

**TRIBAL EMPLOYMENT RIGHTS ORDINANCE
(TERO)**

**CONFEDERATED TRIBES
OF THE
WARM SPRINGS INDIAN RESERVATION**

February 24, 2015

**TRIBAL EMPLOYMENT RIGHTS ORDINANCE
TABLE OF CONTENTS**

CHAPTER 1. GENERAL PROVISIONS	1
SECTION 1.01. Title	1
SECTION 1.02. Purpose	1
SECTION 1.03. Statement of Policy	1
SECTION 1.04. Jurisdiction	2
SECTION 1.05. Definitions	2
 CHAPTER 2. TRIBAL EMPLOYMENT RIGHTS OFFICE	 4
SECTION 2.01. Program Manager	4
SECTION 2.02. General Authorities	5
SECTION 2.03. Specific Authorities	5
 CHAPTER 3. TRIBAL EMPLOYMENT RIGHTS PROGRAM	 6
SECTION 3.01. Scope	6
SECTION 3.02. Compliance Agreement	7
SECTION 3.03. Job Qualifications and Personnel Requirements	8
SECTION 3.04. Tribal Hiring Hall	8
SECTION 3.05. Unions	8
SECTION 3.06. Contractors and Subcontractors	9
SECTION 3.07. Preference in Contracting and Subcontracting	9
SECTION 3.08. Layoffs	9
SECTION 3.09. Promotion	9
SECTION 3.10. Compliance Fees	9
SECTION 3.11. On Site Inspections	11
SECTION 3.12. Tribal Minimum or Prevailing Wage	11
 CHAPTER 4. VIOLATION PROCEDURES	 12
SECTION 4.01. Investigation by the Program Manager	12
SECTION 4.02. Issuance of Citation	12
SECTION 4.03. Program Manager Hearing	13
SECTION 4.04. Emergency Relief	13
SECTION 4.05. Individual Complaint Procedure	13
SECTION 4.06. Appeals of Program Manager Decisions	14
 CHAPTER 5. PENALTIES AND ENFORCEMENT	 14
SECTION 5.01. Penalties for Violation	14
SECTION 5.02. Monetary Fines	15
SECTION 5.03. Enforcement	15
 CHAPTER 6. TRIBAL EMPLOYMENT RIGHTS OFFICE COMMISSION	 15
SECTION 6.01. Establishment	15

CHAPTER 7. COMMISSION APPEALS AND HEARINGS	16
SECTION 7.01. Filing an Appeal	16
SECTION 7.02. Scheduling Appeal Hearing	17
SECTION 7.03. Request to Reschedule Commission Hearing	17
SECTION 7.04. Commission Hearing Participants	17
SECTION 7.05. Hearing Procedure	18
SECTION 7.06. Commission Decision	18
SECTION 7.07. Commission Training	18
CHAPTER 8. TRIBAL COURT ENFORCEMENT AND JUDICIAL REVIEW	18
SECTION 8.01. Appeals of Commission Decisions	18
SECTION 8.02. Tribal Court Enforcement of Final Agency Decisions	19
CHAPTER 9. WORKFORCE DEVELOPMENT	19
SECTION 9.01. Authorization	19
SECTION 9.02. Workforce Development Plan	19
SECTION 9.03. Training	20
SECTION 9.04. Inter-Departmental Participation and Cooperation	20
SECTION 9.05. Reporting	21

TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE

CHAPTER 1: GENERAL PROVISIONS

Section 1.01: TITLE

This Code shall be known as the Tribal Employment Rights Ordinance.

Section 1.02: PURPOSE

The purposes of this Code are:

- A. To prevent employment related discrimination against American Indians;
- B. To ensure compliance with this Code that is intended to give preference in employment, contracting and sub-contracting, and training to American Indians; and
- C. To maximize utilization of Indian workers in all employment opportunities on and near the Warm Springs Indian Reservation.
- D. To ensure the Indian workforce on the Warm Springs Indian Reservation are trained and equipped to enter the workforce and maintain employment of their choosing.

Section 1.03: STATEMENT OF POLICY

The Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon finds that:

- A. Jobs in the private employment sector on and near the Warm Springs Reservation are an important resource for Indians residing on and near the Reservation.
- B. In order to attract private employers to locate on the Warm Springs Reservation, Indians residing on or near the Reservation need to have the training and skills those employers require.
- C. This Code is consistent and supplemental to existing federal and tribal law prohibiting employment discrimination against Indians and providing employment and contract preference to individual Indians and Indian-owned enterprises.
- D. Indian unemployment on the Reservation continues to be a problem of sufficient magnitude to warrant the enactment and implementation of this Code which is designed to improve training and employment opportunities for Indians living on and near the Reservation.
- E. Many unemployed Indians on the Reservation may have social barriers to employment such as poor education, substance abuse, the lack of vocational training or the lack of tools and other equipment needed by their preferred vocation that need to be addressed.

Section 1.04: JURISDICTION

- A. This Code shall apply to all Employers and Construction Employers located on or engaged in work on the Reservation as set forth in this Code. This Code shall also apply to ODOT Contractors engaged in work on and near the Reservation as permitted by this Code and applicable federal and state law as identified in the Memorandum of Understanding.
- B. This Code shall not apply to any direct employment by the Tribe, its enterprises or tribally owned corporations, or by federal, state, or other governments; however, construction contractors and subcontractors of these governmental entities shall be subject to the Code.
 - 1. This Code is not intended to pre-empt or interfere with the rights or obligations set forth in the Tribes' Personnel Policies and Procedures, or the personnel manuals of Tribal enterprises now or later established. The employees of the Tribe and Tribal enterprises shall be limited to the rights and remedies provided in the duly adopted manuals or procedures enacted by the Tribe for those employees. This Code shall not apply to or be enforced against Tribal enterprises established and owned by the Tribe. Indian employment preference shall be provided at each Tribal enterprise in personnel manuals developed for each enterprise.
 - 2. Contract disputes between contractors and their subcontractors or their employees are outside the scope or jurisdiction of this Code and are not subject to enforcement, compliance or the issuance of a citation under this Code. Contract disputes shall be resolved through specified contract procedures for such disputes or through a court of competent jurisdiction.

SECTION 1.05: DEFINITIONS

- A. COMMISSION - shall mean the Warm Springs Tribal Employment Rights Commission.
- B. COMMISSIONER - shall mean a member of the Warm Springs Tribal Employment Rights Commission.
- C. COMMISSION CHAIRPERSON - shall mean the Chairperson of the Commission which shall be elected by the Commission on an annual basis. The Chairperson of the Commission shall preside at all meetings of the Commission.
- D. COMPLIANCE AGREEMENT - an agreement between a Employer, Construction Employer, or ODOT Contractor and the Tribal Employment Rights Office, setting forth how the employer will meet Indian preference hiring and subcontracting goals and that they will comply with this Code. The Compliance Agreement must be executed prior to commencement of any portion of a construction contract or sub-contract within the Reservation, or in the case of an ODOT Contractor, within or near the Reservation.

- E. CORE CREW - means the essential, permanent employees of an Employer or Construction Employer. Core Crew employees must have been regular employees of the Employer for at least six (6) months. "Core Crew" requests must be submitted to the Office in writing, showing that each Core Crew member meets these criteria before the start of any project work, and approved by TERO Program Manager.
- F. CONSTRUCTION EMPLOYER - shall mean any person, company, contractor, subcontractor, or entity located or engaged in construction work on the Reservation including new construction, remodeling, repair, or maintenance of structures, infrastructure, equipment and support facilities. The term shall include construction contractors and subcontractors of federal, state, county, and other local governments, but shall not include the Tribe, federal, state, or local governments or Tribal enterprises when they are employers.
- G. EMERGENCY RELIEF ORDER - shall have the meaning set forth in Section 4.04 of the Code.
- H. EMPLOYER - shall mean any person, company, contractor, subcontractor, or entity located on or engaged in work on the Reservation.
- I. ENGAGED IN WORK ON THE RESERVATION - an Employer or Construction Employer is "engaged in work on the reservation" if during any portion of a business enterprise or specific project, contract or subcontract, he or any of his employees spends time performing work within the exterior boundaries of the Reservation.
- J. INDIAN - shall mean any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to American Indians.
- K. INDIAN OWNED BUSINESS - a business that is at least 51% owned, operated, and controlled by an Indian.
- L. INDIAN PREFERENCE - shall mean a preference for enrolled Indians in all aspects of employment, including but not limited to, hiring, training, promotions, layoffs, contracting, and subcontracting for work on or near the Reservation. Qualified, available Indians shall receive an Indian preference in accordance with this code and negotiated Compliance Agreements.
- M. LOCATED ON THE RESERVATION - an Employer or Construction Employer is "located on the Reservation" if during any portion of a contract it maintains a temporary or permanent office or facility within the exterior boundaries of the Reservation.
- N. MEMORANDUM OF UNDERSTANDING - shall mean the agreement between the Tribe and the Oregon Department of Transportation providing Indian preference in employment for Indians on ODOT transportation projects and authorizing the Office to impose a compliance fee on ODOT contractors.

- O. NEAR THE RESERVATION - shall mean jobs within 60 miles of the exterior boundaries of the Warm Springs Indian Reservation.
- P. ODOT - shall mean the Oregon Department of Transportation.
- Q. ODOT CONTRACTOR - shall mean a transportation construction contractor, and all related subcontractors, to ODOT that are subject to the TERO Indian employment and subcontracting preference and Compliance Agreement under the Memorandum of Understanding.
- R. OFFICE - shall mean the Warm Springs Tribal Employment Rights Office.
- S. PROGRAM MANAGER - shall mean the Program Manager of the Warm Springs Tribal Employment Rights Office.
- T. PROGRAM MANAGER DECISION - shall have the meaning set forth in Section 4.03 and 4.05 of the Code.
- U. RESERVATION - shall mean the Warm Springs Indian Reservation.
- V. TERO - shall mean this Tribal Employment Rights Ordinance.
- W. TRIBE or TRIBAL - shall mean the Confederated Tribes of the Warm Springs Indians of Oregon.
- X. TRIBAL COUNCIL - shall mean the governing body of the Confederated Tribes of the Warm Springs Indian Reservation.
- Y. TRIBAL COURT - shall mean the Warm Springs Tribal Court.
- Z. WORKFORCE DEVELOPMENT - shall be the training and employment component of the TERO program.

CHAPTER 2: TRIBAL EMPLOYMENT RIGHTS OFFICE

Section 2.01: PROGRAM MANAGER

The Program Manager of the Tribal Employment Rights Office shall be responsible for administering the provisions of this Code and provide direction, leadership and oversight to Office staff.

Section 2.02: GENERAL AUTHORITIES

The Program Manager shall have the authority to hire staff, to obtain and expend funds from tribal, federal, state, or other sources to carry out the purposes of this Code as provided in the annual budget of the Tribe, to establish Employer, Construction Employer, and ODOT Contractor record-keeping requirements, to implement a workforce development program plan to consult with the Commission

on policy issues related to the implementation of this Code, and to take such other actions as are necessary for the fair and vigorous enforcement of this Code. The Program Manager will report TERO activities in the Human Resource Department Annual Work Plan for Tribal Council review.

Section 2.03: SPECIFIC AUTHORITIES

The Program Manager shall have the authority to implement and enforce this code, including but not limited to:

- A. Enter Compliance Agreements with Employers, Construction Employers, and ODOT Contractors;
- B. Investigate violations of and impose penalties on Employers, Construction Employers, and ODOT Contractors who violate the provisions of the Code;
- C. Assist the Commission to develop and promulgate regulations necessary to implement the provisions of this Code;
- D. For purposes of Compliance Agreements, develop and impose numerical hiring goals and timetables that reflect the available Indian labor pool and other employment opportunities for each craft and skill category.
- E. Require Employers, Construction Employers, and ODOT Contractors that have established training or apprentice programs to provide preference to Indians.
- F. Establish and maintain a tribal hiring hall that maintains a record of qualified, employable Indians that is to be used by employers to fill vacancies.
- G. Prohibit any Employer, Construction Employer, and ODOT Contractor from imposing employment qualification criteria that serve as barriers to Indian employment unless it can be demonstrated that such criteria are required by business necessity.
- H. To work cooperatively with other Tribal programs, including, but not limited to, Warm Springs Health & Wellness Center, Department of Children & Family Services, and Education to establish counseling, education and training, substance abuse treatment, and other support programs for Indian workers to assist them in acquiring and retaining employment.
- I. To enter into cooperative agreements with federal and state agencies to minimize employment discrimination against Indians both on or near the Reservation, to promote Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Code.
- J. Through required payroll reports, from Construction Employers and ODOT Contractors, monitor wage scale and salaries to ensure equitable compensation of Indian workers.

- K. To assess fees on Construction Employers and ODOT Contractors to support the operation of the Office.
- L. To apply for federal funding to provide workforce training opportunities for Indians living on or near the Reservation pursuant to the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, Public Law 102-477.
- M. To address the needs of Indian persons living on or near the Reservation that are now unemployed or underemployed and/or dependent on public assistance, through the linkage of employment and vocational training, substance abuse counseling and other needed social services. Specifically, the Office will provide, or facilitate the provision of, special services to enable such Indian persons to receive the education, training, and other medical and social services they need to become productive employees in the workforce. The Program Manager shall carry out these duties as set forth in Chapter 9 of this Code.
- N. Advertise, collect data, investigate, communicate, and make recommendations to the Commission regarding any application or re-certification process on the Indian Owned Business Directory. The Office will ensure each applicant has been reviewed and certified and shall make a recommendation to deny or approve the application to the Commission. The Office will ensure each Indian Owned Business on the Directory will be re-certified every 2 years and update the Commission on an annual basis.

CHAPTER 3: TRIBAL EMPLOYMENT RIGHTS PROGRAM

Section 3.01: SCOPE

All Construction Employers located on or engaged in work on the Reservation shall and ODOT contractors engaged in work on or near the Reservation shall:

- A. Give preference to Indians in hiring, promotion, training and all other aspects of employment, contracting and subcontracting, business opportunities;
- B. Comply with the Compliance Agreement executed under this Code; and
- C. Shall comply with the terms of the Code and its implementation regulations.

Section 3.02. COMPLIANCE AGREEMENT

- A. Each Employer, Construction Employer, and ODOT Contractor shall be required to meet with the Program Manager to negotiate, execute, and comply with a Compliance Agreement which sets forth:
 - 1. The minimum number of Indians that shall be hired for any particular project while the Employer or Construction Employer is located on or engaged in work on the Reservation, or an ODOT Contractor is engaged in work on or near the Reservation, numerical goals

and timetables for each craft, skill area, job classification, etc., used by the Employer, Construction Employer or ODOT Contractor including, but not limited to: general labor, skilled, administrative, supervisory, and professional categories;

2. Applicable wage scale provisions, prevailing wage standards, and salary compensation terms that may be applicable to a project or contract under applicable federal or state law, or Tribal law, provided that any Tribal Minimum Wage or Prevailing Wage has been promulgated as provided in Section 3.12 of this Code;
 3. Periodic reporting requirements to the Program Manager on the number of Indians employed, a record of persons hired, fired, or promoted during the reporting period, and a statement regarding compliance with the hiring goals set forth in the Compliance Agreement.
 4. Preference for training programs where the Employer, Construction Employer or ODOT Contractor has an established program.
 5. In the Program Manager's discretion, procedures and remedies for the enforcement and/or violations of the Compliance Agreement or the Code that may vary from the procedures and remedies set forth in this Code.
- B. The numerical goals set forth in the Compliance Agreement shall be based upon surveys conducted by the Program Manager of the available and qualified Indian work force and of projected employment opportunities on or near the Reservation.
1. Compliance Agreements shall be reviewed periodically and revised as necessary to reflect changes in the number of Indians available or changes in Employer, Construction Employer or ODOT Contractor hiring plans.
 2. At the Program Manager's discretion, no Employer, Construction Employer or ODOT Contractor shall commence work or site mobilization until a Compliance Agreement has been negotiated and executed.
 3. Any violation of an executed Compliance Agreement shall be a violation of this Code.
 4. When an Office employee referral to an Employer, Construction Employer or ODOT Contractor is unable to continue working, the Employer, Construction Employer or ODOT Contractor shall immediately notify the Office who shall provide a substitute referral within three (3) business days or notify the Employer, Construction Employer or ODOT Contractor that it has no referrals for the position, after which time the Employer, Construction Employer or ODOT Contractor will be authorized to hire a permanent replacement.

Section 3.03: JOB QUALIFICATIONS AND PERSONNEL REQUIREMENTS

Employer, Construction Employer or ODOT Contractor shall not use qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the Employer, Construction Employer or ODOT Contractor is able to demonstrate that such criteria or requirements are required by business necessity.

Section 3.04: TRIBAL HIRING HALL

The Program Manager shall establish and maintain a hiring hall to assist Employers, Construction Employers and ODOT Contractors and all other employers doing business on the Reservation in placing qualified Indians in job positions.

- A. Construction Employer and ODOT Contractors shall not hire a non-Indian in violation of the Compliance Agreement until the Program Manager has certified within a reasonable time that no qualified Indian is available to fill the vacancy. For purposes of this section, "reasonable time" for construction jobs shall mean that the Program Manager shall have 48 hours from time of notice of manpower needs to locate and refer a qualified Indian.
- B. The Program Manager may waive the 48-hour time period upon a showing by the Construction Employer or ODOT Contractor that such time period imposes an undue burden upon the Construction Employer or ODOT Contractor, the business or the construction project in question

Section 3.05: UNIONS

Construction Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code, its rules and regulations and their Compliance Agreement. ODOT Contractors with collective bargaining agreements with a union are responsible for informing such unions of this Code, the Memorandum of Understanding and their Compliance Agreement. Unions will give absolute preference to Indians in job referrals regardless of which referral list they are on. Temporary work permits will be granted to Indians who do not wish to join a union. Nothing herein shall constitute official tribal recognition of any union or tribal endorsement of any union activities on or near the Warm Springs Indians.

Section 3.06: CONTRACTORS AND SUBCONTRACTORS

Where the general contractor on a project is a Construction Employer, that general contractor shall ensure that all its subcontractors comply with this Code. The general contractor who is a Construction Employer may be held liable for violations of this Code by its subcontractors.

Section 3.07: PREFERENCE IN CONTRACTING AND SUBCONTRACTING

- A. For Construction Employers. Construction Employers located on or engaged in work on the Reservation shall give preference to Indian Owned Businesses in the award of contracts or subcontracts to the extent permitted by applicable law. The Program Manager shall maintain a list of Indian Owned Businesses (“Indian Owned Business Directory”) which shall be supplied

to Construction Employers and ODOT Contractors upon request. Indian Owned Businesses shall be certified by the Program Manager to ensure that they meet the requirements of such an entity as set forth in section 1.05(I) of this Code. Indian Owned Businesses will submit re-certification applications every two (2) years to remain active.

- B. All other Employers. All other Employers located on the Reservation shall give preference to Indian Owned Businesses in the award of contractor subcontracts to the maximum extent feasible as permitted by federal law and the law, budget, and fiscal policies of the Tribe.

Section 3.08: LAYOFFS

In all layoffs and reductions in force for a Construction Employer and ODOT Contractors, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed. The non-Indian shall be terminated first if the Indian possesses threshold qualifications for the job classification. If a Construction Employer or ODOT Contractor lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classification are employed elsewhere on the job site, except for non-Indians hired as Core Crew pursuant to negotiated Compliance Agreements.

Section 3.09: PROMOTION

Each Construction Employer and ODOT Contractor shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For each promotion or supervisory position filled by a non-Indian, the Construction Employer or ODOT Contractor shall file a report with the Program Manager stating what efforts were made to inform Indian workers about the position, what Indians, if any, applied for the position and if an Indian was not chosen, the reasons therefore.

Section 3.10: COMPLIANCE FEES

The Program Manager shall assess and collect a compliance fee as follows:

- A. Every Construction Employer with a construction, renovation, improvement, or expansion contract in the sum of ten thousand dollars (\$10,000) or more shall pay a fee of 2.5 percent of the total amount of the contract. Such fee shall be paid by the Construction Employer prior to commencing work on the Reservation.
- B. The Program Manager may develop a sliding scale fee that reduces the 2.5 percent fee applicable to Construction Employers based upon the Construction Employer meeting Indian Preference goals and Indian Owned Business subcontracting targets, provided that the fee shall not be reduced below 1.5 percent. All TERO compliance fee adjustments must be presented to the Program Manager for approval.
- C. The Program Manager shall be authorized to assess a compliance fee on ODOT Contractors engaged in construction projects on or near the Reservation as may be permitted by the

Memorandum of Agreement or federal transportation agency managing the transportation construction project.

- D. Compliance fees shall be used for the Office operating budget. Compliance fees shall be appropriated by the Tribes' annual budget process.
- F. The Program Manager shall be authorized to do the following in connection with the payment of the compliance fee:
 - 1. Permit the employer to pay the compliance fee pursuant to a payment schedule over the lifetime of the project (for on reservation non-ODOT projects only) being constructed, provided that such payment shall be fully paid within twenty years; and
 - 2. Provide credit to Construction Employer (for on reservation non-ODOT projects only) for the payment of the compliance fee when the Construction Employer makes contributions to the Tribal scholarship, vocational training or workforce development programs that are similar to the education and training functions of the Office, or when the Construction Employer establishes and funds an apprenticeship program providing job training for Indians.
- G. The Program Manager shall receive a copy of each compliance fee payment. The Program Manager shall be responsible for collecting the fees and may request that the Commission promulgate such regulations as are necessary to ensure a fair and timely fee collection process. For Construction Employers working on projects that begin off and end on, or begin on and end off the Reservation, will be considered one hundred percent on-Reservation, thus subject to the full compliance fee. However, if fifty percent (50%) or more of the work is off-Reservation, the Program Manager is authorized to negotiate an appropriate compliance fee based upon the percentage of the work performed on the Reservation.

Section 3.11: ON SITE INSPECTIONS

The Program Manager shall have the authority to make on-site inspections during regular working hours in order to monitor compliance with this Code and the applicable Compliance Agreement by a Construction Employer or ODOT Contractor. The Program Manager and any authorized Office staff shall have the right to inspect and copy all relevant records of a Construction Employer or ODOT Contractor, of any signatory union or subcontractor of a Construction Employer or ODOT Contractor, and shall have the right to speak to workers and to conduct an investigation on the job site. All information collected by the Program Manager and/or Office staff shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

Section 3.12: TRIBAL MINIMUM OR PREVAILING WAGE

- A. The Program Manager may promulgate a Tribal Minimum Wage or Prevailing Wage as provided in this Section. Such Tribal Minimum or Prevailing Wage shall only apply to

Construction Employers. A Tribal Minimum or Prevailing Wage established under this subsection may be included in a Compliance Agreement pursuant to Section 3.02 of this Code.

- B. Definitions. For purposes of this Section, the terms “Minimum Wage” and “Prevailing Wage” are defined as follows:
1. Minimum Wage: Shall mean the lowest wage that the Construction Employer can pay any employee, which Minimum Wage shall not be less than the federal minimum wage;
 2. Prevailing Wage: Shall mean the lowest wage that a Construction Employer can pay any employee by trade or craft. A Prevailing Wage need not limit or put a cap on all employees in a particular craft or trade.
- C. If the Program Manager elects to promulgate a proposed Minimum Wage or Prevailing Wage, the following factors shall be taken into consideration:
1. The prevailing wage for each job classification in the Oregon or Washington wage classifications;
 2. The prevailing wages established by other Northwest Indian tribes;
 3. The number of Indian persons living on or near the Reservation with the particular craft or trade skills;
 4. The Reservation unemployment rate – especially the unemployment rate for the particular craft or trade;
 5. Local labor and market conditions;
 6. The potential impact of the Prevailing Wage to attract businesses or Construction Employers to do business on the Warm Springs Indians; and
 7. The potential impact of the Prevailing Wage in raising the costs of Tribal facilities.
- D. The draft Minimum or Prevailing Wage shall be published in the Spilyay Tymoo with notice of the comment opportunity and comment deadline date and distributed to all Tribal governmental departments, enterprises, and to persons or entities that are known to the Office that could be impacted by such a proposal for review and comment. The record shall be kept open for at least sixty (60) days to permit comments to be submitted.
- E. Within thirty (30) days of the closing of the record for comments, the Program Director shall either prepare a draft Minimum or Prevailing Wage, submit the proposed Minimum or Prevailing Wage to the Commission for its approval, or shall withdraw the proposal.

- F. Upon receipt of Commission approval, the draft Minimum or Prevailing Wage shall be submitted to the Tribal Council for approval. The Minimum or Prevailing Wage shall become final upon Tribal Council approval of the Minimum or Prevailing Wage.

CHAPTER 4: VIOLATION PROCEDURES

Section 4.01: INVESTIGATION BY THE PROGRAM MANAGER

Whenever a violation of this Code or a Compliance Agreement has been alleged and is brought to the attention of the Program Manager, the Program Manager shall ensure a prompt and thorough investigation of the alleged violation. The Program Manager shall seek to achieve an informal settlement of the alleged violation, with a written report of findings provided to the Commission.

Section 4.02: ISSUANCE OF CITATION

- A. If the Program Manager determines that a violation of the Code or a Compliance Agreement exists, and an informal settlement cannot be achieved, the Program Manager shall issue a warning to the Employer, Construction Employer or ODOT Contractor. This warning shall specify the nature of the violation and direct that the violation be corrected within three (3) days or sooner where warranted.
- B. If the violation is not corrected within the time specified, the Program Manager shall issue a citation to the Employer, Construction Employer or ODOT Contractor which shall:
 - 1. Be in writing and in the name of the Confederated Tribes of the Warm Springs Indian Reservation;
 - 2. State the name of the violator;
 - 3. Bear the signature of the Program Manager or the authorized representative;
 - 4. State the name and section number of the Code provision or Compliance Agreement violated;
 - 5. State a brief summary of facts constituting the violation; and
 - 6. State a time and place the Construction Employer or ODOT Contractor must appear to answer to the violation at a Program Manager hearing.

Section 4.03: PROGRAM MANAGER HEARING

Any Employer, Construction Employer or ODOT Contractor that receives a citation shall be entitled to a hearing before the Program Manager no later than ten (10) working days after receipt of a citation. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The Employer, Construction Employer or ODOT Contractor shall be entitled

to present evidence and to call witnesses to demonstrate that it has complied with the requirements of this Code or Compliance Agreement or that it made its best effort to do so and therefore should not be subject to sanctions. On the basis of evidence presented at the hearing, and the information collected by the Office, the Program Manager shall determine whether or not the Employer, Construction Employer or ODOT Contractor complied with this Code. If the Employer, Construction Employer or ODOT Contractor fails to attend the hearing set before the Program Manager, the Program Manager shall base its determination on the facts before the Program Manager. If the Program Manager determines that the Employer, Construction Employer or ODOT Contractor is out of compliance and has not made a best effort to comply, the Program Manager shall impose one or more of the sanctions provided for in this Code, as appropriate, and shall order the Employer, Construction Employer or ODOT Contractor to take such corrective action as is necessary to remedy any harm done to the Tribe or individual Indians caused by the non-compliance. The Program Manager shall send written notice of its decision (“Program Manager Decision”) to all parties within ten (10) days after its decision in the matter.

Section 4.04: EMERGENCY RELIEF

When the Program Manager determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the Program Manager may issue a citation without delay, stating sanctions to be placed on the offending Employer, Construction Employer or ODOT Contractor (“Emergency Relief Order”). The Employer, Construction Employer or ODOT Contractor shall have the right to appeal the Emergency Relief Order and any imposition of emergency sanctions to the Commission. The Commission shall schedule a hearing on any appeal of an Emergency Relief Order within seven (7) working days.

Section 4.05: INDIVIDUAL COMPLAINT PROCEDURE

- A. Any Indian who believes that an Employer, Construction Employer or ODOT Contractor has failed to comply with this Code or applicable Compliance Agreement, or who believes that they have been discriminated against by an Employer, Construction Employer or ODOT Contractor because they are Indian, may file a complaint with the Office. The complainant shall be responsible for providing the Office with evidence of the discriminatory practices. Upon receipt of a complaint supported by sufficient evidence of discrimination against an Indian complainant, the Office shall conduct an investigation of the charge, which shall include interviews of the project manager for the Employer, Construction Employer or ODOT Contractor and any person(s) allegedly responsible for the discriminatory conduct, and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the Program Manager shall hold a hearing on the matter, shall make a determination on the validity of the charge, and shall issue a Program Management Decision as is necessary to make whole any Indian who is harmed by the Employer’s, Construction Employer’s or ODOT Contractor’s non-compliance or discriminatory behavior. The Program Management Decision shall be in writing and shall be sent to all parties within seven (7) working days.

- B. In conducting the hearing, the Program Manager shall have the same powers, and shall be bound by the same hearing requirements as provided in Sections 4.03, 4.04 and 4.06 of this Chapter.

Section 4.06: APPEALS OF PROGRAM MANAGER DECISIONS

- A. The following may file an appeal:
 - 1. A party;
 - 2. Any person adversely affected by a Program Manager Decision or Emergency Relief Order; and
 - 3. A person entitled to notice and to whom no notice was mailed.
- B. Program Manager Decisions or Emergency Relief Orders not timely appealed as set forth in WSTC Sections 4.03, 4.04, 4.05(A), and 7.01 shall be final agency orders subject to enforcement by any legal means, including in Warm Springs Tribal Court.

CHAPTER 5. PENALTIES AND ENFORCEMENT

Section 5.01: PENALTIES FOR VIOLATION

- A. Employer, Construction Employer, or ODOT Contractor who violates this Code or a Compliance Agreement shall be subject to penalties including, but not limited to:
 - 1. Denial of the right to commence or continue business on the Reservation;
 - 2. Suspension of operations on the Reservation for Employers or Construction Employers or on or near the Reservation for ODOT Contractors;
 - 3. Payment of back pay and/or damages to compensate any injured party;
 - 4. An order to summarily remove employees hired in violation of this Code or a Compliance Agreement;
 - 5. Imposition of monetary civil penalties pursuant to a schedule of penalties promulgated by the Commission, which penalties shall take into consideration the severity of the violation, whether any other penalty pursuant to this section was imposed and whether the person or entity that is subject to the fine has any prior history of violating this Code; or
 - 6. An order specifying requirements for employment, promotion, and training Indians injured by the violation.

Section 5.02: MONETARY FINES

The maximum monetary penalty that may be imposed for a violation is five hundred dollars (\$500). For purposes of the imposition of penalties determined by the Court or sanction by the Program Manager, each day during which a violation exists shall constitute a separate violation.

Section 5:03: ENFORCEMENT

- A. The Program Manager shall be entitled to pursue the enforcement of any final agency order under this Code by any legal means, including Tribal Court enforcement.
- B. Costs associated with the enforcement of final agency orders issued pursuant to this Code shall be assessed against the Employer, Construction Employer, or ODOT Contractor that is out of compliance. These may include, but are not limited to: document reproduction costs, filing fees, attorney fees and costs incurred by the Tribe or the Project Manager or Commission related to securing enforcement of the order.
- C. Employers or Construction Employers that do not comply with the provisions of this Code, and leave the Reservation before enforcement orders are issued or penalties are imposed and collected or an enforcement order is issued by the Commission or the Court, shall be denied the right of contracting or doing further business on the Reservation.

CHAPTER 6: TRIBAL EMPLOYMENT RIGHTS OFFICE COMMISSION

Section 6.01: ESTABLISHMENT

The Tribal Employment Rights Office Commission (“Commission”) is hereby established to perform the duties and responsibilities set forth in this Code.

- A. Membership - the Commission shall be comprised of 5 members appointed by the Tribal Council. The members shall hold office for a period of 1 and 2 years, terms to be determined by the Tribal Council. There is no limitation on the number of terms a member may serve.
- B. Qualification - any Indian 18 years and older who works or resides on the Reservation is qualified to be appointed to the Commission.
- C. Commission Chairperson - the Commission shall elect annually a Chairperson from its membership. The Chairperson shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.
- D. Duties and Powers - the Commission shall be responsible for conducting hearings on tribal employment rights matters in accordance with this Code. In addition to all specific powers set forth in this Code, the Commission shall also have the following powers:
 - 1. Review contractor applications to certify that applicant is eligible for inclusion on Indian Owned Business Directory.

2. Certify On-The-Job training hours as recorded by Office staff for Tribal Apprenticeship Programs.
 3. The Commission may conduct on-site visits if such visits are a part of their investigation for the decision making process for appeals.
 4. Develop procedures necessary to implement the provisions of this Code that are consistent with this Code.
 5. Conduct an annual review of the Code.
- E. The Commission will hold regular meetings at 1:30 pm, on the first and third Tuesday of every month. Times and procedures for hearings will be set as necessary, when an appeal is filed on a sanction or decision of the Program Manager. The Commission shall attempt whenever possible to execute its powers by consensus. If a consensus cannot be achieved, the affirmative vote of a majority of the 5 Commissioners shall be required to take Commission action. The Chairperson shall be entitled to vote on any decision or action. All written agreements or plans, directives, complaints, and appeals which the Commission authorized or required to issue or file, shall bear the signature of at least 2 Commissioners. The Commission will not supervise Tribal Employment Rights and Workforce Development personnel.

CHAPTER 7. COMMISSION APPEALS AND HEARINGS

Section 7.01: FILING AN APPEAL

- A. Program Manager Decisions and Emergency Relief Orders may be appealed to the Commission.
- B. To initiate an appeal, the person or entity appealing a sanction or decision of the Program Manager shall:
 1. File a completed notice of appeal on a form prescribed by the Commission along with an appeal fee established independently by the Commission.
 2. The notice of appeal and appeal fee must be received at the Commission office no later than 5:00 PM on the ninth (9th) day following mailing of the decision.
 3. The notice of appeal shall be accompanied by a written statement of appeal describing the nature of the Program Manager's action or decision being appealed, summarizing the factual and legal basis for the appeal and identifying the relief requested and by a copy of the Program Manager's written decision, if any.
 4. In the circumstance of an appeal by a party who was entitled to notice but did not receive notice, the notice of appeal and appeal fee must be received by the Commission no later than 5:00 PM on the twentieth (20th) day following mailing of the decision.

Section 7.02: SCHEDULING APPEAL HEARING

Upon receipt of an appeal that has been timely filed, the Commission shall establish a hearing date, time, and place and shall notify in writing the appealing party and the Program Manager. Each party shall be responsible for ensuring that their witnesses attend the hearing. A hearing on an appeal of a grant of emergency relief pursuant to Section 4.04 of this Code shall be scheduled within seven (7) working days of the filing of the appeal. All other hearings shall be scheduled as soon as possible.

Section 7.03: REQUEST TO RESCHEDULE COMMISSION HEARING

Upon receipt of a request by a party to a Commission appeal hearing requesting the rescheduling of a Commission hearing, the Commission shall promptly rule on such request and immediately notify the parties of its decision.

Section 7.04: COMMISSION HEARING PARTICIPANTS

Only the party filing the appeal, the Program Manager and the witnesses that may be called by the parties in the hearing may attend the hearing. The Commission shall be responsible for maintaining an administrative record of the proceedings including providing for audio recording of the hearing or other appropriate recording of the hearing. Both the appealing party and the Program Manager may be represented by counsel at the hearing.

Section 7.05: HEARING PROCEDURE

- A. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence.
- B. Both parties will be afforded the opportunity to present written arguments and opening statements with respect to what they intend to present to the Commission. Following opening statements, first the appellant and then the Program Manager may present witnesses and evidence in support of their position on the issues being appealed.
- C. The Commission Chairperson or his/her Commission delegate will preside over the hearing and will take whatever action is necessary to ensure an equitable and expeditious hearing. Parties will abide by the presiding official's rulings. The Chairperson may limit the number of witnesses when testimony would be unduly repetitious, and exclude any person from the hearing for contemptuous or inappropriate misbehavior that obstructs the hearing.

Section 7.06: COMMISSION DECISION

- A. The Commission will render a written decision and order ("Order") within ten (10) working days from the date of the hearing. Such decision shall include a statement of facts and a statement of legal authority on which the decision is based. Orders shall be delivered to the party for whom the hearing was held and shall include information and instructions for appealing the decisions pursuant to WSTC 8.01.

- B. Orders not appealed to the Court of Appeals as set forth by WSTC 203.100 within thirty (30) days of the date of the Order shall be considered final agency orders of the Commission and subject to enforcement by any legal means, including Warm Springs Tribal Court.

Section 7.07: COMMISSION TRAINING

The Commission will be afforded annual training on hearing procedures and decision making techniques.

CHAPTER 8: TRIBAL COURT ENFORCEMENT AND JUDICIAL REVIEW

Section 8.01: APPEALS OF COMMISSION DECISIONS

- A. Any party to the Commission proceeding under Chapter 7 may appeal an Order of the Commission.
- B. The Warm Springs Court of Appeals (“Court of Appeals”), established pursuant to WSTC Chapter 203, is hereby granted exclusive jurisdiction to hear appeals from Orders of the Commission and shall act as the final reviewing body for an Order of the Commission under this ordinance.
- C. All notices of appeal and proceedings shall follow the established rules of the Court of Appeals.
- D. The Court of Appeals shall initiate an expedited review procedure and shall issue decisions on appeals of Commission Final Orders within 45 days of the filing of the notice of appeal.

Section 8.02: TRIBAL COURT ENFORCEMENT OF FINAL AGENCY ORDERS

The Tribal Courts are hereby conferred exclusive jurisdiction and shall have the authority to issue any order, enter any judgment or take any action necessary to enforce any final agency order under this ordinance including without limitation the authority to assess and collect civil penalties, to enjoin or mandate actions to enforce the provisions of this Code, and to provide any other relief the Tribal Court deems lawful and equitable; provided that nothing in this Code shall be construed as a waiver of the sovereign immunity of the Confederated Tribes. Accordingly, nothing in this Code shall be construed as any authority for a claim for money damages against the Tribe, the Office or Tribal officials and employees acting pursuant to their authority under this Code.

CHAPTER 9: WORKFORCE DEVELOPMENT

Section 9.01: AUTHORIZATION

The Program Manager shall prepare for Tribal Council approval of a Workforce Development Plan pursuant to the Indian Employment, Training and Related Services Demonstration Act of 1992, 25

U.S.C. §3404 et seq. The Plan shall be submitted to the Department of Interior for its review, approval and funding. The Plan shall be developed by the Program Manager in consultation with the Tribal Secretary-Treasurer/CEO, the Tribal Human Resources Director, the Warm Springs Health & Wellness Chief Executive Officer, and the Directors of the Department of Children and Family Services, and the Department of Education.

Section 9.02: WORKFORCE DEVELOPMENT PLAN

The Workforce Development Plan shall, at a minimum, include the following elements:

- A. Identification of the members of the Tribe and other enrolled Indians living on the Reservation between the ages of 18 and 65 who are either unemployed or underemployed;
- B. The employment opportunities for members of the Tribe and enrolled Indians within the Reservation, including a listing of each enterprise, the types and number of employment positions available;
- C. The education, vocational training, scholarships, and other training opportunities that might be available to increase the job skills of Indians living on the Reservation;
- D. Identification of the employment obstacles experienced by unemployed and underemployed Indians residing on the Reservation;
- E. Description of Tribal government departments, programs, and services that are available to address the obstacles preventing employment by Reservation Indians;
- F. A comprehensive strategy to address and remove the employment obstacles experienced by Reservation Indians, the utilization of Tribal departments, programs, and services to address these obstacles and the education, training and employment opportunities available for Indians;
- G. Additional funding and personnel needed to implement the Plan; and
- H. Means to provide incentives for Indian persons to receive the services, education, or training needed to remove employment obstacles and seek gainful employment, which may include the removal of governmental benefits in the event that able bodied persons are unwilling to participate in Workforce Development programs or services to enable the participant to gain employment or, if such services or training have been provided, to pursue such employment.

Section 9.03: TRAINING

- A. The Program Manager shall identify training programs necessary in order to increase the pool of qualified Indians for employment on the Reservation.
- B. The Program Manager may initiate and sponsor training programs for employers to participate in, or the Program Manager may work with employers to establish and sponsor their own

training programs to assist Indians to become qualified in the various job classifications used by employers.

- C. The ratio of Indian trainees to fully qualified workers shall be negotiated as part of the Compliance Agreement. For construction projects, the number of Indian trainees shall be no less than the minimum ratio established by the Department of Labor.

Section 9.04: INTER-DEPARTMENTAL PARTICIPATION AND COOPERATION

Removing employment obstacles experienced by Reservation Indians will require the participation and cooperation by all Tribal departments and enterprises. While the Program Manager is charged with developing and implementing the Workforce Development Plan, all Tribal department directors and enterprise managers shall cooperate in the implementation of the Plan to the fullest extent practicable.

Section 9.05: REPORTING

The Program Manager shall report quarterly to the Trustees on the status of and progress in developing and implementing the Workforce Development Plan. Such reporting shall include information on the following:

- A. Status of development of Workforce Development Plan;
- B. Status of Department of Interior of Workforce Development Plan;
- C. Amount of federal funding received, expended, and available for the implementation of the Workforce Development Plan;
- D. Number of Indian persons receiving services or training pursuant to Workforce Development Plan;
- E. Number of Indian persons who, after receiving Workforce Development services or training, have been employed;
- F. A discussion of problems encountered in addressing employment obstacles experienced by Reservation Indians under the Workforce Development Plan.