



TRIBAL BUSINESS CODE

NENANA TRIBAL GOVERNMENT

Nenana, Alaska

Adopted by the Tribal Council November 22, 2011

Signed Certificate of Adoption in the Council Files

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CHAPTER 1

GENERAL PROVISIONS

Section 1. Purpose

The economy of the Village of Nenana is a blend of the subsistence economy and the cash economy; however, protecting the subsistence economy and cultural sites is a priority for the Nenana Tribe. At the same time, it is the Nenana tribal policy to encourage economic development that benefits Nenana Tribal members and that does not jeopardize the subsistence and other cultural resources. The purposes of this Code are to provide employment opportunity for the Nenana Tribe to the maximum extent possible and to provide guidelines for tribal businesses.

CHAPTER 2

TRIBAL EMPLOYMENT RIGHTS ORDINANCE

TERO

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Section 1. Purpose, Authority, Establishment of TERO

The purpose of this Ordinance is to promote the self-sufficiency of the Nenana Tribe, by requiring the fair employment of and preventing discrimination against Nenana tribal members, Alaska Natives, and American Indians residing in and near the Village of Nenana. In carrying out these purposes, the Tribal Council shall generally oversee employment activities according to this Ordinance, and hereby establishes the Nenana Tribal Employment Rights Office (TERO) as an office of the Tribe. The Tribe exercises its authority to implement this Ordinance under its inherent sovereign powers as a federally recognized tribe, under the authority of the Nenana Tribal Constitution and under powers specifically delegated through state or federal law where applicable.

Section 2 Definitions

If not defined in this section, terms used in this Ordinance shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, [29 USC 201 et. seq.] or the regulations adopted under it. In this Ordinance, the following words and phrases shall have the following meanings:

“Contractors” shall include any employer contracting with the Tribe, as defined herein, or contracting with such a contractor, to perform work in or near the Village of Nenana, and any employer contracting to perform work on lands owned by the Nenana Tribe.

“Council” means the Nenana Tribal Council.

“Employer” means any person, or agent of a person, located or engaged in work in or near the Village of Nenana, employing two or more persons, and that is not exempted by the Council.

“Employer Agreement” means any agreement between the Tribe and an employer dealing with the employment of persons in or near the Village of Nenana.

“Exempted by the Council” means that the Council has passed a written resolution by an affirmative vote of a majority of the full Tribal Council finding it to be in the best interest of the Tribe to hire, promote, or train persons outside of the guidelines established in this Ordinance with respect to a specific named employer or project.

“In or near the Village of Nenana” means the area within the exterior boundaries of lands selected on behalf of the Nenana Village under the terms of the Alaska Native Claims Settlement Act, or within reasonable daily commuting distance of the village.

“Project Labor Agreements” means any agreement between the Tribe and a union or other collective bargaining unit representing employees.

“Residents” mean persons who live in or near the Village of Nenana.

“Self-Determination Contract” means any contract or compact entered into pursuant to the Indian Self-Determination and Education Assistance Act, [P.L. 93-638, as amended; 25 USCA 450 et. seq.]

“TERO fee” means a fee collected by the Tribe from employers engaged in work in or near the Village of Nenana, and collected under a project agreement. The fee shall be used by the Tribe for employment services such as recruiting, screening, referral, training, compliance, and counseling or for other public services if it is determined to be in the best interest of the Tribe.

“Tribe” means the Nenana Tribe and shall include any subsidiary organization or offices, or any tribal organization as that term is defined under federal law, administering programs, services or activities on behalf of the Tribe.

“Tribal members” are those persons enrolled or who are eligible for enrollment into the Tribe.

Section 3. Powers and Responsibilities Tribal Council and TERO Director.

A. Tribal Council. The Tribal Council shall have the following powers and responsibilities in implementing this Ordinance:

1. Appoint or remove the TERO Director, or a Special TERO Director having authority over a specific project, whose employment shall be subject to the Nenana Tribal Personnel Policy.
2. Approve by written resolution, any Employer Agreement or Project Labor Agreement relating to employment subject to this ordinance.
3. Approve by written resolution any exemption when finding it to be in the best interest of the Tribe to hire, promote, or train persons outside of the guidelines established in this Ordinance with respect to a specific named employer or project.
4. Approve any litigation or other action enforcing the terms of this Ordinance before any judicial or non-tribal regulatory agency.

5. Approve any and all grants, contracts or cooperative agreements, and the expenditure of tribal funds in support of tribal employment activities.
6. Establish reasonable hiring goals for tribal members and other Alaska Native and American Indian people.
7. Enter into cooperative agreements with tribal, federal and state agencies to eliminate hiring discrimination against tribal members, establish or participate in job training programs that will increase employment opportunities of tribal members, and implement and enforce this Ordinance.
8. Negotiate with employers to give preference to tribal and other Native-owned businesses in the award of contracts and/or subcontracts, subject to Council approval.

B. TERO Director – A TERO Director may be appointed or hired by the Tribal Council, subject to the application of the tribal personnel policy and supervision as directed by the Tribal Council. The TERO Director, or a Special TERO Director having authority over a specific project, shall have the following powers and responsibilities in implementing this Ordinance:

1. Notify all employers and potential employers of the tribal policy on hiring preferences outlined in Section 4 of this Ordinance.

2. Represent the Tribe in the consultation, negotiation, implementation and enforcement of any Employer Agreement, Project Labor Agreement or exemption subject to this ordinance to promote the maximum Tribal and Indian preference as possible.
3. Submit to the Tribal Council any and all Employer Agreements, Project Labor Agreements or exemptions subject to this Ordinance for approval prior to implementation of such agreements or exemptions.
4. Report to the Council on a regular basis or upon a specific Council request with respect to the implementation of this Ordinance.
5. Collect and deliver to the Tribe's Chief Financial Officer any and all TERO fees collected subject to this Ordinance.
6. Establish a tribal hiring hall, and to use the Tribal Council office as a tribal hiring hall when no other hiring hall agreement exists.
7. Establish employment-counseling programs to assist tribal members in obtaining and retaining employment.
8. Maintain lists and information on the available tribal work force in the Village and provide such lists and information to employers and potential employers.
9. Take any and all other necessary actions to promote the purposes of this Ordinance.

Section 4. Employment Preferences

A. Preference Generally.

1. Preference Hire: To the extent permitted under tribal, state, and federal law, employers in or near the Village of Nenana shall provide a preference in employment, as provided herein, in all aspects of employment, including but not limited to recruitment, hiring, promotion, lateral transfers, retentions, and training. No employer may recruit, hire, promote, transfer, retain, or train a non-preferred individual for any employment position covered by this Ordinance unless there is no preferred person available for such position.

2. Minimum Threshold Requirements: A person shall be qualified for employment in a position if he or she meets the minimum threshold requirements for such position. No employer may utilize any employment criterion that is not reasonably necessary and related to the performance of the position.

3. Work Experience: In determining qualifications, experience doing the same or similar work may be substituted for educational requirements on a month-to-month basis. In determining qualifications for a job for which the employer may provide training, applicants shall be evaluated without regard to whether the applicant has previously received such training. In determining qualifications, an employer must make reasonable accommodations to employees as may be required by federal and state law, and may not utilize criteria or procedures that violate federal or state law.

4. Layoffs and Reductions: In all layoffs and reductions in force, no tribal member, Alaska Native, or American Indian shall be terminated if a non-Native worker in the same craft or job remains employed. If a covered employer lays off by crews, qualified Alaska Natives shall be transferred to crews that will be retained so long as there are non-Natives employed in the same craft or job.

B. Tribal Preferences. Qualified enrolled tribal members shall be provided a preference in employment in all tribal enterprises, in any position funded solely by tribal funds or a position funded by a self-determination contract intended to solely benefit the Tribe, or any other contract that specifically allows tribal employment preferences. In applying these preferences, residents shall be preferred over non-residents.

C. Indian Preferences. Subject to any applicable tribal preference, qualified enrolled members of federally recognized Indian tribes, including members of the Nenana Tribe, shall be provided a preference in employment in all federally assisted contracts, programs, functions, services, and activities conducted in or near the Village of Nenana. In applying these preferences, residents shall be preferred over non-residents.

D. Local Preference. Subject to any applicable tribal or Indian preference, qualified residents shall be provided a preference in employment in all programs, functions, services and activities conducted in or near the Village of Nenana.

Section 5. Contracts and Agreements

A. Contracts. All contractors shall sign a written agreement to comply with this Ordinance at the time of submission of any contract bid submitted to the Tribe in response to a request for proposal for contract services to be provided to the Tribe. Such agreement shall require the contractor to incorporate contract terms into any sub-contract connected with the proposed contract.

B. Employer Agreements. The Tribal Council may pursue employer agreements with employers to give employment preferences as provided in Section 4 of this Ordinance.

C. Project Labor Agreements. The Tribal Council may pursue project labor agreements with unions to give employment preferences as provided in Section 4 of this Ordinance, Such project labor agreements may include agreements between unions other tribes, tribal organizations, state and federal agencies and private industry.

Section 6. Tribal Council Employment

A. Tribal Employees. The Tribal Council shall follow the employment preference outlined in Section 4 of this Ordinance except when it is specifically found to be in the best interest of the Tribe to hire, promote, or train persons outside of the guidelines established in this Ordinance. The best interest finding shall be specific, noted in writing, and adopted by an affirmative vote of a majority of the full Tribal Council.

B. Personnel Policy. In implementing this Ordinance, the Tribe shall comply with the Tribal Personnel Policy. In the event of a conflict between the Tribal Personnel Policy and this Ordinance, the provision of this Ordinance shall govern.

C. Nepotism and Favoritism: Tribal Council members shall not participate in hiring or other employment decisions or exert excessive influence or favoritism to pressure other tribal officials to alter decisions concerning employment or other benefits involving his or her spouse or significant other, first degree relatives, any person living in the same household, or any person with whom they have a romantic relationship.

Section 7. Enforcement, Grievances, Disputes, and Complaint Procedures

A. Tribe as Necessary Party. The Tribe shall be a necessary party to any litigation or other judicial action brought against an employer, union or government agency to challenge the legality of this Ordinance, or any agreement authorized by this Ordinance. Nothing in this Ordinance, nor any Employer Agreement, Project Labor Agreement, or Contract entered into pursuant to this Ordinance shall be interpreted nor otherwise infer that the Tribe has

1. Consented to be sued,
2. Agreed to arbitration, mediation or other enforceable dispute resolution process,
3. Affected the sovereign immunity of the Tribe, or
4. Provided for indemnity of employers government agencies, or unions for liability arising from compliance with this Ordinance.

The Tribe reserves the right to specially appear in any legal proceedings brought against any person, employer, union, or agency complying with this Ordinance to seek dismissal of claims for failure and inability to join an indispensable party to the litigation. Such appearance shall not be construed to be consent to sue, nor a waiver of any immunity, right, privilege, or defenses the tribe may possess.

B. Tribal Waiver of Defenses. Any consent to sue the Tribe, waiver of tribal immunity, privilege or defense, indemnity agreement, or enforceable dispute resolution agreement with respect to claims against the Tribe arising under this Ordinance or actions complying with this Ordinance, shall be in writing and approved by an affirmative vote of a majority of the full Tribal Council, and provide the maximum dollar value of any claim, provide for a time limit to bring

any claim or action, which shall not exceed one (1) year from the date of injury giving rise to any claim, and specifying by name the party who may bring such claim or action. In all cases, a party making a claim against the tribe must first exhaust tribal remedies provided in this Ordinance.

C. Grievances against Employer. Any person may file a grievance against an employer with the TERO Director with regard to violations of this Ordinance. The TERO Director shall give notice of the grievance to the Employer within two (2) business days of receipt of the grievance. Within ten (10) business days of such grievance, the TERO Director shall conduct an investigation into grievance and make a report to the Council. A copy of the report shall be provided to the Employer. The Nenana Tribal Court shall appoint a Committee of three Nenana Tribal Court Judges to conduct a hearing on the grievance upon five (5) days prior notice. The grievant, the employer and the TERO Director may present evidence at such hearing. At the conclusion of the hearing, if the Committee:

1. Finds in favor of the employer that no violation occurred, the Committee shall dismiss the grievance.
2. Finds in favor of the grievant that a violation has occurred, the Committee may order that the employer take specific and appropriate employment action with the grievant, or award damages to be paid by the Employer to the grievant; which may be deducted from payments due the employer from the Tribe or Third parties, together with reasonable hearing costs incurred by the Tribe.

D. Employer Determination. An employer may request a determination that a planned employment action complies with this Ordinance by filing a request with the TERO Director. Within ten (10) business days of such request, the TERO Director shall conduct an investigation and make a determination whether the planned employment action complies with this Ordinance. A copy of the

determination shall be provided to the Employer. A determination by the TERO Director that no violation will occur shall be conclusive and no person may file a grievance arising out of the approved employment action against an employer for violation of this Ordinance.

CERTIFICATE OF ADOPTION

The TERO ordinance in this Code shall replace any previously adopted TERO. The Nenana Tribal Business Code was submitted to a vote of the Nenana Tribal Council at an open meeting on _____ for which proper notice was provided, and was duly adopted by the Nenana Tribal Council by a vote of ____ in favor, and ____ opposed.

_____ Chief

_____ Second Chief

_____ Secretary/Treasurer

_____ Council Member

_____ Council Member

_____ Council Member

_____ Council Member

_____ Council Member

_____ Council Member