



Prairie Island Indian Community Tribal Employment Rights Ordinance¹

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¹ Note of Adoption: The Tribal Council adopted the Tribal Employment Rights Ordinance on November 2, 2022, by Resolution Number 22-11-2-202.

Section 1. Short Title.

This Ordinance shall be known and may be cited as the Prairie Island Indian Community Tribal Employment Rights Ordinance (TERO).

Section 2. Statement of Purpose, Findings, and Authority.

- a. Purpose. The purposes of this Ordinance include, but are not necessarily limited to:
 - 1. Ensure that no covered employer discriminates against any Tribal Member or Native American in any aspect of employment, including but not limited to, hiring, promotion, demotion, transfer, change in work status, layoffs, and termination from employment.
 - 2. Require that all covered employers give preference to qualified Tribal Members or Native Americans in all aspects of employment, including but not limited to, hiring, promotion, demotion, transfer, changes in work status, layoffs, and termination from employment.
 - 3. Require that all entities awarding contracts give preference to Native American Contractors for contract and subcontract work on the Reservation.
 - 4. Authorize agreements between the Tribes and the United States or any of its agencies or departments to enforce federal laws prohibiting discrimination as set out and limited in this Ordinance.
- b. Findings. Jobs, contracts and subcontracts for the employment and the provision of goods and services to the Prairie Island Indian Community are a vital resource for Tribal Members and Native American people. The Prairie Island Tribal Council has the inherent sovereign power to pass laws to protect, preserve and enforce the employment rights of Tribal Members and other Native Americans. Such a Tribal law is fully consistent with the federal laws adopted to combat employment discrimination and empower Tribal people and businesses on or near the Prairie Island Reservation. The Prairie Island Indian Community finds it is critical to establish a tribal employment rights law to increase employment of Tribal Members and Native American workers and businesses.
- c. Authority. The Prairie Island Tribal Government has the inherent sovereign power to pass laws to protect the interests, health, and general welfare of Tribal Members and other Native American people residing or working on the Prairie Island Indian Reservation. The Prairie Island Tribal Council also has authority to protect these interests pursuant to the Constitution and By-Laws of the Prairie Island Indian Community, Article V, Section 1(i). The Prairie Island Tribal Council has determined that the Prairie Island Indian Community has a compelling interest in adopting this Ordinance for these purposes.

Section 3. Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- a. “Business for Profit” means any business, enterprise, or operation, which is not defined as a 501(c)(3) nonprofit or not-for-profit organization by the Internal Revenue Service engaged in commerce on the Prairie Island Indian Reservation.
- b. “Contract” means an agreement or promise, written or unwritten, between two or more persons which creates an obligation enforceable by law to perform work, supply service, labor, or material(s) on the Reservation.
- c. “Contractor” means any person, employer, or entity that enters a contract as defined herein to perform work, services, or other obligations where the person, employer, or entity has the primary responsibility for providing the work or services under the contract on the Reservation.
- d. “Covered Employer” means any employer, whether a Business for Profit or not for profit, employing two or more employees who, during any given period of time, perform work, or render services on the Reservation. Covered Employers shall include the Prairie Island Tribal government, its departments, agencies, and enterprises. A Covered Employer under this Ordinance does not include a private individual who contracts or subcontracts work on his or her own private residence.
- e. “Department Director” means the head of any department, agency or enterprise – including the gaming enterprise - of the Prairie Island Indian Community.
- f. “Discriminate” means to, with the exception of the Native American preferences provided for in this Ordinance, administer conditions and privileges of employment based upon a person’s race, color, sex, sexual orientation, gender identity, national origin, age or disability.
- g. “Entity” means any person, partnership, corporation, joint venture, vendor, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be broadly interpreted to further the purposes of this Ordinance.
- h. “Employee” means any person employed for remuneration, compensation, or other value.
- i. “Indian Tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

- j. “Native American” means any person that is an enrolled member of a federally-recognized Indian Tribe. It shall also be synonymous with the term Indian as defined in federal law.
- k. “Native American Contractor” means a business entity, contractor, or subcontractor that is 51 percent or more owned, controlled, and managed by a Tribal Member, Native American, or an Indian Tribe.
- l. "Native American Preference" means the requirement that, all factors being equal, the covered employer or entity will give preference to Tribal Members or Native Americans in employment and contracting.
- m. “Ordinance” or "TERO" means this Tribal Employment Rights Ordinance.
- n. “Qualified Native American” means an enrolled Tribal Member or an enrolled member of another federally-recognized Indian Tribe who meets minimum qualifications for a specific job or other employment position.
- o. “Reservation” means all lands and waters within the exterior boundaries of the Prairie Island Indian Reservation, notwithstanding the issuance of any patent, easement, or rights-of-way running through the Reservation, ceded lands, and such other lands without such boundaries as may be added by purchase, exchange, transfer, gift or grant, or which are under the jurisdiction of the Tribe.
- p. “Subcontractor” means any entity, usually a third party, hired or retained by a contractor, to perform work, supply services, or provide materials under a contract.
- q. “Tribal Council” means the elected governing body of the Prairie Island Indian Community of the Prairie Island Indian Reservation as established and defined by the Prairie Island Indian Community Constitution.
- r. “Tribal Member” means an enrolled member of the Prairie Island Indian Community.
- s. “Tribe” means the Prairie Island Indian Community.

Section 4. General Applicability.

All Covered Employers that conduct business on the Reservation shall comply with this Ordinance, which sets forth the specific obligations of Covered Employers in regard to Native American Preference.

Section 5. Satisfaction of Requirements by Prairie Island Indian Community.

The Tribal government, including tribal agencies, departments, and enterprises, can satisfy the requirements of this Ordinance through the adoption and implementation of an employment and contracting preference policy, duly approved by the Tribal Council.

Section 6. Notice; Bid Requirements.

Department Directors shall make good faith efforts, through direct contact and general public information, to inform all Covered Employers, Contractors, and any other Entity that

conducts business on the Reservation of the requirements of the TERO. All bid announcements issued by the Tribe for work funded by federal, tribal or state funds within the exterior boundaries of the Reservation shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and that a bidder shall contact the Department Director of the entity letting the contract to obtain information regarding their obligation to comply with this Ordinance. It shall not be a defense in any enforcement action for a Covered Employer, Contractor, or other Entity to allege that the Department Director failed to notify the Covered Entity of the requirements of this Ordinance.

Section 7. Native American Preference in Employment Actions.

- a. All Covered Employers, for all employment activities occurring on or near the Reservation, shall give preference in hiring, training, advancements, promotions, and layoffs to Qualified Native Americans and/or the spouses, domestic partners or dependents of Tribal Members, with preferences in the following order:
 - 1. First preference to enrolled Tribal Members in all hiring, promotion, training, layoffs, and all other aspects of employment;
 - 2. Second preference to spouses, domestic partners or dependents of enrolled Tribal Members;
 - 3. Third preference to enrolled members of other federally-recognized Indian Tribes;
 - 4. Fourth preference to non-Native Americans who have successful work experience with Native American Tribes; and
 - 5. Fifth preference to all other non-Native Americans.
- b. Preference in layoffs means that Qualified Native Americans who are Tribal Members of the Prairie Island Indian Community shall be given preference for retention when layoffs occur. As between Qualified Native Americans subject to layoffs, retention preference shall be given to Qualified Native Americans in accordance with the above-listed preference order unless the layoff is based upon significant employee performance and/or qualifications.

Section 8. Native American Preference in Contracting.

- a. All covered employers awarding contracts or subcontracts for supplies, services, labor, and/or materials in an amount of \$5,000.00 or more shall give first preference in contracting and subcontracting to Native American Contractors, then in the preference order set forth in Section 7.
- b. The Native American Preference requirements contained in this Ordinance shall be binding on all contractors and subcontractors of covered employers and will be deemed to be part of and incorporated into any contract or subcontract covered by this Ordinance. The covered employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements.

- c. The above Native American Preference requirements apply in all cases except where specific percent of ownership or preference requirements are established by Tribal law or policy pursuant to Section 2 for particular types of employment or contracting.
- d. Any exception from these Native American Preference in Contracting compliance requirements, or Native American preference provisions in this Ordinance must be approved by the Tribal Council.

Section 9. Equal Employment Rights.

Other than Native American Preference as required under Sections 7 and 8, Covered Employers shall not consider any person's race, color, religion, gender, age, or national origin in any personnel, management, or contracting decisions.

Section 10. Obligation of Department Directors.

Department Directors letting a contract shall ensure that all TERO requirements found in Sections 7 through 9 are incorporated into the contract terms.

Section 11. Compliance; Enforcement.

- a. Compliance. Failure to comply with the provisions of this Ordinance shall constitute a breach of contract and shall constitute a civil violation.
- b. Enforcement. Tribal Council may bring a civil cause of action in the Prairie Island Tribal Court against any covered employer or entity who is in violation of this Ordinance and may seek monetary and equitable remedies.
- c. Private Cause of Action. Any Qualified Native American who is denied employment preference rights or any Native American Contractor that is denied subcontracting preference rights may bring a civil cause of action in the Prairie Island Tribal Court against any covered employer or entity that is in violation of this Ordinance, and may seek monetary and equitable remedies; provided that no such cause of action may be brought against the Tribe, its departments, agencies, enterprises, officers, or employees.

Section 12. Miscellaneous Provisions.

- a. Severability. If any provision of this Ordinance shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Ordinance, but such other provisions shall continue in full force and effect.
- b. Amendments. The Tribal Council has the sole authority to approve and amend provisions of this Ordinance.
- c. Sovereign Immunity Provision. Nothing herein shall be interpreted as a waiver of the Tribe's immunity from suit.
- d. No Effect. This Ordinance shall not in any manner amend or repeal the provisions of the Tribal Right to Work Ordinance.

- e. Repeal. This Ordinance hereby repeals and replaces the Equal Employment and Indian Preference Ordinance No. 94-8-16-135 (Aug. 16, 1994).
- f. Effective Date. This Ordinance shall take effect on November 2, 2022.