

NINTH LEGISLATURE  
OF THE  
CHEYENNE AND ARAPAHO TRIBES  
8<sup>th</sup> REGULAR SESSION  
AUGUST 13, 2022  
LCR, CONCHO, OK

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**RESOLUTION:** A Resolution to Amend the Cheyenne and Arapaho Tribes TERO Ordinance.

**RESOLUTION NO:** 9L-RS-2022-08-003

**DATE INTRODUCED:** July 5, 2022

**SPONSOR:** Travis Ruiz, Arapaho District 3

**CO-SPONSOR:** Bruce Whiteman Jr., Cheyenne District 1

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**SUBJECT:** A Resolution to Amend the Cheyenne and Arapaho Tribes TERO Ordinance.

**WHEREAS:** The Cheyenne and Arapaho Tribes ("Tribes") are federally recognized Indian tribes, Organized under a Constitution approved by Tribal membership on April 4, 2006, and approved by the Secretary of the Interior; and

**WHEREAS:** Article VI, Section 5(a) and (c) in the Constitution provides that "Legislative power shall be vested in the Legislature" and "[t]he Legislature shall have the power to make laws and resolutions in accordance with the Constitution which are necessary and proper for the good of the Tribes"; and

**WHEREAS:** The Legislature has the Constitutional obligation and public responsibility to the Tribes to oversee the Tribes' operations in order to establish and promote justice, establish guidance and direction for the government and advance the general welfare of the Tribes; and

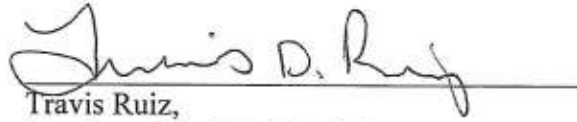
**WHEREAS:** Article VI, Section 5(a) of the Constitution provides that Legislative power shall reside with the Legislature; and

**WHEREAS:** Article VI, Section 5(a) of the Constitution requires "Laws and resolutions which have been enacted shall remain valid until amended or repealed"; and

**WHEREAS:** The Cheyenne and Arapaho Tribes TERO Ordinance is in need of an update in Order to reflect the current times and organization of the Tribes; and

**WHEREAS:** The Ninth Legislature of the Cheyenne and Arapaho Tribes recognizes the need to update the Tribes' TERO Ordinance to better guide the tribal government; and

**NOW THEREFORE BE IT RESOLVED**, that the Ninth Legislature of the Cheyenne and Arapaho Tribes, pursuant to its Constitutional authority, approves and hereby adopts the amendments made to the Tribes' TERO Ordinance, which are attached hereto.



Travis Ruiz,  
Speaker of the Ninth Legislature  
Cheyenne and Arapaho Tribes

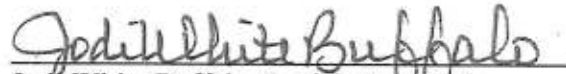


**ATTEST:**

I, Jodi White Buffalo, Legislative Clerk, hereby certify that the foregoing is a True and Accurate Copy of the Original Bill No. 9L-RS-2022-08-003 which was acted upon by the Legislature of the Cheyenne and Arapaho Tribes in the Ninth Legislature Regular Session, by a roll call vote on the 13th day of August 2022, by a vote.

**VOTE RECORD:**

DISTRICT	LEGISLATOR	YES	NO	ABSTAIN	ABSENT
A1	Diane Willis	✓			
A2	Kendricks Sleeper	✓			
A3	Travis Ruiz	✓			
A4	Rector Candy	✓			
C1	Bruce Whiteman Jr.	✓			
C2	George Woods	✓			
C3	Darrell Flyingman	✓			
C4	Byron Byrd	✓			
<b>TOTAL</b>		5			
Passes (X) Fails ( ) Tabled ( ) Allowed to Die ( ) No Action ( )					

  
Jodi White Buffalo, Legislative Clerk  
Ninth Legislature, Cheyenne and Arapaho Tribes



**ATTEST:**


Pursuant to Article VI, Section 7, subsection (a)(iv) of the Tribes Constitution reads in part: "All Bills passed by the Legislature shall be presented to the Governor for signature or veto. All laws shall take effect thirty days after signature by the Governor or veto override by the Legislature unless any Member of the Tribes submits to the Coordinator of the Office of Tribal Council a petition signed by at least one hundred fifty Members of the Tribal Council seeking to repeal the law or resolution at the next Tribal Council meeting. If the Tribal Council fails to repeal such law or resolution at the next Tribal Council where the matter has been properly placed on the agenda for the Tribal Council meeting, such law or resolution shall become effective immediately."

Pursuant to Article VII, Section 4, subsection (g) of the Tribes Constitution reads: "The Governor shall have the power to sign any enactment passed by the Legislature into law or to veto any enactment passed by the Legislature within ten days of passage with a written explanation of any objections; and if the Governor takes no action within ten days, then the enactment shall become law in accordance with this Constitution."

{  } APPROVED

{  } VETOED: Attachment \_\_\_\_; Governor's written explanation of any objections.

On the 13<sup>th</sup> day of August, 2022.

  
\_\_\_\_\_  
Reggie Wassana, Governor  
Cheyenne and Arapaho Tribes



**TRANSMITTAL OF DOCUMENTS:**

**From the Legislative Branch to the Office of Records Management**

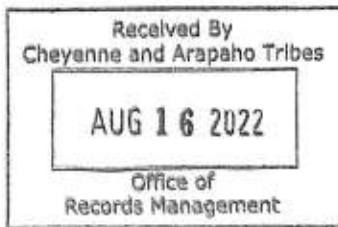
**ATTEST:**

Pursuant to Article VI, Section 7, subsection (a)(v), of the Tribes Constitution reads, "The Office of Records Management shall compile all Laws and Resolutions into a comprehensive Code in an orderly manner that shall be published annually."

Office of Records Management Staff, hereby certify that the foregoing is a True and Accurate Original Resolution No. 9L-RS-2022-08-003.

Space below is reserved for Stamp:

Received (Date) Office of Record Management



Signature: Cheryl Blind

Print Name: Cheryl Blind

Title: Director

Date: 8/16/22

Office of Records Management  
Department of Administration, Executive Branch  
Cheyenne and Arapaho Tribes



**CODIFICATION ACT FOR THE CHEYENNE AND ARAPAHO TRIBES  
CHEYENNE AND ARAPAHO TRIBAL CODE (CAC)  
TITLE 5 – PERSONNEL, EMPLOYMENT, AND LABOR  
SECTION 5.600 – CODIFICATION ACT**

**AMENDED BY LEGISLATURE: August 13, 2022**

**CITE AS: 5 CAC § 5.600**

**SUBJECT**

This Bill amends the TERO Ordinance for the Cheyenne and Arapaho Tribes.

**FINDINGS**

The Cheyenne and Arapaho Tribes are a federally recognized Indian tribe, organized under a Constitution approved by Tribal membership on April 4, 2006 and approved by the Secretary of the Interior; and

- (a) Article VI, Section 5(a) and (c) in the Constitution provides that “Legislative power shall be vested in the Legislature” and “[t]he Legislature shall have the power to make laws and resolutions in accordance with the Constitution which are necessary and proper for the good of the Tribes...Laws and resolutions which have been enacted shall remain valid until amended or repealed[;]” and
- (b) The Office of Records Management is created pursuant to Constitution Article VII, and the Office of Records Management “shall compile all laws and Resolutions into a comprehensive Code in an orderly manner that shall be published annually.” Constitution Article VI, Section 7(a)(v). The Legislature has deemed it necessary and proper to create a Codification Act to ensure the Office of Records Management has a clear and concise direction to maintain a comprehensive Code in an orderly manner.
- (c) The Cheyenne and Arapaho Tribes has the inherent sovereign power to form its government, to administer its own land, and to regulate the use of land within the Cheyenne and Arapaho Reservation.
- (d) The Cheyenne and Arapaho Tribes deem it essential to the orderly management, control, and enforcement to Tribal Employment Rights Office to adopt and to implement this Ordinance.

# SUBSTANTIAL PROVISIONS

The Legislature of the Cheyenne and Arapaho Tribes hereby amends the following  
TERO Ordinance FOR THE CHEYENNE AND ARAPAHO TRIBES

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## **CHAPTER 1. AUTHORITY AND DEFINITIONS**

### **§5.601 Authority**

- (a) The Cheyenne and Arapaho Tribes are duly recognized by the United States Secretary of the Interior as a self-governing, Sovereign Nation, that is a federally recognize Indian Tribe with all rights, privileges, and powers attended thereto as a sovereign government, and organized in accordance with Title 25 of the United States Code, Section 450, the “Indian Self-Determination and Education Assistance Act,” and Article XVII of the Tribe’s Constitution and By-Laws and Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), under an amended Constitution ratified on April, 2006 and approved by the Secretary of Interior on May 17, 2006; and
- (b) Article VI, Section 5, subsection (a) of the Constitution grants that the Legislative power shall be vested in the Legislature; and
- (c) Article VI, Section 5, subsection (a) of the Constitution further grants that the Legislature shall have the power to make laws and resolutions in accordance with the Constitution which are necessary and proper for the good of the Tribes; and
- (d) Article VI, Section 5, subsection (a) of the Constitution further grants that all actions by the Legislature shall be embodied in a written law or resolution; and
- (e) Article VI, Section 5, subsection (a) of the Constitution further grants that laws and resolutions which have been enacted shall remain valid until amended or repealed.

### **§5.602 Definitions**

- (a) “Executive Branch” shall mean the Office of the Governor and Lt. Governor as defined in the Cheyenne and Arapaho Tribes Constitution.
- (b) “Legislative Branch” shall mean the Members of the Legislature as defined in the Cheyenne and Arapaho Tribes Constitution.



- (c) “Department of Labor” shall mean the Department within the Executive Branch overseeing the TERO Program.
- (d) “TERO” shall mean the Tribal Employment Rights Office.
- (e) “TERO Officer” shall mean the Director or TERO staff.
- (f) “Project” shall mean any construction, alteration, renovation, maintenance, or repair of buildings or structures performed for the Cheyenne and Arapaho Tribes or its entities.
- (g) “Cheyenne and Arapaho Tribes” shall mean the officials and employees of the Cheyenne and Arapaho Tribes and its programs or commissions wherever located. “Cheyenne and Arapaho Tribes” shall mean the government of the Cheyenne and Arapaho Tribal Members as defined in the Tribes’ Constitution.
- (h) “Contractor” shall mean any person, company or other entity engaged in work with the Cheyenne and Arapaho Tribes, its entities or wholly-owned corporations. The term “contractor” includes Cheyenne and Arapaho Tribes, its entities and wholly-owned corporations, and includes contractors, and subcontractors thereof. This term shall not include federal, state, or county government agencies to the extent prohibited by federal or state law.
- (i) “Core crew” shall mean an owner of the firm, or an employee of a company who is in a supervisory or other key position such that the employer would face a serious financial damage or loss if that position was filled by a person who had not previously worked for the employer contractor or subcontractor.
- (j) “Lands” shall mean all trust lands under the jurisdiction of the Cheyenne and Arapaho Tribes, tribal or allotted as defined in the Tribes’ Constitution, and all other lands under the jurisdiction of the Cheyenne and Arapaho Tribes.
- (k) “Commerce” shall include all distributions, trade, traffic, communications, transportation, provision of services, manufacturing, production, agricultural production, building, mining, and energy production.
- (l) “Non-Compliance List” shall be a list of contractor/employers which have previously engaged in non-compliant behavior with contract provisions, rules, regulations, or laws. This term shall also include the “Non-Compliance List” from the Cheyenne and Arapaho Tribes Procurement Grants and Contracts Program.
- (m) “Employee” shall mean to include any employee or applicant for employment or former employee whose employment has ceased as a consequence of and/or in connection with a current labor practice. Any person employed for remuneration.

- (n) "Employee on lands under the jurisdiction of the Cheyenne and Arapaho Tribes" shall mean and include any employee in a supervisory, nonsupervisory, managerial, or non-managerial position who spends more than one-half of his/her working hours per pay period on lands under the jurisdiction of the Cheyenne and Arapaho Tribes.
- (o) "Employer" shall include, but not limited to any persons who engages in commerce through paid agents servants, or who is hired or contracts for services, upon tribal lands under the jurisdiction of the Cheyenne and Arapaho Tribes. The term "employer" includes any person acting as an agent, contractor, subcontractor, or any employer (directly or indirectly) but shall not include the United States or wholly owned government corporation, or any state or political subdivision thereof; but shall include independent contractors and subcontractors of the Cheyenne and Arapaho Tribes.
- (p) "Covered employer" shall mean any employer employing one or more employees who during any 20-day period, spend, cumulatively, 16 or more hours performing work within the exterior boundaries of the Reservation.
- (q) "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 the Ordinance's coverage over all employment and contract activities within the Tribe's jurisdiction, and the term shall be so interpreted by the Commission and the Courts.
- (r) "Indian" shall mean any member of a federally recognized Indian tribe
- (s) "Indian owned firm or entity" shall mean any commercial industrial, or other business activity which is owned by an Indian, or Indians, or other Indian-owned firm or entity provided that such Indian ownership constitutes 51% or more of the enterprise and ownership shall encompass active operation and control of the enterprise
- (t) "Indian Preference" shall mean that Indians residing on lands under the jurisdiction of the Cheyenne and Arapaho Tribes are given preference over nonresident Indians in employment and training.
- (u) "Non-resident Indian" shall mean any Indian who is not an Indian resident within the definition of Section 4(k) 'Lands.'
- (v) "Notice" as it is required to be given by the Tribal Employment Rights Officer, shall be sufficient as to unnamed parties in an action, all interested persons who are not parties to an action, and in all instances where a specific person is not addressed, if it is published and posted in a public place on the lands under the jurisdiction of the Cheyenne and Arapaho Tribes for not less than five (5) working

days and is on file in the office of the Employment Rights Officer and open public inspection.

- (w) “Person” shall mean both natural persons and artificial persons including but not limited to, corporations, trusts, partnerships, unions, agents, societies, sole proprietorships, estates or descendants, associations, legal representatives, mutual companies, joint stock companies, unincorporated organizations, and trustees.
- (x) “Resident Indian” means any Indian person who, has resided on lands under the jurisdiction of the Cheyenne and Arapaho Tribes for not less than the preceding sixty (60) days.
- (y) “Union” or “labor union” shall mean any organization of any kind, any agency, or employee representation committee or plans of action, in which employees participate, and exists for the purpose (in whole or in part) of dealing with employers concerning grievances, labor disputes, wage, rate of pay, hours of employment, or other conditions of work.

## **CHAPTER 2. SHORT TITLE**

### **§5.603 Short Title**

This Ordinance shall be cited as the “Cheyenne and Arapaho Tribal Employment Rights Ordinance.”

## **CHAPTER 3. PURPOSE**

### **§5.604 Purpose**

The purpose of this ordinance is to assist and require fair employment of Indians and to prevent discrimination against Indians in the employment practices of employers who are doing business with the Cheyenne and Arapaho Tribes on tribal lands.

## **CHAPTER 4. Employment and Training**

### **§5.605 Employment and Training**

- (a) The Cheyenne and Arapaho Tribes believe that it is important to create employment and training opportunities for the Cheyenne and Arapaho people and other tribes. An integral part of attaining this goal is by structuring employment and training opportunities on the Cheyenne and Arapaho reservation to provide for the hiring of Indians.

- (b) Nothing contained in the Code shall violate or undermine federal requirements on Equal Employment Opportunity, namely Title VII of the 1964 Civil Rights Act, and the Office of Federal Contract Compliance Program (OFCCP) or Executive Order 11246. Title VII prohibits preferential employment on the basis of race, color, sex, or national origin. However, Title VII contains special exceptions which makes Indian-preference permissible. Section 703.10 states, “Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to a publicly announced employment practice of such business is given to any individual because he is an Indian.”
- (c) The Bureau of Indian Affairs in its regulations implementing the Indian Self-Determination Act proves for Indian preference in employment and all contracts negotiated pursuant to the Act. See 25 USC 3271.44.
- (d) The U.S. Congress justifies tribal power to impose preferential requirements on the grounds that: “This exemption is consistent with the Federal Government’s policy of encouraging Indian employment and with the special legal position of Indian.”
- (e) In January, 1977, the OFCCP issued regulations which state: “Work on or near Indian Reservations.” It shall not be a violation of the equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near Indian reservations would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors and subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with the other requirements contained in the Section.

## **CHAPTER 5. Fair Labor Standard Policy**

### **§5.606 Fair Labor Standard Policy**

(Reserved)

## **CHAPTER 6. Tribal Employment Rights Office**

### **§5.607 Tribal Employment Rights Office**

The Cheyenne and Arapaho Tribal Employment Rights Office is hereby established with the full supervisory authority to vest in a Tribal Employment Right Officer, who shall uphold the Ordinance in an independent capacity of the Tribes, reporting directly to the Tribes Department of Labor.

(a) The Cheyenne and Arapaho Department of Labor shall employ a Tribal Employment Rights Officer. The Officer shall have the authority to:

1. Hire staff.
2. Expend funds appropriated by the Legislature
3. To obtain and expend funding from federal, state, or other sources to carry out the purpose of the office subject to approval of the Executive Director of Labor
4. Administer the policies, powers, and duties prescribed in the Ordinance as delegated by the Executive Director of Labor to Section 6a.
5. Hold hearings for the purpose of taking evidence, obtaining witnesses, and acquiring documentation.
6. Require employers to submit labor census reports identifying tribal, other tribes, or non-Indian employee counts.
7. Issue, cease, and desist orders.
8. Take other actions as are necessary for the fair and vigorous implementation of this Ordinance.
9. Network with labor programs to assist Indians in obtaining and retaining employment.
10. To require employers to give preference to Tribal and other Indian-owned businesses in the award of contracts and subcontracts.

(b) The power delegated to the TERO Officer shall be enforced by means of:

1. cease and desist order
2. imposition of fines and
3. posting notices, not in consistent with 25 USC 1301, et.seq.

(c) Scope of Indian Preference:

All employers are hereby required to give preference to resident Indians in hiring, promotion, training, pay, benefits, and other terms and conditions of employment. All employers are further required to give preference to Indians in subcontracting. Employers shall comply with the rules, regulations, and guidelines of the

Cheyenne and Arapaho Tribes in regard to its Indian preference requirements.

(d) Compliance by Unions:

Every union with a collective bargaining agreement with an employer must file a written agreement stating adherence to the rules, regulations, and orders of the TERO Commission. Until such agreement is filed with the TERO Officer and the TERO Commission, the employer may not commence work within the Cheyenne and Arapaho Tribes' lands.

(e) Content of Union Agreements:

Every union agreement with an employer or filed with the TERO Commission must provide:

1. Indian Preference.

The union will give preference to Indians in job referrals regardless of which union referral list they are on.

2. Cooperation with the TERO Commission

The union will cooperate with the TERO Commission in all respects and assist in the compliance with and enforcement of this ordinance and related regulations and agreements.

3. Registration.

The union will establish a mechanism allowing Indians to register for job referral lists by telephone, online, email, or mail.

4. Training Programs.

The union will establish a journeyman upgrade and advance apprenticeship program.

5. Temporary Work Permits.

The union will grant temporary work permits to Indians who do not wish to join the union.

(f) Recognition of Unions.

Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities within the Cheyenne and Arapaho Tribes.

(g) Burden of Proof.

In any hearing before the Commission where the issue is in compliance by an employer of any of the requirements and/or provisions of the foregoing subsections of Section 5, the burden of proof shall be on the employer rather than on the employee or other complainant to show said compliance.

(h) Model Union Agreements.

The Commission will provide a model union agreement for use by all unions who have a collective bargaining agreement with any employer.

(i) Implementation.

In implementing the requirements of this action, the TERO Officer is authorized to:

1. Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire by craft or skill level or at the TERO Officer's discretion to set percentage hiring goals by craft or skill level for specified employment fields.
2. Require covered employers to establish or participate in such training programs as the Officer deems necessary to increase the pool of Indians eligible for employment on or off the Cheyenne and Arapaho boundaries.
3. Establish a TERO Job Bank and impose a requirement that no covered employer may hire a non-Indian until the TERO Officer has certified that no qualified Indian is available to fill the vacancy.
4. Prohibit any covered employer from using job qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity.
5. Enter into non-monetary agreements, with approval of the Executive Office, with unions to ensure union compliance with the Ordinance.
6. Require employers to give preference in the award of subcontractors to tribal and other Indian owned firms and entities.

7. Establish programs subject to the Department of Labor's approval, in conjunction with the Tribal and Federal Offices, to provide counseling and support to Indian workers, and to assist them to retain employment. Employers shall be required to participate in and/or cooperate with such support and counseling programs.
8. To promulgate such rules and regulations and guidelines consistent with the policies states in the Ordinance and further subject to the provisions set forth in Section (J).

(j) Regulations.

In issuing rules, regulations, and guidelines, the TERO Officer is guided by the policy and standards enumerated through this Ordinance, and such further resolution as the Commission may issue. The TERO Officer shall ensure that all rules, regulations, and guidelines that are issued provide notice to the public and further that all rules, regulations, and guidelines accord affected parties' rights to due process of law set forth in this ordinance.

Except in cases where the TERO Officer has determined that an emergency situation exists, the following minimal procedures in issuing all rules, regulations, and guidelines are listed below:

1. All proposed rules, regulations, and guidelines shall be posted in a public place on the lands under the jurisdiction of the Cheyenne and Arapaho Tribes and in a file in the Office of Tribal Employment Rights within the Department of Labor which is open for public inspection for not less than twenty (20) days.
2. The TERO Officer shall accept written comment from any interested parties during the twenty (20) days. The TERO Officer shall discuss in the preamble to such final rules raised by the comments, if any.
3. The final rules, regulations, and guidelines shall go into effect upon being posted in a public place on the lands under the jurisdiction of the Cheyenne and Arapaho Tribes, and in a file in the Department of Records which is open for public inspection.

(k) Employment Rights Fee

An Employment Compliance fee charged to raise revenue for the operation of the Cheyenne and Arapaho Tribal Employment Rights Office is hereby authorized and to be imposed by the TERO Office as follows:

1. Every covered construction contractor with a contract of \$10,000 or more on the lands under the jurisdiction of the Cheyenne and Arapaho Tribes or an



agency, thereof, shall pay a one-time fee of two (2) percent of the total amount (gross contract price) per each contract.

2. Every covered employer, other than construction contractors with three or more employees on lands under the jurisdiction of the Cheyenne and Arapaho Tribes or gross sales of \$10,000 or more regardless of sources, shall pay an annual fee of 2% of their employee's annual payroll.
3. The TERO Office is authorized to develop regulations allowing for the rebate of some or all fees paid by an employer according to the extent that any employer is found to be in compliance with the requirements imposed by this chapter and is making a substantial effort to employ, train, and promote Indians.
4. Such fee shall be paid to the Cheyenne and Arapaho Tribes and shall be placed in a special account to be used to meet operational costs of the office. The TERO Officer shall be responsible for collecting said fees and is authorized to establish such rules and regulations as are necessary to insure a fair and timely collection process. An employer or contractor who fails to pay the required fee shall be subject to the remedial actions provided for in this ordinance.

(l) Contractors and Subcontractors.

The Indian Preference requirements contained in this Ordinance and all regulations hereunder shall be binding on all contractors and subcontractors of covered employers, regardless of tribe, and shall be deemed a part of all resulting subcontract specifications. The employer will be subject to penalties provided herein for violation of this ordinance if the contractor or subcontractor fails to comply.

(m) Religious Freedom

Employers shall make a reasonable accommodation to the religious beliefs of Indian workers in accordance with the guidelines to be developed by the Cheyenne and Arapaho TERO Office.

(n) Delegation of Authority.

The Cheyenne and Arapaho Tribes shall delegate such authority to the Tribal Employment Rights Officer as is convenient or necessary for the efficient administration of the Ordinance to write rules, regulations, or guidelines and submit them to the Commission.

## **CHAPTER 7. Employment Rights Commission**

### **§5.608 Employment Rights Commission**

(a) Duties of the Commission

As part of this Ordinance, the Tribes hereby establishes the Tribal Employment Rights Commission (Commission) to review and to issue rules and/or orders pertaining to appeals to the TERO Officer's decision by aggrieved parties.

(b) Members.

The Commission shall consist of a three (3) member administrative review board to be appointed by the Governor and approved by the Legislature. All decisions of this Commission shall be final. The Commission shall develop rules of practice and procedure defining its process and deadlines that applies to the hearing proceedings which will uphold this Ordinance.

## **CHAPTER 8. Complaints and Hearing Procedures**

### **§5.609 Complaints and Hearing Procedures**

a. Notice.

If a hearing is requested by the Commission, an individual, an employer, or union pursuant to this section, a written notice of hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented at the hearing, to present testimony or witnesses and other evidence, and to be represented by the counsel at their expense.

b. Commission Complaint Procedure.

If the Commission has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this Ordinance or any rules, regulations, or orders of the Commission, it may file a complaint and notify such party of the alleged violations. The Commission will attempt to achieve an informal settlement of the matter; but if an informal settlement cannot be achieved the Commission may request a hearing upon the matter pursuant of Section 5.609.

(c) Individual Complaint Procedure

If any Indian believes that an employer has failed to comply with this Ordinance or rules, regulations, or orders of the Commission, or believes he has been discriminated against by an employer because he is an Indian, he may file a complaint with the Commission specifying the alleged violation. Upon receipt of the complaint, the Commission shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or Commission may request a hearing upon the matter pursuant to Section 5.609.

If an employer fires, lays off, or penalizes in any manner an Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in Section 5.610 of this Ordinance.

(d) Employer or Union Complaint Procedure.

If an employer or Union believes that any provision of this Ordinance or any rules, regulations, or order of the Commission is illegal or erroneous, it may file a complaint with the Commission specifying the alleged illegality or error. Upon receipt of the complaint, the Commission shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement of the matter cannot be achieved, the employer may appeal to the tribal court pursuant to Section 5.611.

(e) Hearing Procedure.

Hearings shall be governed by following the rules or procedures:

1. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.
2. The Commission may have the advice and assistance of counsel at the hearing provided by the Tribes.
3. The Chairman of the Commission or the Vice-Chairman shall preside and shall proceed to ascertain all facts in a reasonable and orderly fashion.
4. The hearing may be adjourned, postponed, and continued at the discretion of the Commission.
5. At the final close of the hearings, the Commission may take immediate action or take the matter under advisement.
6. The TERO Officer shall notify all parties within thirty (30) days after the last hearing of its decision in the matter.

## **CHAPTER 9. Penalties for Violations**

### **§5.610 Penalties for Violations**

Any employer, contractor, or union who violates this Ordinance or rules, regulations, or orders of the Employment Rights Office of the Cheyenne and Arapaho Tribes or fails to obtain necessary agreements from its signatory unions shall be subject to penalties for such violations. Also, the Tribal Employment Rights Office shall take remedial action to correct the problem. These penalties include but are not limited to:

- (a) Denial of right to commence or to continue business within the lawful jurisdiction of the Cheyenne and Arapaho Tribes
- (b) Suspension of operations within the lawful jurisdiction of the Tribes
- (c) Payment of back-pay and damages to compensate any injured party.
- (d) Issuance of an order to summarily remove employees hired in violation of this Ordinance or rules, regulations, and orders of the Commission.
- (e) Imposition of monetary civil penalties.
- (f) Prohibition from engaging in future operations within the Cheyenne and Arapaho Tribes
- (g) Issuance of an order making any other provision deemed by the TERO Officer necessary to alleviate, eliminate, or compensate for any violation. The maximum penalty which may be imposed is \$5000.00 for each violation.
- (h) Initiate a petition for the issuance of removal and related order in the Cheyenne and Arapaho Tribal Court.

## **CHAPTER 10. Appeals**

### **§5.611 Appeals**

Any party to a hearing shall have the right to appeal any decision of the Commission to the Cheyenne and Arapaho Tribal Court pursuant to the tribal constitution.

## **CHAPTER 11. Publication of Ordinance**

### **§5.612 Publication of Ordinance**

(a)The Commission shall notify all employers of this Ordinance and their obligations to comply. All bid announcements issued by any Tribal, Federal, State, or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and rules, regulations, and orders of the Commission.

(b) All Tribal agencies responsible for issuing business permits for activities within the Cheyenne and Arapaho Tribes or otherwise engaged in activities involving contact with prospective employers within the Cheyenne and Arapaho Tribes service area shall be responsible for advising such prospective employers of their obligations under this Ordinance and rules, regulations, and orders of the Commission.

(c )The TERO Officer shall send a copy of this Ordinance to every employer doing business with the Cheyenne and Arapaho Tribes.

## **CHAPTER 12. Compliance Plan**

### **§5.613 Compliance Plan**

As of the effective date of this ordinance, no new employer may do business with the Cheyenne and Arapaho Tribes until it has consulted with the Commission for meeting its obligation under this Ordinance.

## **CHAPTER 13. Reporting On-Site Inspection**

### **§5.614 Reporting On-Site Inspection**

Employers shall submit reports and other information requested by the Commission. The TERO Officer and its representative shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Ordinance and rules, regulations, and orders of the Commission. The TERO Officer shall have the right to inspect and copy all relevant records of any employer or any signatory union or subcontractor and shall have the right to speak to workers and conduct investigations on job sites.

## **CHAPTER 14. Coverage**

### **§5.615 Coverage**

This Ordinance shall be binding on all covered employers whether or not they have previously operated on the lands under the jurisdiction of the Cheyenne and Arapaho Tribes and whether or not they are doing so at the time of the implementation of this section of the ordinance. All employers are required to give preference to Indians in hiring, promotion, training, and all other aspects of employment, contracting, or subcontracting and must comply with this Ordinance and rules, regulations, and orders of the Commission.

## **CHAPTER 15. Severability**

### **§5.616 Severability**

If any portion of this ordinance shall be ruled invalid by a court of competent jurisdiction that portion shall cease to be operative but the remainder of the ordinance shall continue in full force and effect.

## **CHAPTER 16. Amendments**

### **§5.617 Amendments**

This Ordinance may be amended by the Cheyenne and Arapaho Legislative Branch upon recommendation from the Tribal Employment Rights Office. Action must be taken by the resolution of the Cheyenne and Arapaho Legislature.

## **CHAPTER 17. Effective Date**

### **§5.618 Effective Date**

This Ordinance shall become effective immediately after passage by the Legislature.