meetings and hearings;
- (l) Require employers to submit applications and reports, including labor force and payroll reports;
- (m) Coordinate and provide reports for Commission meetings;
- (n) Negotiate compliance plans with Covered Employers, as provided for in this Ordinance;
- (o) Collect TERO fees, as well as any monetary sanctions and penalties provided for in this Ordinance;
- (p) Develop a budget and expend funds in accordance with a Tribal Council-approved budget;
- (q) Provide education and training opportunities and work to eliminate barriers to employment and enhance employment opportunities for Tribal members and other Indians; and
- (r) Take all other appropriate action necessary to implement the provisions of this Ordinance, and such other action as may be directed by the Commission.

3. Notice of TERO Requirements

The TERO Office is responsible for notifying Tribal Employers and Covered Employers of their requirements under this Ordinance, including their responsibility to notify their contractors and subcontractors, if any, of any requirements they may have under this Ordinance. In its discretion, the TERO Office may also provide information regarding requirements under this Ordinance to other interested parties, including other governments and other business entities. All procurements issued by Tribal Employers must contain an appropriate statement, which may be prescribed by the TERO Office, referencing the requirements of this Ordinance.

4. TERO Funds

All funds collected by the TERO Office from TERO fees, sanctions, penalties, and interest, in accordance with this Ordinance will be placed in the Tribe's general fund, or such other Tribal fund as may be directed by Tribal Council.

IV. Preference in Employment

1. Preference in Employment Requirements

When two or more candidates for employment or employees are equally qualified, Tribal Employers and Covered Employers must give preference in hiring, promotion, training, layoffs, recall, and all other aspects of employment, as follows:

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

- (a) Tribal Employers. Tribal Employers must give preference:
 - (i) First, to qualified Quileute Tribal members,
 - (ii) Second, to other qualified Indians, and
 - (iii) Third, to qualified spouses of Quileute Tribal members.
- (b) Covered Employers. Covered Employers must give preference for employment on or near the Reservation to qualified Indians residing on or near the Reservation.

2. Proof of Tribal Membership

A person claiming entitlement to Indian preference in employment pursuant to this Part IV has the burden to entitlement to the preference. In order to receive Indian preference, the person must provide:

- (a) A valid identification card issued by the Tribe or another Indian tribe;
- (b) A Certification of Degree of Indian or Alaska Native Blood (CDIB) from the federal Bureau of Indian Affairs; or
- (c) Other documentation approved by the TERO Office.

A person claiming entitlement to preference as the spouse of a Quileute Tribal member must provide the foregoing documentation of the Tribal member's enrollment in the Tribe, as well as documentation of the legal or customary marriage or domestic partnership, such as a marriage certificate or other documentation approved by the TERO Office.

3. Recruitment

Tribal Employers and Covered Employers subject to the preference requirements of this Ordinance may use whatever recruitment techniques they choose, provided they make reasonable efforts to hire qualified Tribal Members and Indians as applicable, and further provided that, at a minimum, they:

- (a) Post all position openings subject to preference requirements for at least five business days in locations where the employer customarily posts position openings (*i.e.*, the employer's website, internet job sites, and any other customary locations); and
- (b) Upon or before posting the position opening, provide the position posting to the TERO Office so that the TERO Office may further advertise the position posting in its own customary locations.

4. Unreasonable Requirements Prohibited

Neither Tribal Employers nor Covered Employers may use job qualifications, criteria, or requirements that have a tendency to bar Indians from employment unless required by a bona fide business necessity. It is the employer's burden to prove business necessity.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

V. Indian Preference in Contracting

1. Indian Preference in Contracting Requirements

When two or more bidders are equally qualified for a contract or subcontract, Tribal Employers and Covered Employers must give Indian preference in the award of the contract or subcontract, as follows:

- (a) Tribal Employers. Tribal Employers must give preference:
 - (i) First, to qualified QOBs; and
 - (ii) Second, to other qualified IOBs.
- (b) Covered Employers. Covered Employers must give preference in the award of contracts and subcontracts for labor and services to be provided on or near the Reservation to qualified IOBs that are 51% or more owned, operated, and controlled by the Tribe and/or Indians residing on or near the Reservation.
- (c) Award Based on Price. Subject to subsections (a) and (b) of this section, when award of a contract or subcontract is based in whole or in part on the lowest bid, each IOB (including each QOB) will be entitled to a bid preference as set forth in the table below, meaning that an IOB's bid will be considered lower than the lowest non-IOB's bid provided the IOB's bid does not exceed the lowest non-IOB's bid by the following percentages:

If the lowest responsive non-IOB bid is:	The bid preference percentage for IOBs is:
Less than \$100,000	10%
At least \$100,000 but less than \$500,000	5%
At least \$500,000 but less than \$1,000,000	3%
\$1,000,000 or more	1%

The Commission or Tribal Council may grant a deviation from these bid preference percentages on a case-by-case basis.

2. Certification of Indian-Owned Businesses

- (a) Eligibility and Burden of Proof. To be eligible to be certified as a QOB, a business entity must be at least 51% owned, operated, and controlled by one or more Tribal Members and/or the Tribe. To be eligible to be certified as an IOB, a business entity must be at least 51% owned, operated, and controlled by one or more Indians and/or an Indian tribe. Indian/tribal ownership, operation, and control must be real, substantial, and continuing, going beyond pro forma ownership of the entity as reflected in formational documents. A business entity seeking certification as a QOB or IOB has the burden of proving its eligibility for such certification by a preponderance of the evidence.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

-
- (b) **Application for Certification.** A business entity seeking certification must submit an application to the TERO Office, in a form prescribed by the TERO Office, together with such proof of eligibility as the TERO Office may require, which may include:
- (i) Formational documents for the business entity or other documentation of the share of Indian ownership, operation, and control;
 - (ii) For each Indian owner, proof of tribal membership as set forth in Section 2 of Part IV, above;
 - (iii) If an owner is an entity of an Indian tribe, documentation of its status as a tribal entity, such as articles of incorporation, a tribal ordinance or resolution establishing the entity, or certification by an appropriate authority of the Indian tribe; and
 - (iv) Such other documents as the TERO Office may reasonably require to establish that the business entity satisfies the eligibility requirements for a QOB or IOB.
- (c) **Certification.** If the TERO Director determines, in the TERO Director's sole discretion, that the business entity meets the eligibility requirements, the TERO Director will certify the business as a QOB or IOB, as applicable.
- (d) **TERO List.** The TERO Office will maintain a list of certified QOBs and IOBs and will confirm a QOB's or IOB's certification upon an employer's request. The TERO Office may also provide an employer with contact information for QOBs and IOBs who perform the type of work for which the employer wishes to contract or subcontract.
- (e) **Duty to Report Changes in Ownership.** QOBs and IOBs must report to the TERO Office any changes in ownership, operation, or control within 20 business days after the change has occurred.
- (f) **Decertification.** The TERO Office may, from time to time, require a QOB or IOB to submit a renewal application or otherwise prove that it continues to meet eligibility requirements for certification. The TERO Director may decertify a business if the business fails to comply or if TERO Director finds that the business no longer meets the eligibility requirements for a QOB or an IOB.

3. Additional Requirement for Covered Employers on Large Construction Projects

Before commencing performance of a construction or consulting project with a total aggregate price of \$200,000 or more on or near the Reservation, a Covered Employer must meet with the TERO Office to negotiate and execute a compliance plan which sets forth how the Covered Employer will meet its obligations under this Ordinance. The compliance plan may cover topics including, without limitation, recruitment techniques, the bidding process, numerical goals for Indian preference in employment and in contracting, and trainee/apprenticeship opportunities. The Covered Employer may not commence performance of the construction project until a compliance plan has been negotiated and executed. The TERO Director may exempt a Covered Employer from the requirement of a compliance plan in the event that the Covered Employer will hire few or no employees, contractors, and subcontractors for the project. Exemption from the requirement of a compliance plan does not exempt a Covered Employer from the Indian preference requirements of this Ordinance.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

4. Recruitment

Except as otherwise set forth in a compliance plan, Tribal Employers and Covered Employers subject to the preference in contracting requirements of this Ordinance may use whatever recruitment techniques they choose, provided they make reasonable efforts to contract with qualified QOBs and IOBs as applicable, and further provided that:

- (a) For publicly advertised procurements, at a minimum the Tribal Employers and Covered Employers:
 - (i) Post all procurements for contracts and subcontracts subject to Indian preference requirements in locations where the employer customarily posts such procurements (*i.e.*, the employer's website, internet RFP databases, and any other customary locations), providing sufficient response time;
 - (ii) Upon or before posting the procurement, provide the procurement to the TERO Office so that the TERO Office may further advertise the position posting in its own customary locations; and
- (b) For non-publicly advertised procurements, at a minimum the Tribal Employers and Covered Employers:
 - (i) Request from the TERO Office a list of QOBs and IOBs who perform the type of work that is the subject of the procurement; and
 - (ii) Provided the TERO Office identifies one or more such QOBs or IOBs, transmit the procurement to at least one of the listed QOBs or IOBs in accordance with the preference requirements of Section 1(a) and (b) of this Part V, providing sufficient response time.

5. TERO Fee

- (a) **Assessment.** To raise revenue for, and support the operation of, the TERO Office, every project or contract with total aggregate price of \$10,000 or more per year (including multiple contracts with the same awardee totaling \$10,000 or more per year) will be assessed a TERO fee of 1.75% of the total gross contract price if any of the following conditions is satisfied:
 - (i) The project or contract is awarded by a Tribal Employer to another Tribal Employer;
 - (ii) The project or contract is awarded by a Tribal Employer to a Covered Employer and the majority of the work of the project or contract will take place on Tribal land within the exterior boundaries of the Reservation, or on off-Reservation land held by the United States in trust for the Tribe; or
 - (iii) The project or contract is awarded by the federal government to a Covered Employer and the majority of the work of the project or contract will take place on Tribal land or navigable waters within the exterior boundaries of the Reservation, on off-Reservation land held by the United States in trust for the Tribe.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

Moreover, every Covered Employer engaged in commercial fishing with gross sales or income on the Reservation of \$10,000 or more per year will be assessed a quarterly TERO fee of 1.75% of its total gross Reservation sales or income.

- (b) **Payment.** The awardee of the project or contract or, as applicable, the Covered Employer engaged in commercial fishing, is responsible for paying the TERO fee to the TERO Office. In the case of projects or contracts awarded by a Tribal Employer, the Tribe will deduct the TERO fee from the amount due under the contract. The Tribe retains the right to issue an invoice for the TERO fee if it is not deducted.
- (c) **No Pass On.** The awardee of the project or contract must not pass on the TERO fee to the Tribe or to the awarding Tribal Employer or Covered Employer.
- (d) **Change in Cost.** In the event that the cost of a project or contract increases or decreases, the awarding Tribal Employer or Covered Employer must notify the TERO Office of the change and provide such documentation of the change as the TERO Office may require, and the TERO Office will increase or decrease the TERO fee accordingly.
- (e) **Waiver.** The Commission may, by regulation, waive the TERO fee for certain categories of projects, contracts, or activities. Tribal Council or the Commission may also waive the TERO fee on a case-by-case basis.
- (f) **Expenditure.** The TERO Office may expend the TERO fees collected pursuant to budgets duly approved by Tribal Council to carry out the purposes of this Ordinance, including without limitation such education, training, apprenticeship, and intern programs for Tribal Members and hiring halls for Tribal Members established pursuant to policies duly approved by the Commission.

VI. Reporting Requirements

1. Employer Reporting Requirements

- (a) **Generally Applicable Reporting Requirements.** With such frequency as the TERO Office may require, but no less than quarterly, all Tribal Employers and Covered Employers subject to the preference and/or TERO fee requirements of this Ordinance must provide a report to the TERO Office, in such form as the TERO Office may require, of their compliance with the requirements of this Ordinance, including the number of Tribal Member (if applicable), Indian, and non-Indian hires, terminations, layoffs, resignations, and promotions during the applicable time period, and such other information and documentation as the TERO Office may require.
- (b) **Additional Reporting Requirements for Compliance Plans.** Covered Employers subject to a compliance plan must also comply with any additional reporting requirements set forth in the compliance plan, which may include more frequent reporting and additional information and documentation, including, without limitation, progress towards achieving numerical goals, contract documents, certified payroll, and personnel records.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

-
- (c) **Sanctions.** Covered Employers who fail to timely submit appropriate reports and documentation may be subject to remedies and penalties as set forth in Part VIII, below.
 - (d) **Authority to Inspect.** TERO Office personnel will have the authority to make on-site inspections during regular working hours in order to monitor an employer's compliance, including the authority to inspect and copy all relevant records of an employer, to speak with employees on the job site, and to engage in similar investigatory activities.

2. TERO Office Reporting Requirements

With such frequency as the Commission may require, but no less than quarterly, the TERO Director will provide reports to the Commission of the TERO Office's enforcement of this Ordinance. The reports must detail Tribal Employers' and Covered Employers' compliance with Indian preference requirements in employment and contracting, the TERO fees and penalties collected, the status of any complaints and enforcement actions, and such other information as the Commission may require.

3. Commission Reporting Requirements

With such frequency as Tribal Council may require, but no less than quarterly, the Chairperson of the Commission will provide reports to Tribal Council of the TERO Office's enforcement of this Ordinance and the Commission's activities under this Ordinance. The reports must include the TERO Office's reports to the Commission, must detail the Commission's activities during the applicable time period, and must provide such other information as Tribal Council may require.

VII. Complaint, Investigation, and Citation

- 1. **Complaint.** Any person or business entity who believes that a Tribal Employer or Covered Employer has violated this Ordinance may file a complaint with the TERO Director. Such complaint must:
 - (a) Be in writing;
 - (b) Be filed with the Director within 14 business days after the date of the alleged violation;
 - (c) State the provision(s) of this Ordinance allegedly violated, provide a detailed account of the alleged violation, and include all supporting documentation and evidence; and
 - (d) State the remedy that the complainant seeks.
- 2. **Investigation.** Upon the TERO Director's own initiative, or upon the filing of a written complaint as set forth in Section 1 of this Part, TERO Office personnel will promptly and thoroughly investigate the alleged violation. TERO Office personnel must complete the investigation within no more than 10 business days after the filing of the complaint, unless the Commission grants an extension. If the TERO Director finds insufficient evidence to establish that a violation occurred, the TERO Director will close the file and provide a notice of closure to both the complainant and the employer.
- 3. **Informal Resolution.** If the TERO Director determines that a violation of the Ordinance exists, TERO Office personnel will seek to achieve an informal resolution of the alleged violation.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

4. **Notice of Non-Compliance.** If the TERO Director determines that a violation of the Ordinance exists and an informal resolution cannot be achieved, the TERO Director will issue a Notice of Non-Compliance to the Tribal Employer or Covered Employer. The Notice of Non-Compliance must specify the nature of the violation and direct that the employer correct the violation within three business days or sooner if appropriate. The TERO Director must serve the Notice of Non-Compliance on the employer personally or by sending it certified, postage pre-paid, via the United States mail.
5. **Citation.** If the employer does not correct the violation within the time specified, the TERO Director will issue a written Citation to the Tribal Employer or Covered Employer. The Citation must specify the violation(s), provide a written description of the factual findings, order appropriate remedies and penalties as provided in Part VIII, below, and give notice of the right to request a hearing before the Commission within 10 business days after issuance of the Citation. The TERO Director must serve the Citation on the employer personally or by sending it certified, postage pre-paid, via the United States mail. If the cited employer disagrees with the Citation, it may request a hearing before the Commission in accordance with Part IX, below. If no request for a hearing is timely filed, the Citation will be final and not subject to further review.

VIII. Remedies and Penalties

1. Remedies and Sanctions

- (a) **Covered Employers.** A Covered Employer who violates this Ordinance may be subject to remedies and sanctions including, without limitation:
 - (i) Denial or suspension of the privilege to commence or continue commerce, projects, or contracts on lands subject to this Ordinance, with a Tribal Employer, or involving Tribal funds;
 - (ii) Debarment or prohibition from engaging in future commerce, projects, or contracts on lands subject to this Ordinance, with a Tribal Employer, or involving Tribal funds;
 - (iii) An order to stop work until the employer is in compliance with this Ordinance;
 - (iv) An order to remove any employee hired in violation of this Ordinance;
 - (v) An order requiring the employment, promotion, or training of Indians injured by the violation;
 - (vi) An order mandating changes in policies or procedures necessary to eliminate or correct the violation; and
 - (vii) An order mandating any other remedy or relief necessary to eliminate or correct the violation.
- (b) **Tribal Employers.** A Tribal Employer who violates this Ordinance may be subject to remedies and sanctions including, without limitation:
 - (i) An order to remove any employee hired in violation of this Ordinance;
 - (ii) An order requiring the employment, promotion, or training of Indians injured by the violation; and
 - (iii) An order mandating any other remedy or relief necessary to eliminate or correct the violation.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

2. Damages and Civil Monetary Penalties

In addition to the remedies and penalties of Section 1 of this Part, a Covered Employer who violates this Ordinance may be subject to the following damages and civil monetary penalties:

- (a) Back pay to compensate an injured employee or former employee;
- (b) Damages to compensate an injured business entity; and
- (c) Civil monetary penalties of up to the greater of \$500 per day per violation while the violation continues, or \$10,000 total per violation. For purposes of assessing a fine, each day the Covered Employer remains in violation may be considered a separate violation.

3. Interest on Late Payments

If any sum payable under this Ordinance is not paid by the date due, interest at the rate of 18% per year will be assessed on the delinquent amount.

4. Penalties for Late Payments

In addition to interest on late payments, if any sum payable under this Ordinance is not paid by the due date, a penalty of 5% of the delinquent amount due (exclusive of interest and other penalties) will be assessed.

5. Cost of Enforcement Actions

In any action brought to enforce the provisions of this Ordinance or to collect any sums due, including interest and penalties, the Tribe will be entitled to its actual costs and reasonable attorney fees incurred in bringing and maintaining the action. Any judgment entered will bear interest at the rate of 18% per year until paid.

6. Police Enforcement Authority

The Quileute Tribal Police are authorized and directed to enforce the remedies and penalties provided for in this Part, whether ordered in a Citation by the TERO Director or a decision by the Commission.

IX. Commission Hearing

1. **Filing of Hearing Request.** Any person or business entity aggrieved by a Citation or other final written determination of the TERO Director may file a request for a hearing before the Commission. Such hearing request must:

- (a) Be in writing;
- (b) Include a copy of the Citation or final written determination;
- (c) Be filed with the Chairperson of the Commission within 10 business days after the TERO Director's issuance of the Citation or final written determination;
- (d) Be served on the Director and any other party to the Citation or final written determination; and
- (e) State the remedy that the petitioner is seeking.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

2. No Stay. The filing of a hearing request will not operate to stay any penalties ordered by the TERO Director in a Citation unless the Commission so orders.

3. Hearing Procedures
 - (a) Initial Determination of whether a Hearing is Necessary. Upon receipt of a hearing request, the Commission will review the hearing request and determine if it can decide the matter based on the written materials submitted, or if a hearing is necessary. If the Commission determines that a hearing is unnecessary, the Commission must issue a written order stating the basis for its decision. The Commission must hold a hearing in all cases in which a timely hearing request is filed by an employer challenging a Citation imposing sanctions or penalties.
 - (b) Notice of Hearing. If the Commission determines that a hearing is necessary, the Commission will provide the Director and all parties at least 10 business days' prior written notice of the date, time, and place of the hearing.
 - (c) Burden of Proof. The petitioner will have the burden of proving its claim by a preponderance of the evidence.
 - (d) Right to Participate; Right to Counsel. All parties will have the right to attend and participate in the hearing, and to be represented by the legal counsel of their choice at their own expense.
 - (e) Rules of Evidence. The Commission may allow any evidence it deems relevant to the hearing request. The Commission need not follow formal rules of evidence or procedure, but it must proceed to ascertain all facts in a reasonable and orderly fashion. The Commission must not allow irrelevant, duplicative, argumentative, unfair, or prejudicial evidence or testimony.
 - (f) Right to Present Evidence and Witnesses. Subject to the previous provision, all parties will have the right to present evidence, including witness testimony, and to cross-examine witnesses called by any other party.
 - (g) Oath. All testimony must be given under oath.
 - (h) Recording. A complete recording (in such form determined by the Commission) of the proceeding must be made and a copy of all records, documents, and evidence must be maintained by the Commission
 - (i) Decision. The Commission must issue its decision in writing within 10 business days after the hearing, and must serve the decision on each party and the TERO Director personally or by sending it certified, postage pre-paid, via the United States mail. The Commission's decision is final and not subject to further review.

XI. Miscellaneous

1. Construction

The purposes of this Ordinance are hereby declared remedial and its provisions will be liberally construed and enforced according to the laws of the Quileute Indian Tribe.

QUILEUTE INDIAN TRIBE
Tribal Employment Rights Ordinance

2. Severability

If any provision of this Ordinance, or its application to any person under any circumstances, is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance will remain in full force and effect.

3. Sovereign Immunity

Notwithstanding anything to the contrary, nothing in this Ordinance waives or may be interpreted to waive the sovereign immunity of the Tribe or any of its officers, employees, or agents acting within the scope of their authority.

4. Effective Date

This Ordinance will take effect immediately upon approval by the Tribal Council and will supersede and replace any and all prior ordinances of the Tribe relating to the subject matter of this Ordinance.