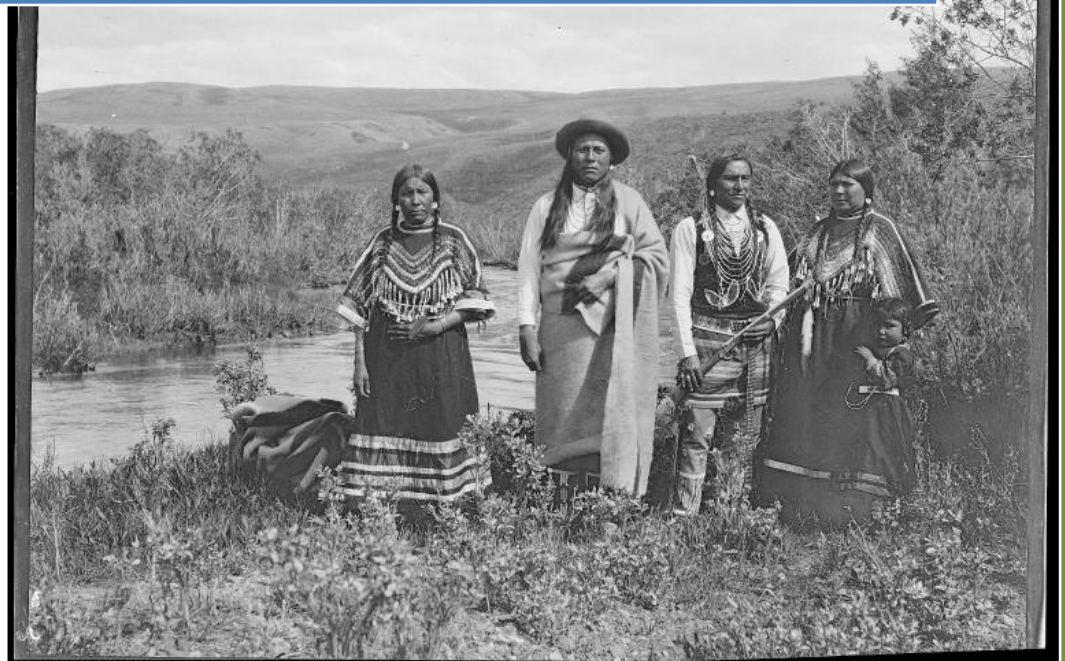


2010

Blackfeet Tribal Employment Rights Ordinance & Safety Enforcement Act of 2010



Blackfeet Tribal Business Council 2010

**The Blackfeet Tribal Employment Rights
Ordinance
& Safety Enforcement Act of 2010**



Executive Summary

Some of the important elements of this legislation:

- Prior Blackfeet Tribal Employment Rights ordinances, resolutions and policies guidance are reaffirmed and supplemented.
- To ensure sufficient “due process” and protect our Tribal Employment Rights Ordinance legislation, we have created a Blackfeet Tribal Employment Rights Hearing Officer.
- The Blackfeet Tribal Employment Rights Ordinance Hearing Officer is considered to be a sworn *judicial* official of the Blackfeet Tribe.
- The Director of the Blackfeet Tribal Employment Rights Office and his/her staff members are considered to be sworn *enforcement* officials of the Blackfeet Tribe and are required to carry badges and officially mark their vehicles.
- The Indian Preference provisions for employment and contracting are clearly delineated and explained.
- Standards are established to certify real Native American businesses and sanction fronts and businesses that misrepresent their Native American status.
- To promote and protect the occupational safety of workers on the Blackfeet Indian Reservation, Tribal Occupational Safety and Health rules are established.
- A Tribal Bureau of Apprenticeship and Training (TBAT) is established.

- Tribal Wage and Hour law is created to handle complaints related to disputes arising from wage rates and/or hours worked.
- This Act establishes Blackfeet Tribal law for discrimination in employment, sexual harassment in the workplace, and family medical leave, including pregnancies.
- A Minimum Wage rate that mirrors State and Federal minimum wages is Tribally established for workers on the Blackfeet Indian Reservation.
- To facilitate our 72-Hour Hiring Hall, workers will be issued ID cards with their photographs and documented qualifications.
- Standards are created for the Enforcement of the Act, including standards for their internal and external application.
- Complaint and hearing procedures are clearly outlined and established, with sufficient levels of “due process” to protect the integrity of our Tribal Employment Rights Ordinance enforcement.
- A funding formula is created for the Tribal Employment Rights Ordinance programs, from fees and fines generated by them, that is flexible and responsive to real workloads.

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Part I. Policies and General Definitions

Section 1-101: Declaration of Policy

As a guide to the interpretation and application of this Ordinance, the public policy of the Blackfeet Tribe is declared to be as follows:

A. That the Blackfeet Tribe adopts the findings of Congress in enacting the Indian Self-Determination Act, as follows:

- 1) After careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that –
- 2) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

3) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

B. The Blackfeet Tribe also finds and formally adopts the reasoning in *Morton v. Mancari*, 417 U.S. 537, 552 (1974), which provides: "Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized." The Court concluded that the preference at issue was not racial but political in that it was "granted to Indians not as a discrete racial group but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion." *Id.* at 554.

C. In addition, economic insecurity and unemployment are a serious threat to the health and welfare of the Blackfeet Tribe. Like land, water

and minerals, employment on the Blackfeet Reservation is important and must be protected and promoted. Indians have unique and special rights. All workers subject to the Blackfeet Tribe's jurisdiction are entitled to a workforce environment that is free of employment discrimination that protects their health and safety.

D. The Blackfeet Tribe's Council therefore declares that in its considered judgment, the public good and welfare of the Blackfeet Tribe require the enactment of this Tribal Employment Rights Ordinance, under its inherent sovereign and police powers, in order to increase employment within the exterior boundaries of the Blackfeet Indian Reservation and to protect the workforce rights of the Indian and non-Indian workers.

Section 1-102: Definitions

The following definitions shall apply to all Parts under this Ordinance unless specifically indicated otherwise in that Part:

A. "Blackfeet descendant," is someone who is not an enrolled member of the Blackfeet Tribe, but is a *lineal* descendant of an enrolled member of the Blackfeet Tribe. The official definition is established and may be revised by the Blackfeet Tribal Enrollment Office.

- B. "Blackfeet member" means an enrolled member of the Blackfeet Indian Tribe.
- C. "Blackfeet Tribe" shall mean the Blackfeet Indian Tribe.
- D. "Blackfeet Tribe's Government" shall mean all offices of the Blackfeet Tribe carrying out governmental activities, all subsidiary entities of the Blackfeet Tribe, including the Blackfeet Housing Authority, and all district, segment or other local governmental entities of the Blackfeet Tribe.
- E. "Contracting Preference for Indian-owned businesses," means that contracting and subcontracting preference shall be given to qualified Indian-owned businesses.
- F. "Council" means the Blackfeet Tribal Business Council.
- G. "Day" means a workday, which excludes Saturdays, Sundays, and Federal and Tribal holidays.
- H. "Director" means the Director of the Blackfeet Tribal Employment Rights Office appointed pursuant to the provisions of Part II of this Ordinance.
- I. "EEOC" means the Equal Employment Opportunities Commission of the United States.

- J. "Employee" means any person employed for remuneration including both independent contractors and regular employees.
- K. "Employer" means any person, partnership, corporation, or other entity that employs, for wages, two or more employees who during any 20-day period spend, cumulatively, 16 or more hours performing work within the exterior boundaries of the Reservation.
- L. "Engaged in Work on the Reservation" means any employer engaged in work on the Blackfeet Reservation during any portion of a business enterprise or specific project, contract or subcontract, and he/she or any of his/her employees spends any of their time performing work within the exterior boundaries of the Reservation.
- M. "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure this Ordinance's coverage over all employment and contract activities within the Blackfeet Tribe's jurisdiction and the term shall be so interpreted by the Hearing Officer and the Courts.
- N. "Government Commercial Enterprise" means any business activity, for-profit company, or enterprise owned by the Blackfeet Tribe or any

subsidiary governmental entity of the Blackfoot Tribe, such as a District or Segment, regardless of how such business activity is legally constructed.

- O. "Hearing Officer" means the Hearing Officer of the Blackfoot Tribal Employment Rights Ordinance Office appointed pursuant to the provisions of Part II of this Ordinance.
- P. "Hiring Preference for Individual Indians" means that a qualified Indian person must be hired before a qualified non-Indian person, whenever an opening is available.
- Q. "Indian" means any member of a federally recognized tribe.
- R. "Indian-owned business" means a business entity of which at least 51% of the business is owned, controlled and managed by Indians. Has one or more of its Indian owners involved in daily business management of the business; and has the majority of its earning accrue to such Indian person.
- S. "Indian Preference" means the right established for Tribal governments to exercise employment preferences for Native Americans. Indian preference does not violate Title VII of the Civil Rights Act of 1964, as amended. The legal authority for Indian Preference can be found in

Title 25, U.S.C. 472, 472 a. and 479; Title 42, Code of Federal Regulations, Part 36, Subpart E and *Morton v. Mancari*.

- T. "Key Employee" means a regular permanent employee who is and has been on the employers' or contractors' annual payroll for a period of one year continuously in a supervisory capacity, or is an owner of the firm.
- U. "Local Indian" means any member of a federally recognized tribe who has resided within the exterior boundaries of the Blackfeet Indian Reservation or within reasonable commuting distance of the Reservation.
- V. "Located on the Reservation," means any portion of a business enterprise or specific project, contract or subcontract that maintains a temporary or permanent office or facility within the exterior boundaries of the Blackfeet Indian Reservation.
- W. "Office" means the Blackfeet Tribal Employment Rights Office.
- X. "OFCCP" means the Office of Federal Contract Compliance Programs of the United States.
- Y. "Qualified" means any worker with sufficient knowledge, skills and experience to properly perform the work assigned to them, per job descriptions, the Dictionary of Occupational Titles (DOT), or other recognized guidance.

- Z. "Regulations" shall mean the regulations implementing this Ordinance which shall be promulgated by the Director and approved by the Blackfeet Tribal Business Council.
- AA. "Religious belief" is defined according to the findings of the American Indian Religious Freedom Act of 1978.
- BB. "Reservation" means the Blackfeet Indian Reservation and any other lands that are subject to the jurisdiction of the government of the Blackfeet Tribe.
- CC. "Responsive bidder" means a party who submits a bid, which meets the requisite specifications of the party letting the bid.
- DD. "Retaliation" means transferring, denying a raise, having their hours reduced, or being fired, punished, unjustified negative evaluations, unjustified negative references, increased surveillance, or intimidated in any way because an individual has exercised, or wishes to exercise, any right afforded to them under this Act.
- EE. "Temporary facility" means a modular or housing type structure or trailer located on the Blackfeet Indian Reservation one day or more.
- FF. "Tribal Descendant" means a non-enrolled lineal descendant of an enrolled member of another federally-recognized Tribe.

GG. “Tribal Employment Rights Ordinance” means the Blackfeet Tribal laws related to protecting the workforce of the Blackfeet Indian Reservation, including Indian Preference in employment, contracting and subcontracting; safety requirements in the workplace; wage and hour protections; equal employment opportunity; compliance with Tribal anti-discrimination and family medical leave laws; etc.

HH. “Tribal Employment Rights Ordinance Office representative” means any duly authorized sworn enforcement or judicial official of the Blackfeet Tribal Employment Rights Office.

II. “Tribal Member” or “Member” means any person who is a duly enrolled member of the Blackfeet Indian Tribe, unless the context clearly indicates otherwise.

Section 1-103: Severability

If, for any circumstance, the appropriate court of jurisdiction holds provisions or sections of this Act invalid, the remainder of this Act and other provisions or sections will not be affected in the application of the Act to any person, Employer and others covered by this Ordinance.

Section 1-104: Effective Date

This ordinance shall be effective immediately upon its approval by the Blackfeet Tribal Council.

Section 1-105: Reserved

Part II. Tribal Employment Rights Ordinance Establishment of the Blackfeet Tribal Employment Rights Office, Director and Fees

Title I. Tribal Employment Rights Ordinance Office and Director

Section 2-101: Establishment of Blackfeet Tribal Employment Rights Office

Consistent with this Ordinance, the Blackfeet Tribal Business Council hereby reaffirms and reestablishes a Blackfeet Tribal Employment Rights Office (TERO), independent of the Council, to enforce Indian preference with all enterprises, businesses, and projects operated or undertaken within or near the Blackfeet Indian Reservation, and other duties as set forth in this ordinance. The Director of this office shall be appointed by the Blackfeet Tribal Business Council.

[History: Resolution No. 16-77, dated May 5, 1977; Resolution No. 17-79, dated Nov. 2, 1978; Resolution No. 195-79, dated August 24, 1979; Resolution No. 126-82, amended by Resolution No. 141-82, dated December 4, 1981; Resolution No. 215-84, dated March 1, 1984; Resolution No. 136-91, dated March 21, 1991.]

Section 2-102: Director

A. Delegation: The Blackfeet Tribal Business Council does hereby delegate to the TERO Director the authority to hire staff, expend funds, and supervise the enforcement of this ordinance and any rules or regulations promulgated pursuant thereto.

B. The Director shall have the following powers:

- 1) Hire staff;
- 2) Expend funds;
- 3) Issue guidelines;
- 4) Conduct investigations;
- 5) Hold hearings;
- 6) Subpoena documents and witnesses;
- 7) Require employers to submit reports;
- 8) Impose fines;
- 9) Require the employer to pay back wages to an aggrieved employee;
- 10) Require the employer to take other steps to remedy any harm it may have done;
- 11) Suspend or even terminate an employer's operation;
- 12) Certify Indian contractors;
- 13) Revoke Indian Certification and permits;
- 14) Monitor employers for compliance;

15) Enforce ordinance;

16) Take any action necessary to achieve the purposes and goals of this ordinance.

[History: Resolution No. 16-77, dated May 5, 1977.]

Section 2-103: Hearing Officer; Qualifications/Recusal of Hearing Officer

- A. There is hereby created the Blackfeet Tribal Employment Rights Ordinance Hearing Officer (“Hearing Officer”), who shall be an independent Hearing Officer of the Blackfeet Tribe, who shall be selected on a case by case basis, and is appointed by council, reporting directly to the Council of the Blackfeet Tribe, who shall hear all appeals of the TERO Director’s decision.
- B. The individual nominated and approved shall meet the ethical and prior history requirements established for judges in the Blackfeet Tribe’s court system and shall have experience or expertise in one or more of the following areas: Business; Financial management; Construction; Employment Training; or Law.
- C. The Hearing Officer shall serve until replaced.
- D. Recusal of Hearing Officer: For purposes of this Section, “immediate family” means brother, sister, son, daughter, mother, father, husband, wife, stepbrother, stepsister, half-brother, half-sister or brother, sister, son,

daughter, mother or father by adoption. The Hearing Officer shall not participate in any action or decision directly involving him or herself, or a member of his or her immediate family, or any person, business, or other entity of which he/she or a member of his immediate family is an employee, or in which he/she or a member of his/her immediate family has a substantial ownership interest, or with which he/she or a member of his/her immediate family has a substantial contractual relationship.

- E. Nothing in this Section shall preclude the Hearing Officer from participating in any action or decision which: Generally affects a class of persons, regardless of whether the Hearing Officer or a member of his immediate family is a member of the affected class; Affects the Blackfeet Tribe, a Blackfeet Tribe enterprise, or a person or entity in a contractual relationship with the Blackfeet Tribe or a Blackfeet Tribe enterprise, regardless of whether the Hearing Officer is a member of the Blackfeet Tribe.
- F. The Hearing Officer may voluntarily recuse himself or herself and decline to participate in any action or decision when the Hearing Officer, in his/her discretion, believes: That he/she cannot act fairly or without bias; or that there would be an appearance that he/she could not act fairly or without bias.

Section 2-104: Powers of the Hearing Officer of Tribal Employment Rights

Ordinance

The Hearing Officer has the full power, jurisdiction, and authority to:

- A. Take all actions necessary and appropriate to implement the provisions of this Ordinance.
- B. Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the Hearing Officer, and to order any relief or sanctions authorized by this Ordinance, and to petition the Blackfeet Tribe's Court for such orders as are necessary and appropriate to enforce the decisions of the Hearing Officer and any sanctions imposed by the Hearing Officer.

Section 2-105: Intergovernmental Relationships

The Director of Tribal Employment Rights Ordinance is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC, OSHA and OFCCP, in order to protect and promote the workforce rights of Indians on and off the Reservation and to enter into cooperative relationships with federal agencies, such as the BIA, HUD, DOL, FWHW and IHS, in order to implement any federal or other workforce rights, authorities, or requirements as such agency may lawfully delegate to tribes.

Section 2-106: Assumption of Federal Indian Preference Enforcement

If the federal laws or regulations governing any program administered by any office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities authorize a tribe's Indian preference requirements to replace or permit a tribe to obtain delegated authority to assume responsibility for enforcing Indian preference requirements established by federal laws or regulations and enforced by a federal agency, said office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities shall, within 90 days of the effective date of this Ordinance, in coordination with the Director of Tribal Employment Rights Ordinance and the Blackfeet Tribe Legal Department, apply for such delegated or replacement authority and request that such delegated or replacement authority be vested in the Blackfeet Tribal Employment Rights Office. Any disputes regarding the implementation of this Section shall be submitted to the Director, whose decision shall be binding on the parties.

Section 2-107: Reserved

Title II: Tribal Employment Rights Ordinance Fees

Section 2-201: Tribal Employment Rights Ordinance Fees

A fee, to raise revenue for the operation of the Tribal Employment Rights Ordinance programs, is imposed as follows:

- A. Construction Fee. Every Employer or Entity with a construction contract (which includes architect and engineering contracts) in the amount of \$100,000 or more shall pay a fee of four percent (4%) of the total amount of all phases of the contract, including environmental work. The Employer or Entity shall pay such fee prior to commencing work on the Reservation. However, where good cause is shown, the Director of Tribal Employment Rights Ordinance may authorize a construction contractor to pay said fee in installments over the course of the contract. [History: Resolution No. 215-84, dated March 1, 1984; Resolution No. 191-95.]
- B. Each Employer or Entity shall update the Blackfeet Tribal Employment Rights Office on any change-orders, updates, or increases or decreases in the amount to their original contract(s) within 5 working days of said change. The 4% fee shall be levied against any increases in the original contract, and the Employer or Entity is required to comply. Failure to do so may subject the Employer or Entity to Sanctions and/or penalties as outlined in Section 10-108. The Blackfeet Tribal Employment Rights Office

shall maintain copies of all contract documents, including all amendments.

C. Notwithstanding the provisions of Subsection 2-105, a construction contractor awarded a contract by the Blackfeet Tribe's government, including all branches, offices and divisions, all subsidiary governmental entities of the Blackfeet Tribe (including the Housing Authority and Districts), and any governmental commercial enterprise of the Blackfeet Tribe (including casinos), regardless of the source of funds for that contract, shall, as a condition of doing business on the Reservation, grant its consent to the tribal entity awarding the contract to deduct the amount of the Tribal Employment Rights Ordinance fee from the total amount due the contractor under the contract, and to pay said amount directly to the Blackfeet Tribal Employment Rights Office prior to the commencement of work under the contract. Prior to making said deduction, the tribal entity awarding the contract shall provide the contractor with a form prepared by the Blackfeet Tribal Employment Rights Office, in which the contractor grants its consent to the deduction of the Tribal Employment Rights Ordinance fee from the amount it is entitled to receive from the tribal entity, as provided for above. A Contractor shall not be permitted to commence work on the Reservation until it has executed said form. This

provision shall not apply where the Blackfeet Tribe's Legal Department has opined that application of these requirements to that tribal entity is specifically preempted or otherwise prohibited by federal law.

Section 2-202: Fee Collection

The Director of Tribal Employment Rights Ordinance pursuant to the enforcement of this Ordinance shall collect the Tribal Employment Rights Ordinance fee. The fee shall be paid over to the Blackfeet Tribe's Finance Department and shall be credited to the Tribal Employment Rights Ordinance account. Said funds shall be used pursuant to Part X of this Ordinance, to carry out the purposes of this Ordinance. Amounts collected in excess of the amount required to fulfill the purpose of Part X of this Ordinance shall be made available to the Blackfeet Tribe's General Fund.

Section 2-203: Late payment of fees

The Director of Tribal Employment Rights Ordinance is authorized to terminate any alternative payment arrangement under this Section and to declare such fees immediately due and payable on the day following the date on which any installment payment is not timely made.

Section 2-204: Interest

When fees are not paid in full before work commences and the Contractor or Subcontractor opts to pay the Tribal Employment Rights Ordinance fees over a period of time, an interest rate of 18% per annum, compounded daily on all amounts owed, will be applied.

Section 2-205: Other Fees

See Section 8-102 for employer and employee fees not related to Section 2-201 Tribal Employment Rights Ordinance fees.

Part III. Indian Preference in Employment and Contracting

Title I. Indian Preference in Employment

Section 3-101: Coverage

- A. For purposes of this Ordinance, the term “Employer” means any employer or entity performing work within the exterior boundaries of the Blackfeet Reservation.
- B. The requirements set out in this Ordinance shall not apply to any direct employment by the Federal or State government or their subdivisions. It shall apply to all contractors or grantees of such governments and to all

commercial enterprises operated by such governments so long as they are within the exterior boundaries of the Blackfeet Indian Reservation.

Section 3-102: Indian Preference in Employment.

- A. Mandatory Preference. All Employers within the exterior boundaries of the Blackfeet Indian Reservation shall give preference to Indians who meet at least the minimum position qualifications in all hiring, promotion, training, lay-offs, and all other aspects of employment. Such Employers shall comply with the rules, regulations, guidelines and orders of the Blackfeet Tribal Employment Rights Office, which set forth the specific obligations of Employers in regard to Indian preference and local Indian preference.
- B. Indian preference does not mean that an employer or entity gives points for being Indian. Indian preference means if there are two equally qualified applicants, one Indian and one non-Indian, then the person who is Indian gets the job.
- C. "Indian Preference" shall be determined in the following order of preference: 1) Enrolled Blackfeet Tribal Members; 2) Blackfeet descendant and Blackfoot Confederacy members; 3) Non-member spouse of enrolled member; 4) Enrolled members of other Federally recognized Indian Tribe;

5) Other Tribal descendants; and 6) Non-member (non-Indians). These preferences shall be followed unless, because of an overriding federal law, the employer is prohibited from granting a Blackfeet preference. In that event, first preference shall be given to an Indian certified resident.

D. Multiple Qualified Applicants with Preference. When consideration is among a pool of applicants who are solely Blackfeet, which meet the necessary qualifications, the Blackfeet member with the best qualifications shall be selected.

Section 3-103: 72-Hour Requirement – Hiring Hall Identification

No employer shall employ anyone without first providing the Blackfeet Tribal Employment Rights Office with no less than 72 hours to locate and refer a qualified Indian; provided that, the Council may, by regulation, provide for a period of less than 72 hours when required by business necessity.

The Director of Tribal Employment Rights Ordinance shall develop a cost-efficient system for the issuance of Blackfeet Tribal Employment Rights Ordinance Identification Cards, which include a photographic likeness and qualifications for each local worker who registers. The Director of the Tribal Employment Rights Office is authorized to charge a nominal fee to clients to

cover the costs of processing and handling Blackfeet Tribal Employment Rights Ordinance Identification Cards.

Section 3-104: Goals and Timetables

All Employers shall comply with the goals and timetables established by the Blackfeet Tribal Employment Rights Office specifying the minimum number or percentage of Indians an Employer must hire, by craft or skill level. The goal of the Blackfeet Tribal Employment Rights Office is to fill 100% of the available positions with qualified Indian workers.

Section 3-105: Job Qualifications and Business Necessity

No Employer shall use any job qualification criteria or other personnel requirements that serve as barriers to Indian preference in employment, as determined by the Blackfeet Tribal Employment Rights Office, unless the Employer can demonstrate that such criteria or requirements are required by business necessity.

Section 3-106: Schedule of Positions, Permanent and Key Employees

Per Section 3-301, at least 20 days prior to commencing work on the Blackfeet Indian Reservation, a prospective employer and all its contractors and subcontractors shall identify key, regular and permanent employees that they intend to utilize on the Blackfeet Indian Reservation, and a listing of all positions

and the qualifications for these positions, that they intend to hire locally. The Blackfeet Tribal Employment Rights Office, before the commencement of work, must approve this listing.

Approved key employees may be employed on the project whether or not they are local or non-Indian. A regular permanent employee is one who is and has been on the employer's or contractor's annual payroll for a period of one year continuously in a supervisory capacity, or is an owner of the firm. An employee who is hired on a project-by-project basis shall not be considered a key employee.

A key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. The fact that an employee has worked for the employer on previous projects shall not qualify that employee as a regular, permanent employee. The Blackfeet Tribal Employment Rights Office Representative, on a case-by-case basis, may grant exceptions for superintendents and other key personnel who are not permanent regular employees. Any employer or contractor filling vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract to take place on the Blackfeet Indian Reservation shall set forth evidence acceptable to the Blackfeet Tribal Employment Rights Office

Representative that its actions were not intended to circumvent these requirements.

Section 3-107: Unions

Unions are prohibited on the Blackfeet Indian Reservation.

Section 3-108: Apprenticeship Programs

- A. The Director of Tribal Employment Rights Ordinance, in consultation with Blackfeet Manpower Programs and the Blackfeet Community College Blackfeet Apprenticeship Program, shall, within 90 days after the effective date of this Ordinance, prepare and begin to implement a plan for promoting the development of the maximum number of local Indian journeymen as quickly as possible. The Director of Tribal Employment Rights Ordinance shall provide the Tribal Council with an annual report on the apprenticeship program, including the number of local Indian journeymen in each craft, the status of each local Indian in the Program, the number of local Indians who have dropped out of the Program during the past year, and the steps the Director of Tribal Employment Rights Office is taking to maximize the effectiveness of the Program.
- B. Each Employer that hires employees in crafts that are participating in the Blackfeet Tribe's Certified Apprenticeship Program shall employ the

maximum number of trainees or apprentices required by that Program, and shall otherwise cooperate in full with said Program in order to promote the development of local Indian journeymen.

Section 3-109: Prohibition Against Retaliation

If an employer fires, lays off, penalizes, attempts to intimidate, or otherwise retaliates in any manner toward any preferred employee who utilizes the individual complaint procedure provided herein or exercises any right provided herein, the employer shall be subject to penalties provided in Section 10-108 of this Act.

Section 3-110: Reserved

Title II. Indian Preference in Contracting

Section 3-201: Indian Preference in Contracting

- A. All Entities awarding contracts or subcontracts for supplies, services, labor, and materials where the majority of the work on the contract or subcontract will occur within the jurisdiction of the Blackfeet Tribe shall give preference in contracting and subcontracting to qualified Blackfeet firms that are certified by the Blackfeet Tribal Employment Rights Office as 51% or more Indian-owned and controlled. In the event bids are

received from both certified and non-certified entities, the bid must be awarded to the Blackfeet entity submitting the lowest qualified entity, provided such bid is not more than ten (10%) per cent higher than the lowest received.

- B. Where the contractor or subcontractor is selected through a competitive process, the awarding entity shall limit competition to Indian certified firms.
- C. The requirements set out in this Ordinance shall apply to contracts awarded directly by the Blackfeet Tribe, its branches, divisions and all subsidiary governmental entities of the Blackfeet Tribe, and any governmental commercial enterprises of the Blackfeet Tribe or its divisions or subsidiaries (including casinos), except when it is determined by the Director that application of these requirements to that entity is specifically prohibited by Federal law. If a Federal Indian contract or subcontract preference requirement applies and is in conflict with the requirements of this Ordinance, the Federal requirements shall apply.
- D. The requirements shall apply to all subcontracts awarded by a federal or state direct contractor or grantee that is subject to the jurisdiction of the Blackfeet Tribe, whether or not the prime contract was subject to these requirements, except when it is determined by the Director that

application of these requirements to that entity is specifically prohibited by Federal law.

[History: Resolution No. 98-76, dated March 30, 1977.]

Section 3-202: Certification as Indian Preference-Eligible

A. The Director shall promulgate regulations and systems for certifying firms as Indian preference and local Indian preference (“Certified Firm”). Said system shall include detailed regulations to insure that front companies that are not truly 51% or more owned and controlled by Indians are not granted Indian preference certification.

B. An applicant seeking to qualify for preference in contracting and/or subcontracting shall submit proof of the applicant’s Indian ownership, which shall include, but not be limited to:

- 1) Certification by a Federally recognized Indian Tribe or the U.S. Bureau of Indian Affairs (BIA) that the applicant is a member of a Federally recognized Indian Tribe, therefore eligible to receive preference. The Blackfeet Tribal Employment Rights Office shall accept an original certification (not a copy) of a federally recognized Tribal government or the U.S. BIA that an individual is a tribal member. Such tribal or federal certification shall be

- 2) The company name, address and telephone number.
- 3) Proof of company degree of Indian ownership.
- 4) If claiming 51% Indian ownership, the company needs to provide a detailed report on the non-Indian partner(s) of the company.
- 5) Bank and tax records, incorporation documents or joint venture agreements or partnership agreements, which shall include documentation to identify the Indian company, and proof thereof.
- 6) Copies of insurance coverage and bonding capabilities.

- 7) Organization chart, including key personnel, identifying whether they are Indian or non-Indian.
- 8) Evidence that the applicant enterprise or organization is at least 51% Indian-owned and that at least 51% of all profits will flow to the Indian owner(s) during all portions of the contract or subcontract term.
- 9) A firm seeking assistance through the Blackfeet Tribal Employment Rights Office to comply with contracting or subcontracting preference under this Ordinance shall submit sufficient evidence to demonstrate to the satisfaction of the agency and/or contractor, as appropriate; that the applicant has the technical, administrative, and financial qualifications for potential bidders so long as those qualifications are in writing and are reasonable qualifications that are necessary to the project or purpose of the contract or are standard in the industry.
- 10) Rights Office Representative, tribal legal staff, and/or Director.

C. Indian Contract Preference Requirements. The entity letting the contract shall award the contract to a qualified preference firm submitting the lowest bid. However, the entity awarding the contract may stipulate that

the acceptable bid must not be more than a fixed percentage larger than the entities' projected, or prototype cost, for the contract.

D. Bid Shopping. A bidder or contractor is prohibited from engaging in bid shopping.

E. Bonding. A contractor may, if it wishes, require that subcontractors provide some form of security. However, if the prime decides to require subcontractor bonds, and an Indian subcontractor is unable to obtain a bond, the prime contractor must permit the Indian subcontractor to provide another adequate form of security. A list of acceptable bonding alternatives is provided here:

- 1) No bond required on amounts of \$25,000.00;
- 2) Security bond;Cash bonds – to 25% - held in escrow by tribal attorney or bank;
- 3) Increased retainages – 25% instead of normal;
- 4) Letter of credit 100%;
- 5) Letter of credit 10% - with cash monitoring system;
- 6) Cash monitoring system; or
- 7) Other options to be considered as they arise.

The final decision on whether a form of security is sufficient shall rest with the Blackfeet Tribal Employment Rights Office.

F. Breaking Up Subcontracts Into Smaller Pieces. If it is determined that there are no Indians available or qualified to perform a particular subcontract because the subcontract is too large for the capacity of any one Indian firm, the contractor shall divide that subcontract into smaller pieces so that several Indian firms may qualify and perform the work. If the low bidder feels that this is impossible, it will be up to the low bidder to document the facts and present them to the Blackfeet Tribal Employment Rights Office and the Contract Letting entity for review and determination.

G. Indian Preference Plan. Within one week after bid opening, the apparent low bidder shall submit an Indian Preference Plan as it pertains to labor, supplier, and subcontractor. The Blackfeet Tribal Employment Rights Office staff will be available to assist the low bidder in developing an acceptable preference plan. For those subcontracts not to be awarded to Indian firms, the bidder shall provide acceptable documentation on why no Indian firm was selected. This documentation shall be submitted to the Blackfeet Tribal Employment Rights Office for review. If acceptable documentation is not provided, the bidder will be declared non-responsive.

H. Before any individual or firm is prequalified pursuant to the Blackfeet

Tribal certification procedure and TERO guidelines, that person or firm

must be a fully certified, licensed and practicing profession in the field in which he is engaged and applies to the Blackfeet Tribal Certification Board for pre-qualification. [History: Resolution No. 318-89, dated June 22, 1989.]

- I. In order to qualify for certification as an Indian-owned firm entitled to Indian Preference, the “Indian Person” applying for certification must be a fully licensed, certified and qualified Indian entity in that field, and must be in control and responsible for activities of the firm seeking qualification under Section 7(b) of the Indian Self-Determination Act, and not merely a spouse or associate of the non-Indian person seeking certification.

[History: Resolution No. 318-89, dated June 22, 1989.]

Section 3-203: Methods for Certifying Indian Firms as Eligible Indian Preference Firms.

A. Certified, Licensed and Practicing in Profession. Before any individual or firm is prequalified pursuant to the Blackfeet Tribal Certification procedure and TERO guidelines, that person or firm must be a fully certified, licensed and practicing profession in the field in which he is engaged and shall apply to the Blackfeet Tribal Certification Board for pre-qualification.

B. In order to qualify for certification as an Indian owned firm entitled to Indian Preference, the Indian person applying for certification must be fully licensed, must be in control, and must be responsible for activities of the firm seeking qualification under Section 7(b) of the Indian Self-Determination Act, and not merely a spouse or associate of the non-Indian person seeking certification.

Section 3-204: Requirements for Advertisement and Statements of Preference in Advertisements for contracts, labor, and purchases.

- A. Requirements for Advertisement. All owners, employers, and purchasers of products shall advertise all contracts, job vacancies, and purchases in a least one newspaper serving the Blackfeet Indian Reservation; provided, however, that employers do not have the foregoing obligations in the event a Blackfeet member is selected for the employment opportunity and is a current employee of the Employer.
- B. Statement of Preference in Advertisements. All employers, purchasers, owners, shall include and specify the Blackfeet preference policy statement in all job announcements and advertisements and employer policies covered by this policy.
- C. The advertisement for bids shall be made a sufficient time previous to the purchase, contract, or job, and specification and invitations for bid shall

permit such full and free competition as is consistent with the procurement of types of property.

- D. All purchase, contracts, and jobs shall be made by advertising as provided in this ordinance, except that such purchases, contracts, and jobs may be negotiated by the owner, employer, or purchaser if for property or services for which it is impractical to secure competition and it would otherwise be authorized by law.

[History: Resolution No. 105-84, dated December 19, 1983.]

Section 3-205: Weight factor for Indian Preference-Eligible Contractors or Subcontractors

A. The Blackfeet Tribe recognizes that local contractors and subcontractors are often at extreme disadvantage because of economies of scale and bid systems that have long tilted the playing field toward large regional and national contractors and subcontractors. It is the desire of the Blackfeet Tribe to attempt to level that playing field via a weight factor that will help local and Indian contractors and subcontractors be more competitive in their bidding.

B. Award shall be made to qualified Indian-owned enterprises with the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are being taken and no more than "X"

higher than the bid prices of the lowest responsive bidder from any qualified bidder. "X" is determined as follows:

Lowest Responsive Bid		"X "
At Least	But less than	Equals
\$ 1.00	\$ 100,000	10%
\$ 100,000	\$ 200,000	10%
\$ 200,000	\$ 300,000	10%
\$ 300,000	\$ 400,000	10%
\$ 400,000	\$ 500,000	10%
\$ 500,000	\$ 1,000,000	10%
\$ 1,000,000	\$ 2,000,000	10%
\$ 2,000,000	\$ 4,000,000	10%
\$ 4,000,000	\$ 7,000,000	10%
\$ 7,000,000	Or more	10%

Section 3-206: Pre-Certification of Firms

Any firm or person wishing to bid or submit a proposal for any contract to be awarded by an agency or contractor may submit its proof of qualifications for Indian preference to the Blackfeet Tribal Employment Rights Office. The pre-qualifications application shall be reviewed by the Blackfeet Tribal Employment Rights Office and if the firm qualifies as Indian-owned, a certification shall be granted. An agency or contractor may request that the Blackfeet Tribal

Employment Rights Office review the qualifications of any certified firm at any time.

**Title III. Notification of Blackfeet Tribal Employment Rights Office
Requirements and Compliance Plan Requirements**

Section 3-301: Compliance Plan

All Employers and all Entities subject to this Ordinance shall, no less than twenty days prior to commencing business on the Reservation, prepare a plan acceptable to the Director of Tribal Employment Rights Ordinance, setting out how the Employer or Entity shall comply with the requirements of this Ordinance. This plan shall include the Schedule of Positions required in Section 3-106 as well as: a Certified Payroll List; Identification of all Contractors and Subcontractors and their Schedule of Positions; Copies of Business Licenses and Work Visas; and TERO reference person(s) if this Employer or Entity has worked in the lands of other Tribal Blackfeet Tribes with Tribal Employment Rights Ordinances laws in place.

Section 3-302: Signs at Reservation Point of Entry

The Director of Tribal Employment Rights Ordinance shall cause to be erected, next to each paved road at the point at which it enters the Reservation, a sign informing the public that Employers and Entities are required to comply with the requirements of this Ordinance.

Section 3-303: Notice to Proposed Contractors

Any office, division, branch, subsidiary entity, or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities, when issuing a notice of a proposed contract to be awarded by it or a notice involving a proposed lease, right-of-way or notice of any other proposed action that will create new employment or subcontracting opportunities on the Reservation, shall include provisions in the notice that fully inform the prospective contractor or other entity about the requirements established by this Ordinance.

Section 3-304: Contract Language Imposing Blackfeet Indian Preference

Requirements

Any office, division, branch, subsidiary entity, or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities, when awarding a contract, lease, right-of-way or entering into any other legal agreement with a Party that will create new employment or subcontracting opportunities on the Reservation, shall include provisions that impose the requirements of this Ordinance on the contractor, lessee, right-of-way grantee, or other Party, such that the legal document will fully bind the Party to comply with the requirements of this Ordinance, notwithstanding any future decision by a court that has the effect of eliminating, reducing, or putting into question the Tribe's authority to impose

the requirements of this Ordinance on said contractor pursuant to the sovereign authority of the Tribe.

Section 3-305: Model Language

In order to implement the requirements of Section 3-303 and 3-304, the Director of Tribal Employment Rights Ordinance shall prepare and provide to the offices, divisions, branches, subsidiary entities and commercial enterprises of the Blackfeet Tribe and its subsidiary entities:

- A. Model language that shall be included in the notice to prospective contractors, lessees, right-of-way grantees, or other parties who will be engaged in activity that will create new subcontracting or employment opportunities on the Reservation, informing them of the requirements established by this Ordinance; and
- B. Model language to be included in each contract, lease, right-of-way agreement, or other legal document issued by that office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe and its subsidiary entity, imposing the requirements set out in this Ordinance as terms of the contract, lease, right-of-way agreement or other legal agreement being entered into with the Party that will be engaged in activity that will lead to the creation of subcontracting or employment opportunities on the Reservation.

C. The Director of Tribal Employment Rights Ordinance shall submit the proposed model language to the Blackfeet Tribe Legal Department for its approval prior to distributing the language to the offices, branches, divisions, subsidiary entities and commercial enterprises of the Blackfeet Tribe and its subsidiary entities, as provided for in this Section.

Section 3-306: Blackfeet Tribal Employment Rights Office Approval of Contracts Awarded by Blackfeet Tribal Entities

A. Each office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities, prior to issuing notice of a contract to prospective contractors or issuing any other notice to prospective Employers or Entities that will lead to the creation of employment, contracting or subcontracting opportunities on the Reservation, and prior to awarding a contract or entering into any other agreement that will lead to the creation of employment, contracting or subcontracting opportunities on the Reservation, shall submit the proposed notice or contract to the Director of Tribal Employment Rights Ordinance for his/her approval. The Director of Tribal Employment Rights Ordinance shall indicate his/her approval by signing his/her name at a place provided for Blackfeet Tribal Employment Rights Office approval on the document at issue.

- B. Any contract awarded or agreement entered into by an office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities that is subject to the requirements of this Ordinance and which has not received the prior approval of the Director of Tribal Employment Rights Ordinance, shall be voidable at the option of the Director of Tribal Employment Rights Ordinance. Any disputes between the Director of Tribal Employment Rights Ordinance and the office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities regarding appropriate contract language or other disputes under this Section shall be submitted to the TERO Director for resolution, whose decision shall be binding on the parties.
- C. Any and all requests for written information on the Blackfeet Tribal Employment Rights Office or the Blackfeet Tribe's Indian preference requirements should be referred to the Director of Tribal Employment Rights Ordinance, or his/her designee.

Part IV. Equal Employment Opportunity Act

Section 4-101: Prohibitions

Except in furtherance of the provisions requiring employment preference to Native Americans set out in Part III of this Ordinance, or when based upon a bona fide occupational qualification, it shall be an unlawful to do any of the following acts, wholly or partially for a discriminatory reason based on the actual or perceived; race, color, religion, national origin, sex, age, marital status, disability, pregnancy, sexual orientation, or political affiliation of any individual:

- A. By an Employer – To fail or refuse to hire, or to discharge, any individual, or otherwise to discriminate against any individual, with respect to his or her compensation, terms and conditions, or privileges of employment, including promotion, to discriminate in recruiting individuals for employment, or to limit, segregate, or classify his or her employees in any way which would tend to deprive them of employment opportunities;
- B. By a labor organization – To exclude or to expel from its membership, or otherwise to discriminate against, any individual, or to classify, or fail or refuse to refer for employment, an individual in any way which would deprive such individual of employment opportunities, or would limit

such employment opportunities, or otherwise adversely affect his or her status as an employee or as an applicant for employment;

- C. By an Employer or a labor organization – To discriminate against any individual in admission to or the employment in any program established to provide training or retraining, including on-the-job training.

Section 4-102: Religious Accommodation

It shall be an unlawful discriminatory practice for an Employer to refuse to make a reasonable accommodation for an employee's religious observance by such actions as permitting the employee to make up work time lost to such observance, unless such an accommodation would cause the Employer undue hardship. An accommodation would cause an Employer undue hardship when it would cause the Employer to incur more than *de minimis* costs.

Section 4-103: Discrimination Based on Pregnancy

Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. This requirement shall include but not be limited to a requirement that an employer must treat an employee

temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other disabled employees.

Section 4-104: Discrimination Based on Disability

A. It shall be unlawful for an Employer or labor organization to discriminate in any aspect of employment against a qualified individual with a disability because of that disability; provided that, Employers may use qualification standards, test or selection criteria that have been shown to be job-related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation.

Provided further, nothing in this Section shall prohibit an Employer from refusing to hire or from discharging an individual with a disability if the individual, because of the disability, is unable to perform the duties or to perform the duties in a manner that would endanger the health and safety of the individual or others or is unable to be at, remain at, or go to or from the place where the duties of employment are to be performed.

B. For purposes of this Section, the term “qualified individual with a disability” shall not include any employee or applicant who is currently engaging in the illegal use of drugs.

C. Nothing in Paragraph 4-104(b) shall be construed to exclude as a qualified individual with a disability an individual who is engaging in or who has

successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or who has otherwise been rehabilitated and is no longer engaging in such use.

- D. It shall not be a violation of this Section for an Employer to hold an employee who engages in the illegal use of drugs or excessive use of alcohol to the same qualification standards for employment or job performance and behavior to which that Employer holds other employees, provided that an Employer shall first make reasonable accommodation to the alcohol or drug-using employee who is willing to seek treatment.

Section 4-105: Harassment (Including Sexual Harassment)

- A. It shall be unlawful employment discrimination to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, as well as unwelcome comments, jokes, acts and other verbal or physical conduct related to race, color, national origin, religion, age, pregnancy, sexual orientation, political affiliation or physical or mental disability when:

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

B. An employer is responsible for the acts of workplace harassment of its supervisory and non-supervisory employees where the Employer, or its agents or supervisory employees, knew or should have known of the conduct. An Employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the harassment.

Part V. Employee Wage and Hour Act

Title I. Minimum Wage

Section 5-101: Minimum Wage

Any employee who, in any workweek, is engaged in commerce or the production of goods for commerce, shall be paid an hourly wage of not less than \$6.25 per hour until July 1st, 2008 when it will be raised to \$6.55 per hour; and July 1st, 2009 when it will be raised to \$7.25.

Section 5-102: Maximum Hours

No employer shall employ any of its employees for a workweek longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above specified, at a rate not less than one and one-half times the regular rate at which the employee is employed.

Section 5-103: Exemptions

The provisions in Subsections 5-101 and 5-102 shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity (including teachers and academic administrators, personnel in elementary and secondary schools), employees engaged in newspaper delivery, farm workers on small farms, casual babysitters, and persons employed as companions to the elderly or infirm, or any other exemption category outlined in the Federal Fair Labor Standards Act of 1938, Title 29 of the United States Ordinance, Section 201 *et seq.*, as amended, and regulations concerning that Act promulgated by the U.S. Department of Labor.

Section 5-104: Private Right of Action

Any individual aggrieved under this Section may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against

an employer pursuant to the Enforcement provisions set out in Part X of this Ordinance.

Section 5-105: Statute of Limitations

Any action to secure unpaid minimum wages or unpaid overtime compensation must be commenced within two years after the date on which such wages or overtime compensation should have been included in an employee's paycheck. Any complaint under any other section of this Ordinance must be commenced within two years after the date on which the action upon which the complaint is based occurred.

Section 5-106: Establishing Tribal Wage and Hour Administration

The Director of Tribal Employment Rights Ordinance or his or her designee will serve as the investigator on all claims related to wage and hour complaints made within the exterior boundaries of the Blackfeet Indian Reservation.

Section 5-107: Guidance

For the purposes of interpreting and enforcing this Section only, the Blackfeet Tribal Employment Rights Ordinance Director and the Tribal Court may look to the Federal Fair Labor Standards Act and regulations thereunder, as well as relevant case law, for guidance; provided however, that nothing in this

Section shall be construed as an adoption by the Tribe of the Fair Labor Standards Act of 1938, Title 29 United States Ordinance, Sections 201 *et seq.*

**Title II. Minimum Wage Rates on Projects Subject to
the Federal Davis-Bacon Act**

Section 5-201: Assertion of Tribal Authority over Wage Determinations

Through this Ordinance, the Blackfeet Tribe hereby asserts the authority granted to tribal governments to establish prevailing wage rates for all jobs performed within the exterior boundaries of the Blackfeet Indian Reservation.

[History: Resolution No. 364-2010, dated September 15, 2010.]

Section 5-202: Wage Determinations

The Blackfeet Tribal Employment Rights Ordinance Director is hereby authorized, within six months of enactment of this Ordinance, to prepare a schedule for the prevailing wage rates for each craft of laborers and mechanics that are employed on projects within the exterior boundaries of the Blackfeet Indian Reservation, for Tribal Council action and approval. Said wage rates shall be binding on all Employers engaged in projects authorized pursuant to that Act.

[History: Resolution No. 363-2010, dated September 15, 2010.]

Section 5-203: Trainee Wage and Level Determinations for Trainees

An Employer engaged in a project under the Native American Housing Assistance and Self-Determination Act may pay laborers and mechanics who are not certified as journeymen at the wage rate established by the U.S. Department of Labor Davis-Bacon Wage Determination for a trainee at that skill level, or, if the employee's skill level has not been rated, a wage that is no less than three-fifths of the minimum wage for a journeymen in that craft, as determined by the U.S. Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3142, *et seq.*) for the locality in which the work is to be performed (including any fringe benefit amounts that are included in said wage determination by the Secretary), if the Director of Tribal Employment Rights Ordinance has certified that said employee is participating in a formal or informal training program that will lead to journeyman status.

Each Employer shall employ one trainee for every three journeymen the Employer employs in that craft on that project.

Section 5-204: Fringe Benefits

An employee shall have the option of electing to receive any amounts included for fringe benefits in a prevailing wage, whether said determination was made by the U.S. Secretary of Labor pursuant to the Davis Bacon Act or by

the Blackfeet Tribe pursuant to Sections 5-201 through 5-203 of this Ordinance, in the form of a direct cash payment that is to be included in the employee's paycheck. Each Employer shall offer said option to each employee at the time he or she is first employed.

Section 5-205: Reserved

Part VI. Family Medical Leave Protection Act

Section 6-101: Family Medical Leave Protection

- A. Family medical leave requirement. Employees who have been employed by the same employer for 12 consecutive months may be entitled to up to 12 weeks of family medical leave in any 2 years due to a pregnancy, serious health condition of a family member, or an adoption. The

following conditions apply to family medical leave granted under this

Section:

- 1) The employee must have one year of continuous employment with the same employer and have worked at least 1,250 hours in the last year;
- 2) The employee must give at least 30 days' notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice;
- 3) The employer may require certification for a physician to verify the amount of leave requested by the employee, except that an employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets of a recognized religious or spiritual practice, may submit certification from an accredited practitioner of those healing methods; and
- 4) The employer and employee may negotiate for more or less leave, but both parties must agree.

Family medical leave granted under this subchapter may consist of unpaid leave. If an employer provides paid family medical leave for fewer than

12 weeks, the additional weeks of leave added to attain the total of 12 weeks required may be unpaid.

B. Employee benefits protection.

- 1) Restoration. Any employee who exercises the right to family medical leave under this Section, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. This Subsection does not apply if the employer proves that the employee was not restored as provided in this Subsection because of conditions unrelated to the employee's exercise of rights under this Section.
- 2) Maintenance of employee benefits. During any family medical leave taken under this subchapter, the employer shall make it possible for employees to continue their employee benefits at their current level and cost. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

Effect on existing employee benefits.

- 1) Benefit accrual. The taking of family medical leave under this Section shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.
- 2) Contract rights. Nothing in this subchapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this subchapter.

Part VII. Occupational Safety and Health Act

Section 7-101: Duties of Employers and Employees

- A. Each Employer shall: Furnish employees with a place and condition of employment that is free from recognized hazards that may cause or are likely to cause death or serious physical harm to the employees;
Comply with all occupational safety and health rules promulgated or adopted by the Blackfeet Tribe pursuant to this Part.
- B. Each employee shall comply with all occupational safety and health rules promulgated or adopted by this Part that are applicable to the actions and conduct of the employee.

Section 7-102: Reserved for Tribal Occupational Safety and Health

Administration

Section 7-103: Enforcement

- A. The Director of Tribal Employment Rights Ordinance is authorized to enforce the rules adopted by Section 7-102 pursuant to the Enforcement provisions set out at Part X of this Ordinance to the extent Federal law has not preempted his or her authority.

- B. For those Employers over whom the Director of Tribal Employment Rights Ordinance's authority to enforce the requirements of this Part has been preempted by Federal law, for those employers located within the boundaries of the Reservation that are not subject to the jurisdiction of the Blackfeet Tribe, and for those employers located outside the boundaries of the Reservation that employ a significant number of tribal members, the Director shall work cooperatively with Federal and state officials responsible for enforcing occupational safety and health requirements over such Employers to insure the maximum enforcement of such requirements in regard to such Employers.

Part VIII. Immigrant Worker Control Act

Section 8-101: Immigration Work Visa System

The Blackfeet Tribal Employment Rights Office shall maintain a system for monitoring and enforcing this Ordinance as it relates to the immigration, admission and exclusion of all non-resident, non-tribal members entering the exterior boundaries of the Blackfeet Indian Reservation and conducting work activities therein. The Immigration Work Visa System shall include, but not be limited to, the following:

- A. All individual non-resident, non-tribal members are required to register in person with the Blackfeet Tribal Employment Rights Office if they intend to engage in work activity within the exterior boundaries of the Blackfeet Indian Reservation.
- B. All non-resident, non-tribal corporations, contractors, and sub-contractors engaged in short-term work on the Blackfeet Indian Reservation who do not intend to remain on the Reservation after that work is completed, unless otherwise noted, are required to obtain a Corporate Work Visa.
- C. In order to obtain a Corporate Work Visa, the applying corporations, contractors and subcontractors must first obtain a valid Tribal Business License, which shall be included in the Tribal Employment Rights

- Ordinance Office permanent files for that corporation, contractor or subcontractor.
- D. Registered immigrant workers shall be issued an Immigrant Worker Visa, which shall include their photographic likeness and visa expiration date, and must be carried at all times by the worker.
- E. Enforcement officials of the Blackfeet Tribal Employment Rights Office may refuse to grant, suspend, revoke or terminate any work permit that is requested or issued should that individual, corporation, contractor or subcontractor be found in violation of the laws of the Blackfeet Tribe, or to have been in documented violation of the laws of other tribes on whose lands they have engaged in work activities in the past.
- F. The provisions of this Part are not applicable to:
- 1) Enrolled members of the Blackfeet Tribe, including Confederacy members;
 - 2) Resident workers of non-profit organizations working in the areas of education, physical and mental health care or welfare;
 - 3) Religious institutions;
 - 4) Education institutions (except those that are "for-profit");
 - 5) Volunteers.

[History: Resolution No. 69-2007, dated November 15, 2006.]

Section 8-102: Fee Schedule

Immigrant workers and corporations, contractors and subcontractors shall pay a fee to the Blackfeet Tribal Employment Rights Office for their individual or corporate work visas based upon the length of time that they intend to engage in work activities within the jurisdiction of the Blackfeet Tribe.

Blackfeet Non-Resident Work Visas		
Length	Fee Schedule	
	Individual	Corporation
7-days	\$ 25.00	
30-days	\$ 75.00	
90-days	\$ 150.00	
180-days	\$ 150.00	
365-days	\$ 150.00	

Section 8-103: Engaging in Illegal Work Activity

At the discretion of the Director:

- A. Failure to register and obtain an individual work visa may result in a \$200 fine, plus \$100 for each day worked without the proper work visa.
- B. Failure to register and obtain a corporate work visa may result in a fine of \$1,000 per day for every day engaged without a visa and/or temporary or permanent disbarment from engaging in work within the exterior

boundaries of the Blackfeet Indian Reservation or on behalf of the Blackfeet Tribe.

- C. Employers who engage workers, including contractors and subcontractors, who are not in compliance with this Section of this Ordinance may result in a \$500 per day fine for every non-legal worker and \$1,000 per day fine for every non-legal contractor and/or subcontractor engaged. These amounts will be doubled if illegal foreign workers or contractors or subcontractors are engaged.
- D. Individual work visa applicants must be eligible to work within the borders of the United States of America. Foreign workers must possess valid Immigration and Naturalization Service (INS) and/or Department of Homeland Security documents allowing them to work in the United States. No foreign worker, under any circumstance, shall be issued a tribal work visa that exceeds the length of time allowed by the United States immigration authorities.
- E. If, for any reason, illegal foreign workers are still working within the exterior boundaries of the Blackfeet Indian Reservation after 48 hours have transpired since they were reported to Federal immigration authorities, they will be detained by Tribal police and escorted to the bus

station in Cut Bank, Montana where they will be released and refused re-entry to the Reservation.

Section 8-104: Coordination with Federal Immigration and Homeland Security Agencies

Foreign workers found to be illegally in the United States and within the jurisdiction of the Blackfeet Tribe shall be documented and referred to the appropriate agency of jurisdiction. Within a year of the date of enactment of this legislation, the Director of Tribal Employment Rights Ordinance shall negotiate protocols and procedures with the Immigration and Naturalization Service and the Department of Homeland Security, if appropriate, for coordination of Tribal and Federal efforts in this area.

Part IX. Freedom to Work Without Joining A Labor Union Act

Section 9-101: Policy

It is hereby declared to be the public policy of the Blackfeet Tribe that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.

Section 9-102: Agreements Declared Unlawful

Any agreement between any Employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for the Employer, or whereby such membership is made a condition of employment, continuation of employment, promotion or any other benefits by such Employer, is hereby declared to be against public policy and illegal.

Section 9-103: Employees Not Required to Join A Labor Union

No person shall be required by an Employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

Section 9-104: Employees May Not Be Prohibited From Joining A Union

No person shall be required by an Employer to abstain or refrain from membership in, or holding office in, any labor union or labor organization as a condition of employment or continuation of employment.

Section 9-105: Employees Shall Not be Required to Pay Union Dues

No Employer shall require any person, as a condition of employment or continuation of employment, to pay dues, fees, or other charges of any kind to a labor union or labor organization.

Section 9-106: Payment of Fringe Benefits

Any Employer who is subject to a collective bargaining agreement that requires it to pay monies for fringe benefits for its employees into a union fund, such as health and pension funds, shall offer any employee who is not a union member the option of receiving directly, in each paycheck, the amount that would otherwise have been placed into the union fund on behalf of that employee.

Part X. Enforcement

Section 10-101: Applicability

The enforcement provisions set out in this Part shall be used to enforce the requirements set out in each of the Parts of this Ordinance, unless a specific enforcement provision is contained in a particular part, in which case the latter shall take priority.

Section 10-102: Investigations

On his or her own initiative or on the basis of a complaint filed pursuant to any provision contained in this Ordinance, the Director of Tribal Employment Rights Ordinance or any field compliance officer designated by the Director of Tribal Employment Rights Ordinance may make such public or private

investigations within or without the exterior boundaries of the Reservation as the Director of Tribal Employment Rights Ordinance deems necessary to insure compliance with that provision, to determine whether any Employer or Entity has violated any provision of this Ordinance or its implementing regulations, or to aid in prescribing rules, regulations or policies hereunder.

- A. Separate from acting on any complaint filed, the various Coordinators or appropriate staff personnel shall conduct regular compliance reviews to insure all Employers and Entities are complying with the requirements of this Ordinance.
- B. The Director of Tribal Employment Rights Ordinance shall regularly monitor the issuance of building permits within the exterior boundaries of the Blackfeet Indian Reservation to assure full compliance with this Ordinance.
- C. The Director of Tribal Employment Rights Ordinance or any field compliance officer designated by the Director of Tribal Employment Rights Ordinance may enter the place of business or employment of any Employer or Entity for the purpose of such investigation or compliance review. Tribal Employment Rights Ordinance officers may, at said place of business or employment, in a manner consistent with good safety practices and with the orderly operation of the business activity, interview

any employee or agent of the Employer or Entity, review and copy any documents, and carry out any other activity the Director of Tribal Employment Rights Ordinance or officer deems necessary to the carrying out of the investigation or compliance review; provided that, the Tribal Employment Rights Ordinance representatives shall comply with the requirements of subsection (e) when reviewing or copying any confidential documents subject to that subsection.

- D. For the purpose of the investigations, compliance reviews, or hearings which, in the opinion of the Director of Tribal Employment Rights Ordinance are necessary and proper for the enforcement of this Ordinance, the Director of Tribal Employment Rights Ordinance may administer oaths or affirmations, subpoena witnesses, documents and things, take evidence, and require, by citation, the production of books, papers, contracts, agreements, or other documents, records, or information which the Director of Tribal Employment Rights Ordinance deems relevant or material to the inquiry.
- E. Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed or otherwise obtained pursuant to the provision of this Ordinance, or used in a compliance hearing or subsequent appeal to the Tribal Court, shall be

confidential records of the Director or the Court, shall not be opened to public inspection, shall be used only by the Director of Tribal Employment Rights Ordinance, parties to a Compliance Hearing or subsequent appeal to Court, and the Court, and shall be used in a manner that, to the maximum extent possible consistent with the requirements of fairness to the parties, protects the confidentiality of the documents.

Section 10-103: General Complaints

Any individual, group of individuals, business or organization that believes any Employer or Entity (with the exception of complaints against the Blackfeet Tribal Employment Rights Office or any office, division, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities, which are subject to the complaint provisions set out in Sections 10-104 and 10-105) has violated any requirement imposed by any Part of this Ordinance or regulations issued pursuant to it, may file a complaint with the Director of Tribal Employment Rights Ordinance. The complaint shall be in writing and shall provide such information as is necessary to enable the Director of Tribal Employment Rights Ordinance to carry out an investigation. The Director of Tribal Employment Rights Ordinance shall, within 30 days of the date on which a complaint is filed, complete an investigation of said complaint unless the Director of Tribal Employment Rights Ordinance requests and is granted an

extension by the Director, which shall be for no more than 30 days. If, upon investigation, the Director of Tribal Employment Rights Ordinance has reason to believe a violation has occurred, he or she shall proceed pursuant to the provisions of this Part. Within 15 days after receipt of the complaint, and on a regular basis thereafter, the Director of Tribal Employment Rights Ordinance shall provide the complaining Party with a written report on the status of the complaint.

Section 10-104: Complaints Against Offices, Divisions, Branches, Subsidiary Entities or Commercial Enterprises of the Blackfeet Tribe or of any of the Blackfeet Tribe's Subsidiary Entities

Any individual who believes any office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of its subsidiary entities has violated any requirements imposed by this Ordinance or regulation issued pursuant to it regarding employment may file a complaint with the Director of Tribal Employment Rights Ordinance only after he/she has:

- A. Filed a complaint with, and exhausted the administrative remedies provided by, that office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe, or of any of the Blackfeet Tribe's subsidiary entities; and

B. Filed a complaint and 60 days have passed since he/she filed said complaint and no meaningful action has been taken on the complaint by that office, division, subsidiary entity or commercial enterprise of the Blackfeet Tribe, or of any of the Blackfeet Tribe's subsidiary entities, whichever comes first. Upon receiving a complaint that meets the requirements of this Section, the Director of Tribal Employment Rights Ordinance shall proceed in the same manner as he or she would on a complaint filed pursuant to Section 10-103, except that the Director of Tribal Employment Rights Ordinance shall give careful consideration to any written decision on the complaint issued by the office, division, branch, subsidiary entity or commercial enterprise of the Blackfeet Tribe or any of the Blackfeet Tribe's subsidiary entities that is the subject of the complaint.

Section 10-105: Resolution of Complaints

When, after conducting an investigation or compliance review, whether initiated by a complaint filed by a Party or an investigation or compliance review initiated by the Director of Tribal Employment Rights Ordinance, the Director of Tribal Employment Rights Ordinance has reasonable cause to believe a violation of this Ordinance or regulation issued pursuant to it has occurred (including a failure on the part of a Party to comply with a subpoena or other request during

the investigation phase), the Director of Tribal Employment Rights Ordinance or his/her representative shall so notify the Employer or Entity in writing, delivered by registered mail and/or personal service, specifying the alleged violations.

However, he/she may withhold the name(s) of the complaining party if he or she has reason to believe such party shall be subject to retaliation.

- A. The Director of Tribal Employment Rights Ordinance shall make a good faith effort to achieve an informal settlement of the alleged violation by meeting with the Employer or Entity and taking such other actions as are appropriate.
- B. If the Director of Tribal Employment Rights Ordinance is unable to achieve an informal settlement, he or she shall issue a formal notice of non-compliance, which shall also advise the Employer or Entity of their right to request a hearing. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance.
- C. The complaint shall provide the Employer or Entity (hereinafter the "Party") with a reasonable time, which in no event shall be less than five (5) days from the date of receipt of such notice, to comply, unless the Director of Tribal Employment Rights Ordinance has reason to believe

- substantial harm will occur during that period, in which case he or she may require that compliance occur within fewer than five (5) days.
- D. If the Party fails or refuses to comply as provided for in the formal notice, the Party may request a hearing before the Director, which shall be held no sooner than five days and no later than 30 days after the date for compliance set forth in the formal notice, unless an expedited hearing is deemed necessary by the Director to avoid substantial harm or is requested by the Party and good cause is shown.
- E. If a Party fails or refuses to comply and does not request a hearing, the Director of Tribal Employment Rights Ordinance shall render a judgment and impose appropriate sanctions on the Party.
- F. Notwithstanding the other provisions of this Section, if the Director of Tribal Employment Rights Ordinance has good cause to believe that immediate remedial action is necessary to prevent substantial harm, which shall include but not be limited to loss of employment, contracting, or subcontracting opportunities or dangers to employees from unsafe practices, he or she may require that the Party come into compliance immediately or that the Party immediately enter into a written agreement to come into compliance pursuant to a schedule acceptable to the Tribal Employment Rights Ordinance Office. In such cases, if the Party fails or

refuses to comply and requests a hearing, the hearing shall be held within 48 hours after the Party has received notification of the hearing schedule.

If the Party fails or refuses to comply but does not request a hearing, the Director of Tribal Employment Rights Ordinance shall request that the Hearing Officer issue a decision within 48 hours to impose sanctions on the Party and provide for enforcement of the Hearing Officer of Tribal Employment Rights Ordinance's directive.

Section 10-106: Hearing Procedures

- A. The Hearing Officer shall conduct any hearing held pursuant to this Ordinance. The hearing shall be governed by rules of practice and procedure, which shall be adopted by the Hearing Officer.
- B. The Hearing Officer may consider any evidence that it deems relevant to the hearing. The Hearing Officer shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Hearing Officer. A tape recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by and at the cost of the Party charged.
- C. The Hearing Officer of Tribal Employment Rights Ordinance shall adjudicate the alleged violation on behalf of the Blackfeet Tribal Employment Rights Office. For the hearing and during all stages of the procedures provided for in this Ordinance, the Hearing Officer of Tribal Employment Rights Ordinance shall be represented by the Blackfeet Tribe's Legal Department. If the Party is an office or subsidiary of the Tribal Government, it shall be the responsibility of that entity to obtain counsel, if it so chooses, from a source other than the Blackfeet Tribe's

Legal Department. During the hearing phases of the enforcement process, to avoid a conflict of interest between the Hearing Officer, who sits as an impartial judicial body, and the Director of Tribal Employment Rights Ordinance, who shall act as the prosecutor, the Hearing Officer shall establish such procedures and safeguards to ensure that the due process rights of all parties are protected and that there is no improper contact or communication between the Director and the Hearing Officer of Tribal Employment Rights Ordinance.

- D. If the Hearing Officer requires legal assistance during the hearing process or at any other phase of the enforcement process, and it would be a conflict of interest for the Blackfeet Tribe's Legal Department to provide such representation, the Hearing Officer shall retain its own legal counsel from a source other than the Blackfeet Tribe's Legal Department.
- E. Any person whose official testimony or evidence before the Hearing Officer is found to be inaccurate or untruthful may be subject to charges of perjury, which is punishable by a \$5,000 fine and a temporary or permanent disbarment from work on the Blackfeet Indian Reservation

Section 10-107: Sanctions

- A. If, after a hearing, the Hearing Officer determines that the alleged violation of this Ordinance or regulations has occurred and that the Party

charged has no adequate defense in law or fact, or if a Party were issued a formal complaint and failed to request a hearing, the Hearing Officer may:

- 1) Deny such Party the right to commence business on the Reservation;
- 2) Suspend such Party's business activity within the Indian Reservation;
- 3) Terminate such Party's business activity within the Reservation;
- 4) Deny the right of such Party to conduct any further business within the Reservation;
- 5) Impose a civil fine on such Party from \$500 to \$5,000 (unless otherwise prescribed by this Ordinance) per day, per violation, on a case-by-case basis;
- 6) Order such Party to re-hire and make payment of back pay or other damages to any aggrieved Party;
- 7) Order such Party to dismiss any employees hired as a result of an illegal personnel action, or in violation of the Tribes' employment rights requirements;

- 8) Order the Tribal Treasurer to reimburse any Party who improperly paid a fee or overpaid said fee (but no interest shall be paid in such cases);
- 9) Order the Party to take such other action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation of this Ordinance, consistent with the requirements of the laws of the Blackfeet Tribe and the Indian Civil Rights Act, 25 U.S.C. 1301 *et seq.*

B. The Hearing Officer's decision shall be in writing, shall be served on the charged Party by registered mail, or shall be served in person by an employee of the Blackfeet Tribal Employment Rights Office no later than thirty days after the closing of the hearing, or within ten days after the Hearing Officer imposes sanctions where a Party has not requested a hearing. Where the Party's failure to comply immediately with the Hearing Officer's orders may cause substantial harm, the Hearing Officer of Tribal Employment Rights Ordinance may move the Tribal Court for, and the Court shall grant, such injunctive relief as is necessary to preserve the rights of the beneficiaries of this Ordinance, pending the Party's appeal or expiration of the time for appeal.

Section 10-108: Appeals

- A. Any Party adversely affected thereby, including a complainant, may take an appeal to the Tribal Court from any final order of the Hearing Officer. Said appeal must be filed with the Tribal Court, with a copy to the Hearing Officer of Tribal Employment Rights Ordinance and any other Party to the proceedings, no later than 20 days after the Hearing Officer sends a copy of their decision.
- B. The notice of appeal shall:
- 1) Set forth the order from which the appeal is taken.
 - 2) Specify the grounds upon which reversal or modification of the order is sought.
 - 3) Be signed by the appellant or his legal representative.
 - 4) Comply with any other requirements for actions filed in the Tribal Court established by that Court.
- C. The Tribal Court review shall not be *de novo*. Instead, the Court's review is limited to whether the Hearing Officer's findings of fact were supported by substantial evidence and whether the Hearing Officer's decision was arbitrary, capricious, an abuse of discretion, or contrary to law.
- D. The Hearing Officer of Tribal Employment Rights Ordinance may

petition and, for good cause shown, the Court may order the Party filing the appeal to post a bond sufficient to cover monetary damages that the Hearing Officer assessed against the Party or to assure the Party's compliance with other sanctions or remedial actions imposed by the Hearing Officer's Order if that Order is upheld by the Court.

- E. If a complainant files an appeal of a decision by the Hearing Officer, the Hearing Officer may choose not to be a Party to the appeal. If the Hearing Officer chooses not to be a Party in such a situation, the Hearing Officer of Tribal Employment Rights Ordinance shall so notify the Court and the other parties.
- F. The Tribal Court shall uphold the decision of the Hearing Officer unless it is demonstrated that the decision of the Hearing Officer is arbitrary, capricious or in excess of the authority of the Hearing Officer.
- G. If, by the 20th day after the Party's receipt of either (1) notice of a decision by the Hearing Officer from which no appeal to the Tribal Courts is taken, or (2) notice of final decision of the Tribal Court upholding the Hearing Officer's decision from which no appeal to the Tribal Appellate Court is taken, the Party has failed to come into compliance with the decision of the Hearing Officer or Court, the Hearing Officer of Tribal Employment Rights Ordinance shall petition the Court and the Court shall grant such

orders as are necessary and appropriate to enforce the orders of the Hearing Officer or Court and the sanctions imposed by the Hearing Officer or Court, including confiscation and sale as provided for in Section 10-110.

H. If the order of the Hearing Officer is reversed or modified, the Court shall by its mandate specifically direct the Hearing Officer as to further action the Hearing Officer shall take in the matter, including making and entering any orders or orders in connection therewith, and the limitation or other conditions to be contained therein.

Section 10-109: Confiscation and Sale

If a Party has failed to pay monetary damages imposed on it or otherwise fails to comply with an order of the Hearing Officer or the Court, and the Hearing Officer of Tribal Employment Rights Ordinance believes there is likelihood the Party will remove itself and its property from the jurisdiction of the Blackfeet Tribe, the Hearing Officer of Tribal Employment Rights Ordinance may petition the Blackfeet Tribe's Court to order the Blackfeet Tribe's police to confiscate and hold for sale, such property of the Party as is necessary to ensure payment of said monetary damage order or to otherwise achieve compliance with the order of the Hearing Officer or the Court. Said petition shall be accompanied by a list of property belonging to the Party which the Hearing

Officer of Tribal Employment Rights Ordinance has reason to believe is within the jurisdiction of the Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Blackfeet Tribe's police to confiscate and hold said property with the order outstanding against it. If, 30 days after confiscation, the Party has not come into compliance, the Court shall order the police to sell said property and use the proceeds to pay, in the following order of priority: (1) any outstanding monetary damages imposed by the Hearing Officer or Court; (2) all costs incurred by the Court and police in the confiscation and sale, and (3) any outstanding monetary damages imposed by the Hearing Officer or Court. Any proceeds remaining shall be returned to the Party.

Section 10-110: Other Enforcement Authorities

- A. If, at any stage of the enforcement process, the Hearing Officer of Tribal Employment Rights Ordinance has reason to believe there is a danger that a Party will remove itself or its property from the jurisdiction of the Tribal Court such that the Hearing Officer or Court will not be able to collect monetary damages or Tribal Employment Rights Ordinance fees that are owed by that Party pursuant to any outstanding order of the Hearing Officer or Court, or which may be owed if the charges set out in any outstanding notice of violation are upheld, the Hearing Officer of

Tribal Employment Rights Ordinance may, in his or her discretion, require the Party to post a bond with the Hearing Officer in an amount sufficient to cover possible monetary damages that may be or have been assessed against the Party. If the Party fails or refuses to post said bond, the Hearing Officer of Tribal Employment Rights Ordinance may petition the Blackfeet Tribe's Court for such interim and injunctive relief as is appropriate to protect the rights of the Blackfeet Tribal Employment Rights Office and other parties during the pendency of the complaint and hearing proceedings.

- B. If the Hearing Officer of Tribal Employment Rights Ordinance believes that substantial loss of employment, contracting, or subcontracting opportunities will occur pending a hearing, pending action by the Tribal Court, or at any other stage of the process provided for in this Ordinance, the Hearing Officer of Tribal Employment Rights Ordinance may petition the Tribal Courts to temporarily enjoin such actions of the Party as may be necessary to prevent substantial loss. Upon a showing by the Hearing Officer of Tribal Employment Rights Ordinance of probable cause of success on the merits and substantial injury, the Court shall grant the requested injunction for such period as may be necessary to prevent substantial loss.

- C. When substantial harm will occur before a matter can be brought to the Tribal Courts, the Hearing Officer is authorized to issue such cease-and-desist or related orders as may from time to time be properly issued by the Hearing Officer. Such orders do not require a judicial decree or order to render them enforceable. The police shall not be civilly liable for enforcing such orders so long as the order is signed by the Hearing Officer as a duly authorized order. The Hearing Officer shall seek a Court order as quickly as possible. The Court may dissolve the cease-and-desist order or may order such injunctive or other relief to replace the cease-and-desist order, as it deems appropriate.
- D. In addition to the procedure and remedies provided for in this Ordinance, the Hearing Officer of Tribal Employment Rights Ordinance is authorized to petition the Tribal Courts under any other appropriate provisions of the laws and ordinances of the Blackfeet Tribe as necessary to effect implementation of and compliance with this Ordinance.

Section 10-111: Interference with Officials

Any interference with a Blackfeet Tribal Employment Rights Ordinance representative in the course of their duty, including prohibition of access, verbal abuse, attempts at intimidation, or physical assault are punishable offenses for both the individual offender and their employer(s).

- A. Tribal Employment Rights Ordinance enforcement personnel are authorized to instantly cite all instances of such interference and are required to immediately call Tribal police for back-up. Police officers are required to respond and fully support the incident through to its conclusion.
- B. If Blackfeet Tribal Employment Rights Office representatives have any reason to suspect that interference might occur, they are required to call for police backup before entering the job or worksite. Police officers are required to respond and fully support the incident through to its conclusion.
- C. Depending upon the severity of the circumstance the citing officer may charge the offender with first, second, or third-degree violations of this Section.
- 1) First-degree violations include any physical obstruction (prohibition of access), failure to produce required records or documents, or any aggressive physical contact or assault upon an official in conduct of their duty, and may include other criminal charges;

- 2) Second-degree violations include violent physical outbursts, attempts at physical intimidation, and displays short of actual physical contact, and may include other criminal charges; and
- 3) Third-degree violations would include verbal assault abuse and harassment of an official in conduct of their duty.
- 4) A first-degree offense is punishable by immediate suspension of all work on the project until released by the Blackfeet Tribal Employment Rights Office; a \$10,000 fine for the Entity and a \$10,000 fine for the subcontractor, if appropriate, for every day that they are in non-compliance; and a \$25,000 fine and/or lifetime disbarment from working within the exterior boundaries of the Blackfeet Indian Reservation for individual offender(s), as well as any other criminal assault charges that might be filed with the appropriate agency of jurisdiction if they physically assault or attempt to restrain an official in conduct of their duty.
- 5) A second-degree offense is punishable by immediate 48-hour suspension of all work on the project; a \$5,000 fine for the Entity and a \$5,000 fine for the subcontractor, if appropriate; and a \$5,000 fine and/or temporary or permanent revocation of the Immigrant Work Visa of the offender(s).

6) A third-degree offense is punishable by a \$5,000 fine for the Entity and a \$5,000 fine for the subcontractor, if appropriate; and a \$5,000 fine and/or temporary or permanent revocation of the Immigrant Work Visa of the offender(s).

D. Entities are responsible for their personnel, and repeated violations of this Section by owners, managers and/or their personnel indicate either a pattern of abuse and/or a lack of respect for and compliance with Tribal laws. Entity fines for repeat offenses within a 24-month period will be doubled in both time and dollar penalties for each occurrence, and may also lead to temporary or permanent disbarment for that Entity from working within the exterior boundaries of the Blackfeet Indian Reservation.

Section 10-112: Monitoring and Coordination in Regard to Other Blackfeet Tribe, Federal and State Laws

If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this Ordinance, the Hearing Officer of Tribal Employment Rights Ordinance or Blackfeet Tribal Employment Rights Office representatives have reason to believe that a requirement of the Blackfeet Tribe, Federal, state or local law, ordinance or regulation, other than the ones included in this Ordinance, may have been violated by the Party, the Hearing Officer of

Tribal Employment Rights Ordinance is authorized to document such possible violation, to report it to the appropriate enforcement agency, and, to the extent that resources will permit and the Hearing Officer of Tribal Employment Rights Ordinance determines to be appropriate, assist that agency to investigate and cure the possible violation.

Part XI. Tribal Employment Rights Ordinance Funding Formula

Section 11-101: Statement of Principle

Beginning in 2010, funding levels for the enforcement of Blackfeet Tribal Employment Rights Ordinance Ordinances shall be determined by a weighted formula which is based upon the amount of Tribal Employment Rights Ordinance fees and fines collected by these offices over the three preceding program years. This is to appropriately allow funding levels to rise and fall in response and in direct correlation to workloads.

Section 11-102: Funding Formula

Beginning in 2010, the funding formula for the Tribal Employment Rights Ordinance Programs shall be based upon an amount equal to the total of:
5% of fees and fines collected three years ago (e.g. 2007).

- 7.5% of fees and fines collected two years ago (e.g. 2008).
- 15% of fees and fines collected last year (e.g. 2009).

Funding at this level shall be provided from fees and fines collected in the prior year (e.g. funding in 2010 is provided from fines/fees collected in 2009).

The Hearing Officer of Tribal Employment Rights Ordinance Programs shall consult with the Blackfeet Finance Office and Blackfeet Planning to establish the planning parameters for this process, including the timing and exact choice of months to be used in these annual calculations.

Section 11-103: Funding Distribution and Staffing

Beginning in 2010, the funding received by the Blackfeet Tribal Employment Rights Office under the formula in Section 11-102 shall be used as follows:

- 15% to fund Hearing Officer of Tribal Employment Rights Ordinance,
- 85% to fund Blackfeet Tribal Employment Rights Office.

Based upon workload and other professional considerations, this formula may be amended by the Hearing Officer of Tribal Employment Rights Ordinance with the concurrence of the Blackfeet Tribal Business Council.

Section 11-104: Recommended funding for Fiscal Year 2009

Based upon a professional assessment of current activity levels and planned activity levels based upon this Ordinance, the recommended funding

level for the Blackfeet Tribal Employment Rights Ordinance Programs in 2009 is \$300,000.

Section 11-105: Building and Vehicle Planning

The Director of Tribal Employment Rights Ordinance shall consult with the Blackfeet Finance Office and Blackfeet Planning to develop a plan within 6 months of the date of enactment of this Ordinance for a new physical plant for the location of the Blackfeet Tribal Employment Rights Office and the replacement of worn-out vehicles. This should include a recommendation on amending the formula in Section X to include a new formula set aside for vehicle purchase, building planning and/or construction.

Part XII. Rescission

Section 12-101: Rescinding Existing TERO Ordinances and Resolutions

The following existing Resolutions are hereby affirmed by the Tribal Employment Rights Office (TERO). All other resolutions are superceded by this Ordinance.

Resolution 98-76
Resolution 16-77
Resolution 17-79
Resolution 195-79
Resolution 126-82
Resolution 141-82
Resolution 105-84

Resolution 215-84
Resolution 272-85
Resolution 318-89
Resolution 136-91
Resolution 191-95
Resolution 69-2007