Pawnee Nation Tribal Employment Rights Act

TERO Ordinance

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Pawnee Nation of Oklahoma

LAW (ORDINANCE) NO. 95-49

AN ORDINANCE AMENDING THE CODE OF LAWS OF THE PAWNEE NATION OF OKLAHOMA TO ADD A NEW CHAPTER ENTITLED "PAWNEE NATION TRIBAL EMPLOYMENT RIGHTS ACT".

BE IT ENACTED BY THE BUSINESS COUNCIL OF THE PAWNEE NATION OF OKLAHOMA THAT THE CODE OF LAWS OF THE PAWNEE NATION OF OKLAHOMA IS HEREBY AMENDED TO ADD A NEW CHAPTER AS FOLLOWS:

PAWNEE NATION TRIBAL EMPLOYMENT RIGHTS ACT

Section 01. Title.

This law shall be entitled the "Pawnee Nation Tribal Employment Rights Act."

Section 02. Findings and Purpose.

(a) Findings: The Business Council of the Pawnee Nation hereby make the following findings regarding the need for and purpose of the Pawnee Nation Tribal Employment Rights Act:

(1) Jobs, subcontracts and contracts in the private sector within the territorial jurisdiction of the Pawnee Nation are important resources for Indian People and Indians must use their rights to obtain their share of such opportunities as they become available;

(2) Indians have unique and special employment, subcontract and contract rights, including Congressional recognition of the power of Indian tribes to impose preferential requirements on the grounds that the exemption is consistent with the federal government's policy of encouraging Indian employment and with the special legal position of Indians;

(3) Indians are entitled to the protection of federal laws concerning prevention of employment discrimination, and the Pawnee Nation can and should plan a role in enforcement of such laws;

(4) The Pawnee Nation has the inherent sovereign power to pass laws to implement and enforce special employment rights on behalf of Indians; and,

(5) The Business Council of the Pawnee Nation recognizes that it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers (Indians).

(b) Purpose: The purpose of the Pawnee Nation Tribal Employment Rights Act is to assist in and require the fair employment of Indians, to create employment and training opportunities for members of the Pawnee Nation and other Indians, and to prevent discrimination against Indians in the employment practices of employers who are conducting business within the territorial jurisdiction of the Pawnee Nation of Oklahoma as defined by Section 03 (t) herein.

Section 03. Definitions.

Terms contained in the Pawnee Nation Tribal Employment Rights Act shall be defined as follows:

(a) "Commerce" shall include all trade, traffic, distribution, communication, transportation, provision of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining and energy production.

(b) "Commission" shall mean the Pawnee Nation Tribal Employment Rights Commission.

(c) "Director" means the Director of the Pawnee Nation Tribal Employment Rights Office.

(d) "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.

(e) "Employee" shall mean any employee, any applicant for employment, and any former employee whose employment has ceased as a consequence for or in connection with a current labor dispute or because of unfair labor practices. The term "employee" shall not include any individual employed in the domestic services of any family or person at his home, or any individual employed by any other person who is not an employer as herein defined.

(f) Covered Employer shall mean any person, partnership, Corporation or other entity that employs, for wages, two or more employees.

(g) "Employment Rights Office" shall mean the Pawnee Nation Tribal Employment Rights Office.

(h) "Entity" means any person, partnership, corporation, joint venture, government, Government Commercial 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 applicability to all employment and contractual activities within the Nation's jurisdiction, and the term shall be so interpreted by the Commission and the Courts

(i) "Government Commercial Enterprise" means any activity by the Pawnee Nation or of the state government that is not a traditional government function as defined by the Internal Revenue Service

(j) "Immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, half-sister, or brother, sister, son, daughter, mother, or father by adoption.

(k) "Indian"/"Native American" means any member of a federally recognized Indian tribe.

(l) "Indian owned firm or entity" means any commercial, industrial, or other business, which is owned by an Indian or Indians, or other Indian owned firm or entity, provided that such Indian ownership constitutes not less than fifty-one percent (51%) of the enterprise.

(m) "Indian resident(s) on land within the territorial jurisdiction of the Pawnee Nation" or "resident Indian" shall mean any Indian person who has resided on lands within the territorial jurisdiction of the Pawnee Nation for not less than sixty (60) days preceding the initial date any contract for work on land within the territorial jurisdiction of the Nation or the initial date any employment offers are made by any employer permanently located on lands within the territorial jurisdiction of the Pawnee Nation.

(n) "Local Indian"/"Local Native American" means any member of a federally recognized tribe who resides within the territorial jurisdiction of the Pawnee Nation.

(o) "Nation" means the Pawnee Nation of Oklahoma.

(p) "Pawnee Nation Court" means the Tribal Court as defined in the Code of Laws of the Pawnee Nation.

(q) "Pawnee Nation Police" means the Police Department as defined in the Code of Laws of the Pawnee Nation.

(r) "Non-resident Indian"/"Non-resident Native American" means any Indian who is not a resident Indian as defined by Section 03 (m) herein.

(s) "PNTERO" means the Pawnee Nation Tribal Employment Rights Office.

(t) "Territorial jurisdiction" means the property held in trust by the United States of America on behalf of the Pawnee Nation of Oklahoma; property owned in fee by the Pawnee Nation of Oklahoma; restricted and trust allotments; and dependent Indian communities. The territorial jurisdiction of the Pawnee Nation of Oklahoma shall also extend to all property located outside said boundaries owned in fee by the Pawnee Nation or held in trust by the United States on behalf of the Pawnee Nation

(u) "Union" or "labor union" means any organization or agency with a collective bargaining agreement with an employer.

Section 04. Establishment of Pawnee Nation Tribal Employment Rights Office.

The Pawnee Nation Tribal Employment Rights Office (PNTERO) is hereby established and provided full supervisory authority over implementation of the Pawnee Nation Tribal Employment Rights Act shall vest in said office. The Pawnee Nation Tribal Employment Rights Office shall be administered by a Director, and shall report directly to the PNTERO Commission.

(a) The PNTERO Commission will develop and provide oversight of TERO enterprises and/or business projects.

Section 05. Director Authority.

The Director of the Pawnee Nation Tribal Employment Rights Office shall have the authority to:

(a) Hire Staff;

(b) Expend funds appropriated by the Business Council and funds collected from employers as provided herein;

(c) Obtain and expend funding from federal, state or other sources to carry out the purpose of the office subject to approval of the Pawnee Business Council;

(d) Administer the policies, powers, and duties prescribed in the Pawnee Nation Tribal Employment Rights Act;

(e) Require employers to submit reports and certified payrolls and take all actions deemed necessary by the PNTERO Director for the fair and vigorous implementation of this PNTERO Ordinance;

(f) Establish programs subject to the Pawnee Business Council's approval, in conjunction with federal and tribal offices, to provide counseling and support to Indian workers, in order to assist them in retaining employment. Employers shall be required to participate in and to cooperate with such support and counseling programs;

(g) Enforce the provisions of the Pawnee Nation Tribal Employment Rights Act and enforce regulations adopted pursuant to Section 08 herein by issuance of cease and desist orders, impositions of fines and posting notices, provided such actions are not inconsistent with 25 USC Section 1301, et.seq;

(h) Take other actions as are necessary for the fair and vigorous implementation of the Pawnee Nation Tribal Employment Rights Act;

(i) Impose up to 100% Indian hiring goals and timetables specifying the number of Indians the employer is hiring by craft and skill level;

(j) Require that employers operating a business within the jurisdiction of the Pawnee Nation to establish or participate in such job-related training programs as deemed necessary to increase the pool of Indians eligible for employment on the Pawnee Nation jurisdiction;

(k) Prohibit employers from using job qualification criteria or personnel requirements that unreasonably bar Indians from employment within the jurisdiction of the Pawnee Nation;

(l) Enter into agreements with unions and others to ensure compliance with this Ordinance and a continued and progressive recruitment in apprenticeship and journeyman level programs, such agreements will not constitute recognition or endorsement of any union;

(m) Require employers to give preference to certified tribal and other Indian owned businesses in the award of contracts and subcontracts; and

(n) Cause to be shutdown any operation where the contractor or sub-contractor fails to comply with any provision of this Ordinance.

Section 06. Pawnee Nation Tribal Employment Rights Commission

(a) Establishment of Pawnee Nation Tribal Employment Rights Commission. The Pawnee Nation Tribal Employment Rights Commission is hereby established.

(b) Members. The Commission shall consist of a five (5)-member administrative review board that shall be appointed by the President of the Pawnee Business Council subject to confirmation by the Business Council.

(1.) TERMS OF OFFICE: The Commissioners are appointed, to serve a three year term ending on December 31, after their third year of being on the Commission. The terms of each Commissioner shall be staggered terms in relation to other Commissioners. The Pawnee Business Council shall have the authority to remove a Commissioner for cause prior to expiration date of the Commissioners term.

(2.) ELECTIONS AND APPOINTMENTS: The Chairperson and the Secretary shall be elected at the first Annual Board Meeting of the Commissioners from members of the Board of Commissioners. The elected officer shall hold office for one (1) year or until their successors are elected and qualified. In the case of absence or incapacity of both, the Chair and the Secretary, the remaining Commissioners may elect a Acting Chair to serve during the period of absence or incapacity of the Chair and Secretary.

(3.) CHAIRMAN: The Chairman shall preside at all meetings of the Pawnee Nation Tribal Employment Rights Commission of the Pawnee Tribe Board of Commissioners.

(4.) SECRETARY: The Secretary shall act as Recording Secretary at the meetings of the Board Meeting of the Commissioners and keep the records of the board meetings of Commissioners and record the proceedings plus shall keep a recording of the transaction.

(c) Qualifications. Any person is eligible to serve as a Commissioner of the Pawnee Nation Tribal Employment Rights Office, however, he/she is subject to the following conditions:

(1) Commissioner shall reside within reasonable distance from the Pawnee Nation of Oklahoma.

(d) Duties. The Commission has the full power, jurisdiction and authority to:

(1) Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this Ordinance pursuant to the provisions of Section 07 herein;

(2) Provide oversight of the Pawnee Nation Tribal Employment Rights Office;

(3) Administer oaths, conduct hearings, and by subpoena, to require witnesses to attend hearings and to produce such records and other documents as deemed necessary by the Commission to fully ascertain facts related to hearings;

(4) Review and issue rulings and orders pertaining to appeals of decisions of the Pawnee Nation Tribal Employment Rights Office aggrieved parties;

(5) To examine, under oath, either orally or in writing, any person with respect to any matter related to this Ordinance;

(6) Petition the Nation's Tribal Court for orders as necessary and appropriate to enforce the decisions of the Commission or Director and any sanctions imposed by them; and

(7) To exercise all other authority delegated to or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any provisions of the PNTERO Ordinance.

(8) The PNTERO commission shall implement any program deemed necessary to advance the employment opportunities of Pawnee Members. This will consist of forming Tribal TERO work groups to operate as small businesses within the community.

(9) Shall develop Tribal business entities and/or business enterprises.

(e) Quorum. A majority of three (3) commissioners 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.

(f) Recusal of Commission Members.

(1) No member of the Commission shall participate in any action or decision by the Commission directly involving himself, or a member of his immediate family, or any person, business or other entity of which he or a member of his immediate family is an employee, or in which he or a member of his immediate family has a substantial ownership contractual relationship.

(2) Nothing in this section shall preclude a Commissioner from participating in any action or decision by the Commission which

generally affects a class of person, regardless of whether the Commissioner or a member of his immediate family is a member of the affected class or affects the tribe, a tribal enterprise, or a person or entity in a contractual relationship with the Nation or a tribal enterprise, regardless of whether the Commissioner is a member of the tribe.

(3) A Commissioner may voluntarily excuse himself and decline to participate in any action or decision by the Commission that the Commissioner, in his discretion, believes that he cannot act fairly or without bias or that there would be an appearance that he cannot act fairly or without bias.

(g) Mileage and Stipends. Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, mileage and stipend payments as are in effect for members of the Commissions of the Tribe.

Section 07. Regulations; Promulgation.

The Commission, assisted by the Employment Rights Office, shall promulgate any rules and regulations necessary for implementation of the Pawnee Nation Tribal Employment Rights Act and consistent with the provisions of said act and other applicable laws of the Nation, provided that the Pawnee Nation Tribal Employment Rights Commission approves said rules and regulations. The Commission shall insure 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. Except in cases where the Commission has determined that an emergency situation exists, the Commission shall follow the following minimal procedures in issuing all rules, regulations, and guidelines:

(a) Notice of Proposed Regulations. All proposed rules, regulations, and guidelines shall be sent to the Pawnee Business Council for approval after the comment period has closed, All proposed rules, regulations, and guidelines shall be posted in at least two public places within the territorial jurisdiction of the Pawnee Nation, and shall be maintained in the Pawnee Nation Tribal Employment Rights Office and made available for public inspection for not less than twenty (20) days from the date the notice was mailed to the Pawnee Business Council.

(b) Comment Period. The Pawnee Nation Tribal Employment Rights Commission shall accept comments from any interested parties during the twenty (20) day notice period required in Section 07 (a) herein.

(c) Finalization. The Pawnee Nation Tribal Employment Rights Commission shall prepare and approve final rules, regulations and guidelines following the comment period, after reviewing any comments made. The preamble to such

final rules, regulations and guidelines shall state the major issues raised by comments, if any.

(d) Effective Date of Regulations. Following Commission approval of the final rules, regulations and guidelines, said rules, regulations and guidelines shall be posted in a public place within the territorial jurisdiction of the Pawnee Nation, and shall be placed in a file in the Pawnee Nation Tribal Employment Rights Office, which shall be open to public inspection.

Section 08. Indian Preference in Employment.

All covered employers, for all employment occurring within the territorial jurisdiction of the Pawnee Nation, are hereby required to give "Indian Preference" to qualified Indians, in all hiring, promotion, training, pay, benefits, and other terms and conditions of employment. Employers shall comply with all rules, regulations, and guidelines applicable to Indian preference and approved by the Pawnee Nation Tribal Employment Rights Commission. The Indian Preference requirements contained herein shall not apply to any direct employment by the Nation or by federal, state or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

(a) Order of Preference: The following employment preference is established.
(b) In General: Whenever an employer or union would be required by any provision in this Ordinance to give preference in hiring or contracting, such preference shall be given to the following persons in the following enumerated order:
    (1) Members of the Pawnee Nation
    (2) Indian Spouses of members of the Pawnee Nation who contribute to the support of a Pawnee household.
    (3) Other Indians
(c) Exception: When prohibited by applicable Federal law, the above order of preference set out in subsection 08 (b) shall not apply. In such cases, preference shall be given in the following enumerated order:
    (1) Indians who are local residents
    (2) Other Indians
(d) Coverage: All employers are required to give preference to Indian employees in hiring, promotion, training, and all other aspects of employment, contracting, or subcontracting, and must comply with the Ordinance, rules, regulations and orders of the PNTERO Office and Commission.

Section 09. Indian Preference in Contracting.

All entities awarding contracts or subcontracts for supplies, services, labor and materials in a amount of **$5,000** or more where the majority of the work on the

contract or subcontract will occur within the territorial jurisdiction of the Nation, shall give preference in contracting and subcontracting to qualified entities that are certified by the commission as fifty-one percent (51%) or more Indian-owned and controlled, with a first preference to qualified entities that are fifty-one percent (51%) or more owned and controlled by local Indians. The requirements of Section 10 herein shall not apply to the award of contracts awarded directly by the Nation, by the federal or state government or their subdivision, but shall apply to any contracts awarded by any commercial enterprises of the Nation, even if said contracts must be submitted to the Nation's Business Council for approval. Tribal programs or divisions other than commercial enterprises shall not be required to comply with these requirements, but shall be required when submitting a contract to the Nation's Business Council for approval to indicate, as part of submission to the Council, the steps taken to award the contract to a local Indian contractor. The requirements of Section 08 herein shall apply to all subcontractors whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission, which is set for the specific obligation of such entities in regard to Indian preference in contracting and subcontracting. The commission shall establish a system for certifying firms as Indian preference and local Indian preference eligible.

Section 10. Indian Preference: Hiring Regulations.

The Commission shall promulgate regulations that impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft, skill level or which establishes percentage-hiring goals by crafts or skill level for specified employment fields.

Section 11. Training.

Employers, subject to the provisions of the Pawnee Nation Tribal Employment Rights Act herein, shall establish or participate in such training programs, as the Commission deems necessary to increase the pool of Indians eligible for employment within or outside the territorial jurisdiction of the Pawnee Nation.

Section 12. Hiring Hall.

The Pawnee Nation Tribal Employment Rights Office is authorized to establish a hiring hall or skills bank, and impose a requirement that no covered employer may hire a non-Indian until the Nation's hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with first preference in referral to local Indians. The PNTERO Office shall establish and administer a Tribal hiring hall to assist the employers in placing preferred (Indians) employees in job positions. An employer may recruit and hire workers from whatever sources are

available to them to achieve the _ same preference hiring goals, but is required to inform the PNTERO Office. The employer may not employ a non-local Indian or non-Indian until the employer has given the Pawnee Nation PNTERO Office 48 hours to locate and refer a qualified local or non-local Indian, whenever an opening is available.

Section 13. Job Qualifications.

No employer subject to the provisions of the Pawnee Nation Tribal Employment Rights Act shall use job qualification criteria or other personnel requirements that serve as barriers to Indian employment as a reason for non-compliance with Indian preference, unless the employer can demonstrate that such criteria or requirements are required by business necessity.

Section 14. Religious Freedom.

Employers shall make a reasonable accommodation to the religious beliefs of Indian workers in accordance with guidelines to be developed by the Pawnee Nation Tribal Employment Rights Office and approved by the Commission.

Section 15. Compliance of Act by Unions.

An employer, contractor or subcontractor having a collective bargaining agreement with one or more labor unions must obtain written agreement from said unions indicating that they will comply with this ordinance, and the rules, regulations and orders of the Pawnee Nation PNTERO Office. Until such agreement is filed with the Pawnee Nation PNTERO Office, the employer may not commence work within the territorial jurisdiction of the Pawnee Nation of Oklahoma. Every union agreement with an employer must be filed with the PNTERO Office and:

(a) No person shall be required, as a condition of employment or continuation of employment, to:
    1. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor union;
    2. Become or remain a member of a labor union;
    3. Pay dues, fees, assessments, or other charges of any kind or amount to a labor union;
    4. Be recommended, approved, referred, or cleared by or through a labor union.

(b) It shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for,

transferred to, or paid over to a labor union unless the employee has first authorized such deduction.

(c) The provisions of this section shall apply to all employment agreements entered into between the employer and PNTERO.

(d) Any person sustaining injury as a result of any violation or threatened violation of the provisions of this section shall be entitled to injunctive relief against any and all violators or persons threatening violation.

(e) Cooperation with the Commission. The union will cooperate with the Commission in all respects and assist in the compliance with, and enforcement of, the Pawnee Nation Tribal Employment Rights Act and related regulations and agreements.

(f) Training Programs. The union will establish a journeyman upgrade and advanced apprenticeship program. The union shall establish entry apprenticeship programs, advance apprenticeship program(s) and a journeyman level upgrade.

(g) 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 Pawnee Nation of Oklahoma. No union activities shall take place without prior approval of the Pawnee Nation Business Council.

(h) No Waiver of Sovereign Immunity. Nothing in this Ordinance is a waiver of the Pawnee Nation of Oklahoma sovereign immunity as against any person, agency, or governmental entity including, but not limited to, the Federal Office of Contract Compliance. Nothing in this Ordinance is a "consent to be sued" as defined by the Pawnee Nation Tribal Codes.

Section 16. Employment Rights Fee.

An Employment Rights Fee is necessary to raise revenue for the operation of the Pawnee Nation Tribal Employment Rights Office, and is hereby authorized to be imposed by the Employment Rights Office.

(a) Every covered employer or entity with a construction contract in the sum of $1,000 or more shall pay a fee of, * *.1% to 5%, to be determined by the TERO Commission*, of the total amount of the contract i.e., equipment, labor, materials and operations, and any increase of the contract/project or sub-contract amount. If the employer or entity initially enters into a contract/project or subcontract of less than $1,000 but subsequently increases costs to $1,000 or more the fee shall apply to the total amount including increases. The employer or entity, prior to commencing work in the Nation's

territorial jurisdiction, shall pay such fee. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments over the course of the contract. * *March 24, 2010*

(b) Every covered employer or entity, other than construction contractors, with five (5) or more employees working within the Nation's territorial jurisdiction with gross sales of $1,000 or more shall pay a quarterly fee of 5% of his employee's quarterly payroll which shall be paid within 30 days after the end of each quarter. This fee shall not apply to education, health, governmental, or non-profit employers or to utilities franchised by the Nation.

(c) The Pawnee Nation Tribal Employment Rights Commission shall collect the fee. The Commission shall provide for an efficient and orderly fee collection process.

Section 17. Reporting and On-site Inspections.

Employers shall submit reports, and other information requested by the Commission. The Commission and its representative shall have the right to make on-site inspections at any time in order to monitor any employer's compliance with the Employment Rights Act and rules, regulations and orders of the Commission. The Commission shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor and shall have a right to speak to workers and conduct investigations on job sites.

Section 18. Complaints.

(a) Parties Entitled to File Complaint. The following shall have a right to file a complaint with the PNTERO Commission:

(1) Director. If the Director has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with the Pawnee Nation Tribal Employment Rights Act or any rules, regulations or orders of the commission, the Director may file a complaint and notify such party of the alleged violations.

(2) Individual Indian. If any Indian believes that an employer has failed to comply with the Pawnee Nation Tribal Employment Rights Act or rules, regulations or orders of the Commission, or believes he has been discriminated against by an employer because he is an Indian, he/she may file a complaint with the Director within seventy-two (72) hours of the alleged violation specifying the alleged violation. If any employer fires, lays off, or penalizes in any manner, any 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 21 herein.

(3) Employer or Union Complaint Procedure. If an employer or union believes that any provision of the Pawnee Nation Tribal Employment Rights Act or any rules, regulations or orders of the Commission is illegal or erroneous, it may file a complaint with the Commission specifying the alleged illegality or error.

Section 19. Investigations.

(a) Investigation Deadline. The Director shall, within five (5) working days of the date on which a complaint is filed, complete an investigation of every complaint unless the Director requests and is granted an extension by the Commission, which shall be for no more than ten (10) days.

(b) Investigatory Authority of Director. The Director or his designee may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations, and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of Section 08 herein and any rule or order hereunder. When requesting any reports or other information from a covered employer, the Director shall request that the covered employer identify all material which contains trade secrets or privileged or confidential commercial, financial, or employment information. Any material so identified shall be kept confidential by the Director unless, on the request of the Director or other interested party, the Commission determines that the material does not contain confidential information, the release of which would cause unnecessary or excessive business or financial injury or would invade individual privacy. If upon investigation, the Director has reason to believe a violation has occurred, he shall proceed pursuant to provisions of Section 21 herein.

Section 20. Investigatory Powers of Director and Commission.

(a) Power to Require Testimony and Production of Records. For the purpose of investigations or hearings which, in the opinion of the Director or the Commission, are necessary and proper for the enforcement of the PNTERO Ordinance herein, a Commissioner, the Director, or any field compliance officer designated by the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements, or other documents, records, or information which the Director or the Commission deems relevant or material to the inquiry.

(b) Confidentiality of Records. Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, employment information subpoenaed pursuant to this section or used in a compliance hearing or subsequent appeal to the Nation's District Court, shall be confidential records of the Commission or the said Court, shall not be opened to public inspection, and

shall be used only by the Director, the Commission, parties to a compliance hearing or subsequent appeal to the Nation's District Court and the District Court.

Section 21. Enforcement.

(a) Notification of Violation. When, after conducting an investigation, initiated by a complaint pursuant to Section 20 herein, the Director has reason to believe a violation of the PNTERO Ordinance herein or regulations issued pursuant to it has occurred, the Director shall notify the covered employer or entity in writing specifying the alleged violations. The Director may withhold the name(s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing.

(b) Formal Notice of Non-compliance. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time to comply, which in no event shall be less than five days from the date of receipt of such notice, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require that compliance occur within fewer than five days.

(c) Request for Hearing. If the party fails or refuses to comply, the party may request a hearing before the Commission which shall be held no sooner than five days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to Section 21 (f).

(d) Bond During Pendency of Proceedings. If the party request a hearing pursuant to Section 21 (c) herein, and the Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Pawnee Nation prior to the hearing, he may, in his discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may proceed pursuant to Section 21 (f). The Director may also petition the Nation's District Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

(e) Conduct of Hearings. Any hearing held pursuant to Section 21 herein shall be conducted by the Commission. Hearings shall be governed by the following rules or procedure:

(1) All parties may present testimony of witnesses and other evidence.

(2) The Commission may have the advice and assistance at the hearing of counsel provided by the Nation.

(3) The Chairman of the Commission or the Vice-Chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.

(4) The Commission may consider any evidence, which it deems relevant to the hearing and conduct of the hearing shall be governed by the rules of practice and procedure that may be adopted by the Commission.

(5) The Commission shall not be bound by technical rules of evidence in the conduct of hearings, 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 Commission.

(6) The hearing may be adjourned, postponed and continued at the discretion of the Commission.

(7) At the final close of the hearings, the Commission may take immediate action or take the matter under advisement.

(8) In any hearing before the Commission where the issue is in compliancy by an employer with any of the requirements and provisions of the Pawnee Nation Tribal Employment Rights Act, the burden of proof shall be on the employer, rather than on the employee or other complainant to show said compliance.

(9) The Pawnee Nation Tribal Employment Rights Office shall notify all parties within thirty (30) days after that last hearing of its decision in the matter.

(10) No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.

(f) Remedies Upon Commission Determination. If, after the hearing, the Commission determines that the alleged violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

(1) Deny such party the right to commence business within the territorial jurisdiction of the Pawnee Nation;

(2) Suspend such party's operation within the territorial jurisdiction of the Pawnee Nation;

(3) Terminate such party's operation within the territorial jurisdiction of the Pawnee Nation;

(4) Deny the right to such party to conduct any further business within the territorial jurisdiction of the Pawnee Nation;

(5) Impose a sanction on such party in an amount to be determined on a case-by-case basis by the Commission for each violation, provided that each day during which a violation exists shall constitute a separate violation.

(6) Order such party to dismiss any employees hired in violation of the Nation's employment rights requirements;

(7) Require employment promotion and training of Indians injured by the violation;

(8) Order the party to take such action as is necessary to ensure compliance with the Code of Laws of the Pawnee Nation or to remedy any harm caused by a violation of said chapter, consistent with the requirements of the Indian Civil Rights Act, 25 U.S.C. 1301 et seq.

(g) Commission Decision; Protection.

The Commission's decision shall be in writing, and shall be served on the charged party by registered mail or in person no later than thirty days after the close of the hearing provided in Section 21 (e). The decision shall consist of the following parts, in the following order:

(1) The facts as found to be true by the Commission;
(2) The finding of violation or no violation on each charge along with the legal and factual basis for the finding;
(3) The orders of sanctions imposed, if any;
(4) Information on rights to appeal;
(5) Information on the authority of the Commission to act if the party fails to comply with its orders or fails to appeal; and
(6) The injunctive or bonding requirements, if any, that the Commission will seek from the court pending the completion of the appeal if an appeal is filed.

Where the party's failure to comply with the Commission's orders within seventy-two (72) hours of the date of the letter may cause irreparable harm, the Commission may

move the Nation's District Court to grant such injunctive relief as necessary to preserve the rights of the beneficiaries of the PNTERO Ordinance herein, pending the party's appeal or expiration of the time for appeal.

Section 22. Appeals.

(a) Manner of Taking Appeal. Any party adversely affected thereby may take an appeal to the Nation's District Court from any final order of the Commission. Said appeal must be filed with the Court no later than twenty (20) calendar days after the party receives a copy of the Commission's decision. The appeal shall be taken by serving written notice of appeal with the Nation's District Court, with a copy to the Director, within twenty (20) calendar days after the date of the entry of the order. The notice of appeal shall set forth the order from which appeal is taken; specify the grounds upon which reversal or modification of the order is sought; and is signed by the appellant.

(b) Stay of Commission Order Pending Appeal; Bond. The order of the Commission shall be stayed pending the determination of the Nation's District Court, provided that such stay may be conditioned upon the posting of a bond if the Director petitions for a bond and the court, for good cause shown, orders the appealing party to post bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the court.

(c) Standard of Review. The decision of the Commission must be proven or shown to be arbitrary, capricious or in excess of the authority of the Commission in the Nation's District Court.

(d) Reversal on Appeal. If the order of the Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.

(e) Enforcement of Commission Order. If the Commission's order is upheld on appeal, or if no appeal is sought within twenty (20) calendar days from the date of the party's receipt of the Commission's order, the Commission shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

Section 23. Confiscation and Sale.

If twenty-one (21) days after a decision by the Commission pursuant to Section 21 (g), no appeal has been filed, or thirty (30) calendar days after a decision by the Court on a appeal from a decision by the Commission pursuant to Section 24, a party has failed to pay monetary damages imposed on it or otherwise complied

with an order of the Commission or the Court, the Commission may petition the Court to order the Nation's Police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Nation's District 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 Nation's Police to confiscate and hold said property or as much available. The Nation's Police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If, thirty (30) calendar 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 any outstanding monetary damages imposed by the Commission and all costs incurred by the Court and the Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

Section 24. Orders to Police.

The Nation's Police are hereby expressly authorized and directed to enforce this Ordinance as they would any other law of the Nation, and they shall have the power to stop any and all activities that are in violation of this Ordinance as may be described by the Commission or the Director.

Section 25. Publication of Law.

(a) The Commission shall notify all covered employers of the Pawnee Nation Tribal Employment Rights Act and their obligation 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 the Pawnee Nation Tribal Employment Rights Act and all rules, regulations and orders of the Commission.

(b) All tribal agencies responsible for issuing business permits for activities within the territorial jurisdiction of the Pawnee Nation of Oklahoma or otherwise engaged in activities involving contact with prospective employers within the Pawnee Nation shall be responsible for advising such prospective employers of their obligations under the Pawnee Nation Tribal Employment Rights Act and the rules, regulations and orders of the Commission.

(c) The Pawnee Nation Tribal Employment Rights Office shall send a copy of the Pawnee Nation Tribal Employment Rights Act to every employer doing business within the territorial jurisdiction of the Pawnee Nation of Oklahoma.

Section 26. Compliance Plan.

As of the effective date of the Pawnee Nation Tribal Employment Rights Act, no new employer may do business with the Pawnee Nation of Oklahoma until it has consulted with the Pawnee Nation Tribal Employment Rights Office and has negotiated and signed a Compliance Plan approved by the PNTERO Director prior to conducting business for meeting its obligations under this law.

Section 27. Applicability.

The Pawnee Nation Tribal Employment Rights Act shall be binding on all covered employers whether or not they have previously operated on lands under the jurisdiction of the Pawnee Nation and whether or not they are doing so at the time of the implementation of the Pawnee Nation Tribal Employment Rights Act.

Section 28. Severability.

If any portion of the Pawnee Nation Tribal Employment Rights Act shall be ruled invalid by the Pawnee Nation District Court, that portion shall cease to be valid, but the remainder of the Act shall continue in full force and effect.

Section 29. Effective Date.

The Pawnee Nation Tribal Employment Rights Act shall be effective from the date of its approval by the Business Council of the Pawnee Nation.

As amended in 2007 by Resolution #07-02. Section 16. (a) was modified by Council action on March 24, 2010.

As Amended in 2012 by Resolution #12-33. Ordinance was modified by Council action on August 22, 2012.