

**TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)**

**OF THE**

**TORRES-MARTINEZ DESERT CAHUILLA INDIANS**

**ORDINANCE NO. TMORD-001-97**

**As Amended April 13, 2019**

## TABLE OF CONTENTS

	<u>Page</u>
Tribal Employment Rights Ordinance	
Section 1. Purposes	4
Section 2. Definitions	4
Section 3. Establishment and Powers of TERO Commission	6
Section 4. Indian and Tribal Preference Requirements in Employment	6
Section 5. Employers' Obligations to Extend Preference to Indians When Engaged in Business on or near the Reservation	8
Section 6. TERO Commission's Authority in Implementation of Indian and Tribal Preference Requirements	9
Section 7. Compliance by Unions	10
Section 8. Coordination with Tribe, Tribal Council and other Tribal Entities to Insure TERO Compliance	11
Section 9. Fees	11
Section 10. Enforcement by the TERO Commission	12
Section 11. Appeals	13
Section 12. The TERO Officer	14
Section 13. Amendments	14
CERTIFICATION	15

WHEREAS, the Torres-Martinez Desert Cahuilla Indian Tribe (“Tribe”) is a federally-recognized self-governing sovereign Indian Nation with a Reservation established by Executive Order on May 15, 1876;

WHEREAS, it is in the best interests of the Tribe and its people that Tribal members living within or near the boundaries of the Torres Martinez Reservation should be given preference in employment with all enterprises, businesses and projects operated or undertaken on or near the Reservation;

WHEREAS, the Torres-Martinez Desert Cahuilla Indians, by its inherent sovereign authority and in order to increase employment of Tribal members and other Indians and eradicate discrimination against them, may promote and implement the unique employment rights of Indians on or near the boundaries of the Torres-Martinez Desert Cahuilla Indian Reservation;

WHEREAS, the Torres-Martinez Desert Cahuilla Indians, by its inherent sovereign powers, has the authority to regulate the employment practices of employers operating within the Torres-Martinez Desert Cahuilla Indian Reservation; and

WHEREAS, full realization of preferential treatment of Tribal members and other Indians will require that Tribal members and other Indians overcome existing barriers to employment, be competitive and competent to enter the workforce through adequate training, education and experience, and be protected in their employment so that they may retain the jobs for which they are qualified.

NOW THEREFORE BE IT RESOLVED, that the General Council of the Torres-Martinez Desert Cahuilla Indian Reservation does hereby amend and enact the Torres-Martinez Tribal Employment Rights Ordinance for the purpose of regulating employers operating on or near the Torres-Martinez Indian Reservation.

## Section 1 Purposes

- 1.1 By means of this Ordinance, the Tribe intends to achieve the following purposes:
- 1.2 To provide employment opportunities for the Tribal workforce;
- 1.3 To provide employment training for Tribal people;
- 1.4 To promote the economic development of the Tribe;
- 1.5 To lessen the dependence of Torres Martinez people on off-Reservation sources of employment, income, goods and services;
- 1.6 To foster the economic self-sufficiency of Tribal families;
- 1.7 To protect the health, safety, jobs and welfare of Tribal workers;
- 1.8 To foster cooperative efforts with employers to assure expanded employment opportunities for the Tribal work force.

## Section 2 Definitions

- 2.1 “Tribe” shall mean the Torres-Martinez Desert Cahuilla Indians.
- 2.2 “Business” means any regular or temporary activity conducted by persons engaged in a trade, profession or commercial activity involving the sale of goods or services. An isolated instance of such activity is not a “business.”
- 2.3 “Employer” means any person, governmental entity, company, contractor, subcontractor or other entity located or engaged in work on or near the Reservation employing two or more persons. An “employer” subject to this Ordinance is one doing business on or near the Reservation, or with the Tribe. “Employer” does not include the Tribe itself, Tribal government departments or agencies or programs because the Tribe maintains an Indian preference policy and reports to the TERO Commission.
- 2.4 “General Council” means the General Council of the Torres-Martinez Desert Cahuilla Indians, comprised of an eligible voting members of the Tribe, and which is the recognized governmental authority of the Tribe,
- 2.5 “Indian” shall mean an American Indian and Native Alaskan persons as defined by Federal regulation or statute.

- 2.6 “Indian Preference” means the policy requiring a preference in hiring and in all other terms and conditions of employment in favor of Tribal members and other American Indians and Native Alaskans in accordance with applicable law.
- 2.7 “On or near the Reservation” means within the boundaries, or within reasonable commuting distance of the Reservation.
- 2.8 “Qualified Indians” means those persons of Indian descent who meet the bona fide qualifications for a position of employment.
- 2.9 “Qualified Indian-owned firm” means a business entity of any type which meets the bona fide qualifications set forth in a request for proposals or bids.
- 2.10 “Reservation” shall mean Tribal and allotted lands of the Torres-Martinez Desert Cahuilla Indian Reservation.
- 2.11 “TERO Commission” shall mean the Tribal Employment Rights Ordinance commission, appointed by the General Council, whose purpose is to enforce the provisions of this Ordinance and all related rules, regulations and guidelines of the Tribe so to achieve the purposes of this Ordinance.
- 2.12 “TERO Commission Bylaws” shall mean the approved bylaws of the TERO commission.
- 2.13 “TERO Commission Compliance Officer” (“TERO Officer”) shall mean the staff person hired by the TERO commission whose duties and responsibilities are enumerated in this Ordinance.
- 2.14 “Tribal Administration” shall mean the Tribe’s administrative office and its personnel.
- 2.15 “Tribal Council” shall mean the elected Council officers and Council members of the Tribe.
- 2.16 “Tribal Employee” shall mean an employee of the Tribe, employed either by Tribal Administration or by one (or more) of the Tribal Enterprises.
- 2.17 “Tribal Enterprises” shall mean the Red Earth Casino, Travel Center, Selnek-is Tem Al Corporation and its various entities, and other entities that are now or may be established and operated directly or indirectly by the Tribe.
- 2.18 “Tribal member” shall mean an enrolled member of the Torres-Martinez Desert Cahuilla Indians.

- 2.19 “Tribal member preference” shall mean preference in hiring enrolled members of Torres-Martinez Desert Cahuilla Indian Tribe.
- 2.20 “Tribal Permit” means written authorization issued under the auspices of the TERO Commission conferring upon an entity the power to do business on the Reservation.

### Section 3 Establishment and Powers of TERO Commission

- 3.1 Pursuant to authority granted by the Tribal Constitution, Article VII (Powers of the General Council), paragraph F, the General Council affirms that by this Ordinance it has created the TERO Commission with the full authority to achieve the purposes, and carry out the duties set forth in this Ordinance.
- 3.2 The TERO Commission consists of seven commissioners and two proxies appointed every two years (biannually) by the General Council.
- 3.3 At the first TERO Commission meeting following appointment of its members, the Commission shall elect a Chairperson, Vice Chairperson and Secretary to serve for a two-year term.
- 3.4 The TERO Commission will report to the General Council as needed, as requested by the General Council, or otherwise at least once each year, on the conduct of its affairs under this Ordinance.

### Section 4 Indian and Tribal Preference Requirements in Employment

- 4.1 All employers operating within the Torres-Martinez Desert Cahuilla Indian Reservations shall give preference to qualified Indians in hiring, promotion, training, and all other terms and conditions of employment and to qualified Indian-owned firms in compliance with this Ordinance and any regulations of the TERO Commission, as directed by the TERO Officer. All employers operating near the Reservation are encouraged to extend similar Indian preference employment opportunities and will be encouraged by the TERO Officer to do so.
- 4.2 Consistent with applicable law, all employers on or near the Reservation shall extend preference to qualified Indians in hiring and all terms and conditions of employment in the following order:

- 1<sup>st</sup> priority: Torres-Martinez Tribal members
- 2<sup>nd</sup> priority: non-member Indians residing in the household of Tribal member
- 3<sup>rd</sup> priority: non-member Indians irrespective of residence

If no qualified Indians are available, employers may then look to non-Indians to fill available positions. Where consistent with applicable law, employers shall prefer non-Indian spouses and non-Indians residing in the household of an Indian over others.

4.3 The Tribe will promote the principles of Indian preference expressed in this Ordinance as follows:

- 4.3.1 The Tribe will coordinate with the TERO Officer with respect to its recruitment and hiring of qualified Indian candidates in Tribal operations.
- 4.3.2 The Tribe will enforce Indian preference in employment through Tribal personnel policies and procedures, and any remedies provided by such policies and procedures.
- 4.3.3 The Tribe will report to the TERO Commission no less than twice annually on the Tribe's Indian preference in employment practices. The reports will include, but not be limited to a description of open positions, efforts to recruit qualified Indian candidates, whether an Indian was hired for a position, and if not, a statement of the reasons for not hiring an Indian. The reports will identify areas in which additional training, education or experience would improve the ability of Indians to be hired and retained by the Tribe. The reports will address whether grievances concerning Indian preference were filed under the Tribe's policies and procedures, and if so, the outcome of such grievances. The reports will respect and preserve the confidentiality of the Tribe's personnel and candidates for Tribal employment.
- 4.3.4 The Tribe and its departments, programs, and commercial enterprises will coordinate with the TERO Officer and TERO Commission with respect to preferences for Indian-owned businesses in planning, procurement, and all other aspects of purchases of goods and services.

Section 5 Employers' Obligations to Extend Preference to Indians When Engaged in Business on or near the Reservation

- 5.1 The Indian preference requirements contained in this Ordinance are binding on all employers doing business with the Tribe or conducting business within the Reservation.
- 5.2 Each such employer must include in its job specifications or requests for proposals or other bids, an Indian Preference Plan.
- 5.3 The Indian Preference Plan must include the employer's identifying information, whether it is an Indian-owned firm, and its overall plan for compliance with this Ordinance.
- 5.4 Each such employer is required to recruit and employ Indians pursuant to this Ordinance, engage Indian-owned subcontractors where feasible, and establish an Indian Preference Plan which addresses the manner in which the employer will comply with this Ordinance.
- 5.5 Among other obligations, an entity may not refuse to employ an Indian-owned subcontractor if the Indian-owned firm's price is within five percent (5%) of the lowest bid received on a project.
- 5.6 Failure to submit an Indian Preference Plan which complies with this Ordinance disqualifies an entity from doing business with the Tribe or on or near the Reservation.
- 5.7 Entities who are awarded the contracts to do business with the Tribe or a permit to conduct business on or near the Reservation, may engage in business conditioned upon full compliance with their Indian Preference Plan and this Ordinance.
- 5.8 This Ordinance is not intended to, and will not be enforced in such a manner that a business entity is required to release or replace its regular, permanent employees. Because of their importance to the contractor, such employees may be employed on the project whether or not they are Indian. A regular permanent employee is defined as:

One who is, and has been for at least one year, on the entity's payroll. The fact that an individual has worked for the contractor on previous projects does not qualify that individual as a regular, permanent employee. Exceptions for key personnel may be granted by the TERO Commission on a case-by-case basis.
- 5.9 Any employer which fills a vacant position within its organization immediately prior to undertaking work for the Tribe shall provide evidence acceptable to the TERO



Commission that such action was not intended to circumvent Indian Preference requirements.

- 5.10 In the event of reductions in the employer's workforce, non-Indian employees must be laid off before qualified Indians. No Indian employee shall be laid off as long as a non-Indian worker in the same craft is still employed. If the employer lays off by crews, qualified Indians shall be transferred to a crew that will be retained.
- 5.11 The employer must consult and reach agreement with the TERO Commission and the TERO officer to establish the minimum number of Indians (or, where applicable, Tribal members) that must be employed on his/her project work force during the time he/she is engaged in work on or near the reservation. Numerical goals shall be set for each position on the project including administrative, supervisory and professional categories. Numeric hiring obligations must take into account the available numbers of qualified Tribal member and other Indians.

#### Section 6 TERO Commission's Authority in Implementation of Indian and Tribal Preference Requirements

In addition to enforcement of the obligations imposed upon employers set forth in this Ordinance, and in order to insure full implementation of the requirements of this Ordinance, the TERO Commission is authorized to:

- 6.1 Issue permits to those employers who comply with the Ordinance, authorizing them to conduct business on or near the Reservation, and deny permits to those who fail to comply with the Ordinance, denying them the opportunity to conduct business with the Tribe or on or near the Reservation.
- 6.2 Establish and conduct training programs, and identify training programs suitable for Tribal members and other Indians to assist them in acquiring the skills necessary to become qualified for employment. Require employers to establish or participate in such training programs as the Commission deems necessary in order to increase the pool of qualified Indians on the reservation

- 6.3 Establish a Tribal Employment Office (i.e., a hiring hall) and require that no employer subject to this Ordinance may hire a non-Indian until the Tribal Employment Office has certified that no qualified Tribal member or other Indian is available to fill the vacancy.
- 6.4 Direct the TERO Officer to establish a pool of qualified Tribal members and other Indians seeking employment, and require employers to utilize that resource prior to hiring non-Indians for projects subject to this Ordinance.
- 6.5 Prohibit an employer from creating or continuing to utilize criteria which operate as barriers to Indian employment, including but not limited to establishing unnecessary and unrealistic qualification criteria or other personnel requirements that disqualify otherwise qualified Indians.
- 6.6 Require employers to give preference in the award to contracts and subcontracts to Indian-owned (or, where applicable, Tribal member-owned) firms.
- 6.7 Establish programs to provide counseling and support to Indian and tribal member workers to assist them in retaining employment and insure that employers participate in and/or cooperate with such programs.
- 6.8 Coordinate with federal employment rights agencies to eliminate unlawful discrimination against Indians on or near the Torres-Martinez Indian Reservation.
- 6.9 Take such other action as is necessary to achieve the purposes and objectives of this Ordinance.

#### Section 7. Compliance by Unions

- 7.1 Every employer who has a collective bargaining agreement with one or more unions shall be required to obtain a written agreement from such union(s) stating that the union shall comply with this Ordinance. Until such agreement is filed with TERO officer the employer may not commence work on the reservation.
- 7.2 Every such union agreement filed with the TERO Officer stating that the union will comply with this Ordinance must contain the following provisions:
  - 7.2.1 Acceptance of the obligation to comply with this Ordinance.
  - 7.2.2 Affirmation of the duty to cooperate with the TERO Officer.

- 7.2.3 Acknowledgment that qualified Indians subject to preference will be hired without an obligation to join the union.
- 7.3 The TERO Officer will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.
- 7.4 Nothing herein, nor any activity by the TERO Ordinance authorized hereby, shall constitute recognition or endorsement of any union or union activities.

Section 8 Coordination with Tribe, Tribal Council and other Tribal entities to Insure TERO Compliance

- 8.1 A designated member of the Tribal Council may attend TERO Commission meetings as an observer to insure full and open communication between the Commission and the Tribal Council. The Tribal Council member is not a voting member of the Commission.
- 8.2 At the invitation of the TERO Commission, representatives of other Tribal departments, programs and entities may attend Commission meetings to insure a coordinated and vigorous effort to bring Tribal members and other Indians into the workforce.

Section 9 Fees

- 9.1 A TERO fee is assessed for projects within the exterior boundaries of the Reservation. Proceeds from the fee are used to pay for implementation of the TERO program, including the provision of TERO-sponsored job training and education programs for Tribal members and other Indians.
- 9.2 **One-time projects.** For every contract, sub-contract, or project with a total value or total projected revenues of ten thousand dollars (\$10,000.00) or more, the employer shall pay a one-time TERO Fee of Five percent (5%) of total project costs, an amount which includes the value of equipment, labor, materials, and revenues. In the discretion of the TERO Commission, the fee may be paid in increments. Fees for projects which are extended and which become year-to-year may be adjusted, in the discretion of the Commission, in accordance with the following paragraph.
- 9.3 **Recurring or ongoing business, services or projects.** Every business operating within the exterior boundaries of the Reservation, other than construction contractors, businesses

owned by the Tribe, and businesses owned by tribal members, shall pay a fee equal to 2% of the annual gross revenue of the business for the privilege of doing business on the Reservation for each year that the annual gross revenue of the business equal or exceed ten thousand dollars (\$10,000). All businesses possibly subject to the fee shall certify under penalty of perjury each year the annual gross revenue of that business. The TERO Commission may audit the books and accounts of any business the TERO Commission reasonably believes to have misstated its annual gross revenue

- 9.4 Such fees shall be paid to the Torres Martinez Desert Cahuilla Indian Tribe and shall be placed in the Tribe's TERO account. Accrual of interest and principal in the TERO accounts shall be utilized solely for the cost of enforcing and monitoring compliance with this Ordinance.
- 9.5 The TERO Commission shall be responsible for the determination of the amount and the procedures to be employed in collection of said fees. The Commission may waive or reduce the amount of fees due when, in its discretion, such adjustments are in the best interests of the Tribe.

#### Section 10 Enforcement by the TERO Commission

In implementing this Ordinance, the TERO Commission has the following powers:

- 10.1 To investigate, monitor compliance, and require production of information from employers to insure compliance with TERO permits and Indian preference plans.
- 10.2 To receive and investigate complaints and respond to inquiries concerning compliance.
- 10.3 To issue notices of non-compliance, subpoenas to employers and others, and to compel production of information concerning compliance.
- 10.4 To hold hearings as necessary in the Commission's discretion to hear and resolve disputes and enforce this Ordinance.
- 10.5 To bring actions in the appropriate Tribal Court to enforce this Ordinance.
- 10.6 Non-compliance with the laws, rules, regulations and guidelines of the Tribe or of this Ordinance may result in one or more of the following sanctions being imposed by the TERO Commission:

- 10.6.1 Denial or withdrawal of a TERO permit with the consequent denial of the opportunity to do business with the Tribe or on the Reservation.
- 10.6.2 Rejection or loss of any business license issued by the Tribe such that the employer is denied the opportunity to conduct business on the Reservation.
- 10.6.3 Civil fines up to 3 times (3x) the amount owed to tribal TERO.
- 10.6.4 Other remedies as appropriate within the discretion of the TERO Commission and consistent with applicable law.
- 10.7 Any employee, employer, union, person or other entity subject to this Ordinance which retaliates against any worker, employer, union, person or other entity because of the exercise of the person's or entity's rights under this Ordinance shall be subject to sanctions.
- 10.8 If disputes arise under this Ordinance and those disputes cannot be resolved by direct discussion, the TERO Officer, TERO Commission, employer, union or individual may request a hearing before the TERO Commission. In response to such a request, the TERO Commission will:
  - 10.8.1 Issue notice of the hearing to all affected parties at least thirty (30) days prior to the hearing;
  - 10.8.2 Convene a hearing to hear testimony, receive other evidence, and hear from each party; and,
  - 10.8.3 At the conclusion of the hearing or within ten (10) working days thereafter, render its decision.
- 10.9 Hearings will be conducted according to the procedures set out in Article VIII of the TERO Commission Bylaws.

### Section 11 Appeals

- 11.1 A party who disagrees with a decision of the TERO Commission may seek review in the appropriate Tribal Court with jurisdiction. Notice of appeal must be filed with the Tribal Court within thirty (30) days of the decision of the TERO Commission.
- 11.2 The appeal will proceed pursuant to applicable rules of the Tribal Court.
- 11.3 The decision of the Tribal Court is final.

## Section 12 The TERO Officer

- 12.1 The TERO Commission shall employ a TERO Compliance Officer to carry out the day to day functions of the Commission under the Commission's direction. The TERO Officer, among other things, will work directly with employers to provide information regarding the TERO Ordinance, assist employers in complying with the Ordinance, assist Tribal members and other Indians in securing employment pursuant to the Ordinance, and coordinating with the Tribe and other Tribal entities in promoting Indian preference in employment and the use of Indian-owned employers in Tribal enterprises.
- 12.2 The TERO Officer will recommend to the Commission that employer applications for TERO permits be approved or denied. The signature of one Commissioner (to be designated by the TERO Commission Chair) along with that of the TERO Officer suffices to approve or deny a TERO permit.
- 12.3 The TERO Officer may be terminated for cause by the Commission only.
- 12.4 In the event the TERO Officer position is vacant, the Commission shall designate one or more of its members to carry out the day to day functions of the Commission as set forth here.

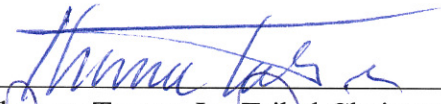
## Section 13 Amendments

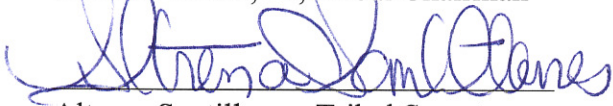
- 13.1 This Ordinance may be amended by a majority vote of the General Council.

Now, therefore be it resolved, that the Tribe hereby approves this Tribal Rights Employment Ordinance.

**CERTIFICATION**

We, the undersigned, as the Torres Martinez Desert Cahuilla Indian Tribal Council, were present at a duly called General Council meeting on April 13, 2019. The Tribal Council, on behalf of the Torres Martinez Desert Cahuilla Indians do certify that the foregoing Ordinance was adopted at aforesaid meeting by a vote of 18 "in favor", 3 "opposed", and 0 "abstaining".

  
Thomas Torte, Jr., Tribal Chairman

  
Altrena Santillanes, Tribal Secretary