

**KENAITZE INDIAN TRIBE TRIBAL EMPLOYMENT RIGHTS
ORDINANCE 2017-01**



**Adopted January 24, 2017
Amended and Restated October 26, 2017
Amended and Restated August 2, 2019**

Section 1. Purpose. Establishment of the Tribal Employment Rights Office

The Kenaitze Indian Tribe's ("Tribe") Constitution, Art. X, Sec. 3, provides that the Tribal Council ("Council") shall promote the general welfare of the members¹ and administer services as may contribute to the social and economic development of the Tribe and its members.

Like land, water, and minerals, jobs, subcontracts and contracts with the Tribe are an important resource for Tribal members and other Alaska Native and American Indians. The Tribe must use these resources to obtain its rightful share of such opportunities as they become available. Indians have unique and special employment, subcontract and contract rights and the Tribe has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of its Tribal members and other Alaska Natives and American Indians. Alaska Natives and American Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of those laws. The Tribe believes it is important to establish an employment rights program and Commission in order to use these laws and powers to increase employment of Tribal members, Tribal member spouse, Alaska Natives, and American Indian workers and businesses and to eradicate discrimination against Alaska Natives and American Indians.

To carry out this purpose, the Council hereby adopts this Tribal Employment Rights Ordinance (referred to herein as "TERO" or "Ordinance") and establishes the Kenaitze Tribal Employment Rights Commission. This Ordinance is intended to be as broad and encompassing as possible to ensure it covers all employment and contract activities within the Tribe's territory and jurisdiction, and the terms shall be so interpreted by the Commission and the Council.

Section 2. Definitions

The following words and phrases, whenever used in this Ordinance, shall have the following meanings:

¹ The TERO Ordinance was established May 17, 1986, rescinded---2016, and amended and restated on October 26, 2017.

- A. "Alaska Native" means a person who is: (1) an indigenous Alaskan who is an enrolled member of a tribe or eligible for enrollment within the territory of Alaska; or (2) who may be listed on the original Alaska Native Claims Settlement Act (ANCSA) roll;
- B. Members shall mean citizens of the Kenaitze Indian Tribe "American Indian" means any individual who is enrolled in a federally-recognized Tribe outside of Alaska (excluding honorary members); or (2) a person issued a Certificate Degree of Indian Blood (CDIB) by the Bureau of Indian Affairs (BIA) which identifies affiliation with a federally-recognized Tribe outside of Alaska.
- C. "Tribal member" shall mean any person enrolled or eligible for enrollment as a citizen/member of the Kenaitze Indian Tribe.
- D. "Tribal Member Spouse" shall mean any person married to a Kenaitze Indian Tribal Member by legal mean.
- E. "Commission" means the Kenaitze Tribal Employment Rights office established by this Ordinance 2017-01.
- F. "Employee" shall mean a person working for remuneration.
- G. "Employer" any person, partnership, corporation, or other entity that employs for wages, two or more employees.
- H. "Covered Entity" shall mean any person, partnership, corporation and or its subsidiaries, joint venture, government, government enterprise, contractor or subcontractor, or any other natural, or artificial person, or organization. The term "Covered Entity" is intended to be interpreted broadly to provide for maximum coverage of this Ordinance.
- I. "Native contractor, subcontractor, business, or entity" shall mean a contractor, subcontractor, business, or other entity that is 60% or more owned or controlled by Alaska Natives or American Indians, who are not Tribal members.
- J. "Tribal contractor, subcontractor, business or entity" shall mean a contractor, subcontractor, business, or other entity that is 51% or more owned or controlled by Kenaitze Tribal citizen/member.

Section 3. Establishment of TERO Commission

- A. The Council hereby establishes the TERO Commission.
- B. The Commission shall be composed of five Tribal members as commissioners appointed by the Council with at least one Council member. The commissioners shall not be employed by the Tribe or be an applicant for a position if there is a conflict of interest with the Tribe. The Commission shall designate one of such commissioner as

- Commission chair. The commissioners shall serve at the pleasure of the Council for a five (5) year staggered term. The Commission Chair may consult with the Executive Director or the appropriate designee as delegated by the Commission as necessary.
- C. A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

Section 4. Powers of the Commission

The Commission has the full power, jurisdiction and authority to:

- A. Formulate, adopt, amend, and rescind rules, regulations and guidelines necessary to carry out the provisions and the intent of this Ordinance for Council approval.
- B. Require each covered employer or entity to submit to the commission an acceptable compliance plan. Such compliance plans shall be submitted before a covered employer or entity may commence work on trust lands within the exterior boundaries of the Kenaitze Tribal territory and jurisdiction.
- C. Expend such funds as the Council may appropriate to the Commission, to collect fees as provided in this Ordinance and to obtain and expend funding from federal, state or other sources to carry out the purposes of this Ordinance. The Commission shall report and be accountable to the Council;
- D. Establish numerical hiring goals and timetables that specify the minimum number of Tribal members, Alaska Natives and American Indians a covered entity must hire;
- E. Require covered entity to establish or participate in training programs as the Commission determines necessary in order to increase the pool of qualified Tribal members, Alaska Natives and American Indians;
- F. Establish a Tribal Applicant Pool consisting of Tribal members, Tribal member spouse and other Alaska Natives and American Indians seeking employment opportunities with the Tribe or on Tribal projects. All covered entities shall provide employment records of all Tribal citizen/members, Alaska Native and American Indian applicants to the TERO Commission. Maintain an index of individuals participating in the Tribal Applicant Pool and their qualifications. To the extent practicable, the index should be cross-referenced so that Commission can efficiently determine whether any individuals in the index meet particular job qualifications;
- G. Covered entities must first contact the Commission when hiring for any position covered by this Ordinance and provide the Commission with a job description and the qualifications required for the position. If the Commission notifies the employer of qualified individuals listed in the employment index, the employer must consider those individuals for the position;
- H. Identify qualification criteria or other personnel requirements that serve as barriers to Tribal member, Alaska Native, American Indian employment, and develop a plan for

- combating such barriers;
- I. Impose contract and subcontract preference requirements consistent with this Ordinance;
 - J. Ensure that preference in employment, contracting and subcontracting, and training is given to Tribal members, Tribal member spouse and other Alaska Native and American Indians consistent with this requirements of this Ordinance;
 - K. Ensure that training, counseling and support to Tribal members is provided and coordinate with other appropriate tribal and federal offices to identify and provide additional resources and assistance;
 - L. Prohibit covered employers from using qualification criteria or other requirements that service as barriers to Tribal citizens/members, Alaska Native and American Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. The Commission shall have the right to adopt and impose its own requirements in addition to or in lieu of equal opportunity and anti-discrimination guidelines when necessary to address unique qualification problems for Tribal citizens/members, Alaska Natives and American Indians.
 - M. Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the Commission, and to order any relief or sanctions provided by this Ordinance and may petition the Tribal Court for orders as are necessary and appropriate to enforce decisions of the Commission or TERO Director and any sanctions imposed by them.
 - N. The Commission shall be responsible for the hiring and oversight of the TERO Director. The Director shall be responsible to carry out the directives of the Commission.
 - O. Provide quarterly reports to the Council, describing the Commission's activities and programs, the Commission's financial status, and such other information as the Council may require.

Section 5. Employment Preference

- A. Commission shall review and identify all positions created and solicited through new hire or grant applications to ensure equity in Tribal hire.
- B. To the maximum extent permitted by Tribal law, the Tribe and every covered entity is required to give preference to Tribal members, Tribal member spouse and other Alaska Natives and American Indians in hiring, promotion, training, or retaining. Preference shall be applied in the following order of priority:
 - 1. Local Tribal citizens/members residing within the territory of the Kenaitze Indian Tribe;
 - 2. Tribal citizens/members residing outside the territory of the Kenaitze Indian Tribe;

3. Tribal member spouse residing within the territory of the Kenaitze Indian Tribe;
 4. Tribal member spouse residing outside the territory of the Kenaitze Indian Tribe.
 5. Alaska Natives residing within the territory of the Kenaitze Indian Tribe;
 6. Alaska Natives residing outside the territory of the Kenaitze Indian Tribe;
 7. American Indians residing inside the territory of the Kenaitze Indian Tribe;
 8. American Indians residing outside the territory of the Kenaitze Indian Tribe;
- C. "Preference" shall mean a qualified Tribal member, Tribal member spouse or other Alaska Native or American Indian meets the minimum qualification, that person will be given preference over a qualified non-Native/American Indian in any phase of employment. Preference shall be given to Tribal member candidates needing additional training to help meet minimum qualifications.
- D. When establishing criteria for reduction in force the order shall be: non-native, American Indian, Alaska Native, Tribal Member Spouse and Tribal citizen/member.

Section 6. Application of Preference – Contracting

When soliciting bids or proposals for covered entities, and when subsequently making their award, preference shall be applied as follows:

- A. The Tribe will give preference to bids or proposals for covered entities in the procurement evaluation process by awarding additional points to Tribal and Native contractors in the evaluation of the bid or proposal.
1. Fifteen (15) additional points for Tribal contractors; or
 2. Ten (10) additional points for Native contractors
- C. If a covered entity is designated for award to the lowest bidder rather than through an evaluation process, the Tribe shall award the contract to the lowest bid or proposal from a qualified Tribal or Native contractor that is within budgetary limits established for the specific project, provided that the Tribal or Native contractor's bid or proposal is not more than twenty percent (20%) higher than the lowest bid on a project valued at \$250,000 or less; or ten percent (10%) higher than the lowest bid on a project valued higher than \$250,000, provided that the overage shall not exceed \$100,000 in total.
- D. The Commission may waive the provisions of this Section 6, and enact a separate ranking system, if application of this Section 6 would compromise, limit, or otherwise negatively affect the Tribe's ability to (1) maintain reasonableness of price; (2) assure the efficient expenditure of contract funds; or (3) comply with any applicable Tribal or federal laws and regulations, or when other circumstances exist that would support a comparable waiver under Section 7 of this Ordinance.

Section 7. Waiver of Preference

The Commission may choose to make a recommendation to Council to waive the hiring preference established by this Ordinance, or to substitute an alternative preference in its place. Commission members may not participate in employment decisions related to themselves or immediate family members, including waivers of preference in hiring, or the exertion of influence or favoritism to pressure other Commission members or supervisors to affect decisions regarding application or waiver of preference that may relate to the employment of a Commission member or immediate family members.

A waiver or substitution must be supported by a finding that it:

1. Was made in good faith upon recommendation from the Commission or an independent determination of necessity by the Council.
2. Was in the Tribe's best interests.
3. Was made in response to circumstances requiring such waiver or substitution in a particular project or endeavor.
4. Would not unfairly discriminate against any Tribal member, Alaska Native, American Indian, or employer.
5. The Commission deems it necessary to eradicate the deplorable rate of poverty, eliminate discrimination, and to remove the historical barriers imposed upon Tribal members, Alaska Natives and American Indians.

Immediate family shall have the same meaning given it in the Tribal Constitution Art. V, Sec. 6, as follows: Immediate family means whether by blood or adoption by legal means: a father, mother, brother, sister, spouse, son, or daughter.

Section 8. Fees

The Commission shall assess a TERO operational fee on covered entities.

- A. The TERO Commission shall assess a fee equal to 3% of the total gross contract price, on all contracts in the sum of \$5,000.00 or more where the majority of the work under the contract is to be performed within the lands and territories of Kenaitze Indian Tribe. The fee shall be assessed on the entity receiving the contract award. Where a construction or other type of contract involves subcontracting, the entity acting as prime contractor or awarding the subcontracts shall be responsible for paying all fees, including those attributable to the subcontractors. The fee shall be due in full prior to commencement of any work under the contract. However, where good cause is shown, the Council, may authorize a covered employer to pay and said fee in installments over the course of the contract.
- B. Kenaitze Indian Tribe covered business enterprises shall be exempt from TERO fees. Where a construction or other contract includes subcontracts with certified Kenaitze

Indian Tribe enterprises, the amount of the Kenaitze Indian Tribe business enterprise subcontracts shall be subtracted from the total price before calculating the TERO fee.

- C. Such fees shall be used for purposes including, but not limited to, operational costs and program services; employee recruiting, referrals, and screening; job counseling; orientations; employee supportive services; compliance; charge processing; investigations; and education and community awareness concerning employment.
- D. Covered entities will pay fees directly to the Tribe for the TERO Fund.

Section 9. Complaints

Any Tribal member or Alaska Native or American Indian employee or applicant, who believes that he or she has been discriminated against by a covered entity because he or she is a Tribal member, other Alaska Native, or American Indian, or who believes that a violation of this Ordinance has occurred, may file a written allegation of that violation with the Commission. The filer shall be responsible for providing the Commission with sufficient evidence of the alleged violation to allow for an appropriate investigation. Upon the Commission's own allegation or upon written allegation of a violation of the Ordinance, the Commission shall notify the Council, Executive Director and Legal, and shall initiate an investigation of the alleged violation. The Commission shall establish procedural rules for such investigations and resolution of violations.

Section 10. Sovereign Immunity

Nothing in this Ordinance shall waive the sovereign immunity of the Tribe, Council members, the Commissioners, Tribal employees, or any other tribal agents responsible for the implementation and enforcement of this Ordinance. The Complaint provisions of this Ordinance shall not be construed as a waiver of sovereign immunity, or as authority for a claim for money damages, or specific performance against the Tribe. Nothing in this Ordinance shall be construed as creating a private right of action.


The Tribal Council in its sole discretion may amend or rescind this Ordinance in whole, or in part at any time without notice.

CERTIFICATION

Adopted this 2 day of August , 2019, by a vote 5 yeas and 0 nays
 0 abstentions, and 1 absent.



**Wayne D. Wilson, Jr. Tribal Chairperson
Kenaitze Indian Tribe**



**Diana L. Zirul, Tribal Secretary
Kenaitze Indian Tribe**