


TITLE 32



TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

TERO

TRIBAL EMPLOYMENT RIGHTS ORDINANCE



2014

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TRIBAL EMPLOYMENT RIGHTS ORDINANCE
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**TITLE 32
TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

**Chapter 32.01
General Provisions and Purpose**

- 32.0101 Name
This Ordinance shall be known as the Turtle Mountain Band of Chippewa Indians Tribal Employment Rights Ordinance.
- 32.0102 Findings
It is the policy of the Turtle Mountain Tribal Council to promote employment opportunities for Indians and business opportunities for Indian firms and contractors, and to provide direction, management and business standards for the Turtle Mountain Indian Reservation. The work force of the Tribe must be given an opportunity to gain employment on or off the reservation and the Tribal council will promote that preference in harmony with congressional enactments giving Indians special employment rights. It is also the Council's responsibility to monitor Indian preference along with collecting from those doing business on the Turtle Mountain Indian Reservation a fair fee for that privilege. Thus, the Tribal Council has enacted and hereby amends an ordinance called "Tribal Employment Rights Ordinance (TERO)."

**CHAPTER 32.02
DEFINITIONS**

- 32.0201 Definitions
Employers/contractors may seek clarification as to all TERO requirements and definitions at the pre-bid conference for any on-reservation construction project, or otherwise by directing inquiries to the Tribal TERO Commission.
1. Chairman; The term "Chairman" shall mean the chairman of the Turtle Mountain Chippewa Tribal Employment Rights Commission.
 2. Commission; The term "Commission" shall mean the Turtle Mountain Chippewa Tribal Employment Rights Commission.
 3. Commissioner; The term "Commissioner" shall mean a Commissioner of the Turtle Mountain Chippewa Tribal Employment Rights Commission.

4. Union; Duly organized workers as recognized by any labor organization recognized as such under the national Labor Relations Act.
5. Council; The term "Council" shall mean the Tribal Council of the Turtle Mountain Band of Chippewa Indians.
6. TERO Director; Individual hired by the Tribal Council to keep the Council, Commission, employees and employers informed of this Ordinance and its violations. The Director has authority to resolve informal disputes on behalf of the Commission.
7. TERO; The term "TERO" shall mean the Tribal Employment Rights Ordinance.
8. EEOC; The term "EEOC" shall mean the Equal Employment Opportunities Commission of the United States.
9. Employer; The term "Employer" shall mean any person, business, company, contractor, subcontractor, or other entity located or engaged in work on the reservation, employing one or more persons, and without regard for whether the employer or its owner is Indian or Non-Indian or a member of the Turtle Mountain Band of Chippewa Indians or not. The term "Employer" excludes federal, state, county and tribal government. Tribally-owned or tribally-chartered private, for profit corporations are employers under this definition. Tribally owned or tribally chartered, non-profit corporations are employers under this definition. Tribally chartered or state chartered non-profit corporations authorized by the Tribe to contract with any federal agency pursuant to P.L. 93-638 or to enter into a grant agreement pursuant to P.L. 100-297 are employers under this definition. Tribally owned corporations are employers under this definition.
10. Engaged in business on the Reservation; An employer is "engaged in business on the reservation" if in connection with any portion of a business enterprise or specific project, contract or subcontract, the employer or any of its employees or agents performing work within the exterior boundaries of the reservation. Employers who have both on-reservation and off-reservation business locations shall also be subject to the TERO in their off-reservation locations if those off-

reservation locations are on lands adjacent to the reservation.

11. Indian; The term "Indian" shall mean any person recognized as an Indian by the United States Government pursuant to its trust responsibility. In complying with and implementing the TERO, following additional preferences shall be recognized and enforced.
 - a. Indians residing in Rolette County, North Dakota.
 - b. Indians residing in other counties in the State of North Dakota.
 - c. Any Indian recognized by the U.S. Government pursuant to its trust responsibility wherever residing.
12. Residence; The terms "residence" or "residing" shall mean the place of domicile of an applicant on the date the applicant seeks employment or contracting preference under the TERO and resides within 90 days prior to such application. Domicile shall mean the place where an individual Indian has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.
13. Indian-Owned Business; The term "Indian-owned business" shall mean a business entity (in whatever form) of which at least 51% is owned by any federally recognized Indian Tribe or by Indians and which has been screened and certified as an "Indian-owned business" by the MBE/WBE office in Bismarck, North Dakota or the Indian Business Development Center in Bismarck. A copy of MBE/WBE certification will be furnished to the TERO Office.
14. Joint Venture; The term Joint Venture shall require that any Tribal member (s) or Tribe who enters a Joint Venture contract must control at least 51% of the Joint Venture and receive at least 51% of profits of the Joint venture. The Joint Venture shall show proof of Joint Venture to the TERO office by providing copies of ownership, state contractors license, bond and liability insurance. The Joint Venture must be certified and screened by the MBE/WBE office in Bismarck, North Dakota.
15. Located on the Reservation; Any employer is "located on the reservation" if in connection with any portion of a business enterprise or specific project contract or subcontract, he/she

- is doing business or performing work within the exterior boundaries of the reservation.
16. OFCCP; The term "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.
 17. Reservation; The term "Reservation" shall mean the Turtle Mountain Indian Reservation proper and all tribal land and trust property held by the U.S. Government for the Tribe in Rolette County, North Dakota, including all land within the exterior boundaries of said reservation proper and said tribal land and trust property.
 18. Secretary; The term "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.
 19. Tribe; The term "Tribe" shall mean the Turtle Mountain Band of Chippewa Indians.
 20. Key Position; An ongoing position where a person is a permanent employee for a period of one year prior to the contract and it is vital to the contractor's ability to perform the contract as he bid it or to the special operation of a crew familiar with each other in their duties to perform, that said person or persons be used on the project in said position(s).
 21. MBE/WBE; MBE means Minority Business Enterprises. WBE means Women's Business Enterprise.
 22. Informal Dispute Resolution; Clarifying and trying to remedy a situation without a hearing. (See 32.0702, 32.0703 and 32.0704)

CHAPTER 32.03

Turtle Mountain Chippewa Tribal Employment Rights Commission.

- 32.0301 Appointment
The Turtle Mountain Chippewa Tribal Employment Rights Commission shall consist of one council member (and one alternate council member) appointed by the Tribal Council, four members appointed by the Tribal Council at large from the reservation community. Chairman of the board will be appointed by the Tribal Council. The alternate council member may vote in place of the appointed council member in the absence of that member.
- 32.0302 Term of Office

Commissioners shall hold office for a period of two years. Commissioners shall hold office after expiration of their terms of office until their successors are duly appointed and approved.

32.0303 Removal from Office

A Commissioner may be removed from office by the Tribal Council upon conviction of a crime, or for gross neglect of duty, misfeasance of malfeasance in office, or ineligibility to serve as a Commissioner or where the Commissioner misses three consecutive meetings without good cause. Specific written charges shall be prepared and served upon the Commissioner by the Tribal Council at least ten days before a Council hearing upon the matter, and he shall be given an opportunity to answer to the charges at the hearing, before Tribal Council action. If the Commissioner refuses to appear before the Tribal Council, the Council shall nonetheless proceed to vote upon his removal. The decision of the Council shall be final.

32.0304 Vacancy and Interim Appointment

If a Commissioner shall die, resign, be incapacitated or leave the reservation or be removed from office, the Tribal Council shall appoint an eligible person to fill the vacant position for the remainder of the term of the office of the Commissioner whose position it has to fill.

32.0305 Chairman

The Chairman of the Commissioner shall be appointed by the Tribal Council and will be liaison between the Council and the Commission when needed.

32.0306 Duties of Commission

The Commission shall administer the employment rights program of the Turtle Mountain Band of Chippewa Indians in accordance with this Ordinance.

32.0307 Powers of Commission

The Commission shall have the power:

- a. To establish rules and regulations governing all activities of the Commission, subject to prior approval of the Tribal Council.

- b. To set minimum wage scale for construction employment at the beginning of each calendar year (see Section 32.014), subject to prior approval of the Tribal Council.
- c. To expend operating funds appropriated by the Council for the use of the Turtle Mountain Chippewa Tribal Employment Rights Program.
- d. To obtain funding from federal, state or other sources to supplement Council appropriations, subject to prior approval of the Tribal Council.
- e. To impose numerical hiring goals and timetables, specifying the fair minimum number of Indians an employer may hire by craft or skill level.
- f. To promote employers to establish or participate in such training programs as the Commission deems appropriate to increase the pool of Indian eligible for employment on the reservation.
- g. To assist the TERO Director in administering a tribal hiring hall.
- h. To require that employers may hire non-Indians for non-key positions only after the tribal hiring hall has certified that qualified Indians are unavailable to fill vacant job positions.
- i. To prohibit employers from using job qualifications criteria a personnel requirement that bar Indians from employment unless such criteria or requirements are required by business necessity. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the reservation, subject to prior approval of the Tribal Council.
- j. To enter into agreements with the unions to insure union compliance with the Ordinance.
- k. To give preference to Tribal and other Indian-owned business in the award of contracts or subcontractors.

- l. To establish counseling programs to assist Indians to retail employment.
- m. To hold hearings and to subpoena witnesses and documents in accordance with this Ordinance.
- n. To require employers to submit reports and take all actions deemed necessary by the Commission for the fair and vigorous implementation of this Ordinance.
- o. To enter into cooperative agreements with federal employments rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation.
- p. To take such other actions as deemed necessary to achieve the purpose and objectives of the Turtle Mountain Chippewa Tribal Employment Rights Program established in this Ordinance.

In exercising the above-specified powers, the Commission shall have the discretion to implement certain powers only or to apply one or more such powers to limited classes or numbers of employers.

**CHAPTER
32.04**

Turtle Mountain Chippewa Tribal Employment Rights Program

32.0401 Coverage

All employers are required to give preference to equally qualified Indians and non-members married to an enrolled tribal member of one-quarter (1/4) or more degree of Indian blood and who resides in Rolette County, in hiring, promotion, training, and all other aspects of employment, contracting and subcontracting, and must comply with this Ordinance and the rules, regulations and orders of the Commission. The above requirements shall apply only to facilities or components or divisions of an employer located on or engaged in business on the reservation, or for employers who have both on-reservation and off-reservation business locations, the employer shall also be subject to this TERO in their off-reservation locations, if those off-

reservation locations are on lands adjacent to the reservation.

32.0402 Contractors, Subcontractors, and Minority Businesses
The Indian preference requirements contained in the Ordinance shall be binding on all contractors, subcontractors, and minority businesses of employers, regardless of tier, shall be deemed a part of all resulting contract and specifications. The TERO Commission shall have the initial and primary responsibility for insuring that all contractors, subcontractors, and minority businesses comply with these requirements and contractors, subcontractors, and minority businesses shall be subject to penalties provided herein for violation of this Ordinance if the contractor or subcontractor, subcontractors, and minority businesses fails to comply.

32.0403 Minimum Numerical Goals and Timetables for Indian Employment
The Commission will establish the minimum number of Indians, which each employer should employ on his work force during any year that he or any of his employees are located or engaged in work on the reservation. Noncompliance will require rational between employer and Commission. Numerical goals shall be set for each craft, skill area, classification, etc., used by the employer and shall include, but not be limited to, administrators, supervisory, and professional categories. The goals shall be expressed in terms of number of Indian employment as a percentage of the total men hours worked by the employer's workforce in the job classification involved. Numerical goals shall be based upon surveys of the available Indian manpower pool and of projected employment opportunities. Both the TERO Director and the License Compliance/Employment Officer shall be involved in the formation of hiring goals for each employer. For new employer, the goals shall meet with the Commission or Director as long before he actually begins work as possible and shall furnish the Commission with a precise list of the number, the kind of employees he expects to employ. The Commission or Director shall then set specific goals and timetables for the employer after considering any special factors or goals into his plan for complying with this Ordinance and shall agree in writing to meet these goals. Any employer who fails to provide such a

written agreement to the TERO Commission shall not be permitted to commence work on the reservation.

For an existing employer on the reservation, the goals shall be a percentage of the new employees expected to be employed during the ensuing year. The employer shall incorporate the goals into his plan for complying with this Ordinance and shall agree in writing to meet these goals. Any employer who fails to provide such a written statement will not be permitted to commence work on the reservation. The TERO Commission shall maintain on file the current plan of each employer authorized to undertake work on the reservation.

For both new and existing employers, the goals shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. Each employer shall submit a monthly report to the Director on a form provided by the employer, indicating the number of Indians in his work force, how close he is to meeting his goals, all persons hired or fired during the month, the job positions involved and other information required by the Commission.

Each employer shall meet his minimum goals for the employment of Indians. Whenever the Commission or Director has reason to believe that an employer is violating this Ordinance by not meeting his goals, the Commission or Director may file a complaint and notify the employer of the alleged violation pursuant to Chapter 32.07 of this Ordinance. The Commission shall bear the initial burden of providing that an employer has failed to or is failing to meet its goals. Upon a prima facie proof of such failure, the employer shall then bear the burden of proving that it has met or is meeting its goals or has made a good faith effort to meet its goals. It shall not be an excuse for such failure that the union with which the employer has a collective bargaining agreement providing for exclusive referral failed to refer Indians.

32.0404 Training

Every employer shall be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. Every employer shall employ the maximum number of Indian trainees or apprentices

possible. The ratio of Indian trainees to fully qualified workers shall be set by the Commission after consultation with employer. For construction projects, the number of Indian trainees shall be no less than the minimum ratio established by the Department of Labor (one trainee for every four journeyman). Every employer with a collective bargaining agreement with a union shall be required to obtain agreement from the union to establish an advanced journeyman upgrade and apprenticeship program.

32.0405 Qualified and Personnel requirements
Every employer is prohibited for using job qualification criteria or personnel requirements which bar Indians from employment. The Commission shall bear the initial burden of proving that a job qualification criterion or personnel requirements is not required by business necessity. Upon a prima facie proof that a job qualification or personnel criterion is not required necessity, employer shall then bear the burden of proving that it is. If that burden is not met, the employer will be required to eliminate the job qualification criterion or personnel acuirements at issue. In implementing this section, the Commission shall be guided by principles established in the EEOC in order to eliminate employment barriers unique to Indians and the reservation. If the employer and the Commission or Director is unable to agree upon any matter in this section, the Commission may invoke the hearing procedure provided in Chapter 32.07 of this Ordinance.

32.0406 Tribal Hiring Hall
The Commission shall establish and administer a tribal hiring hall to assist employers in identifying and hiring qualified Indians in job positions, employ and supervise a License Compliance/Employment Officer to oversee the hiring hall, labor survey, and employee referral functions under this ordinance. An employer may recruit and hire workers from whatever sources are available to it and by whatever process it chooses, provided that it may not hire a non-Indian until it has given the Commission or Director a reasonable time to locate a qualified Indian and the tribal hiring hall has certified that a qualified Indian is unavailable to fill the vacant job position.

For purpose of this Ordinance, "reasonable time" shall be defined as follows: Three (3) working days to locate and refer a qualified Indian. The Commission may grant a waiver of these time periods upon a showing by the employer that such time periods impose an undue burden upon it. An employer subject to a collective bargaining agreement with the union shall be exempt from this procedure if the union agrees to refer Indians from a listing supplied by the Commission or Director. However, if any union fails to meet this obligation to refer Indians to an employer, the Commission or Director may require the employer to accept Indian referrals from sources other than the union.

In administering a tribal hiring hall, a hiring list may be maintained by the License Compliance/Employment Officer. Individuals who desire to obtain employment in areas within the scope of this TERO Ordinance may enter their names on this hiring list. Names shall be entered in chronological order by the date and time of sign-up. The list may be utilized by the License Compliance/Employment Officer on a first come, first served basis in placing individuals of comparable skills in various crafts with various employers: Comparably skilled individuals shall be referred for placement in the order their names appear on the list. If any non-Indian worker is found to be employed in a job in violation of this section, the employer shall be required by the Commission or Director to remove employee immediately and said employer shall be subject to the penalties in Chapter 32.08 of this Ordinance.

32.0407 Counseling and Support Programs

The Commission will establish counseling and other support programs to assist Indians to retain employment. Every employee shall be required to cooperate with the Commission regarding such counseling and support programs.

32.0408 Preference in Contracting and Subcontracting

Every employer shall give preference in the award of any contract or subcontract to Indian-owned businesses, the names of which shall be supplied to the employers for their use. Employers shall be required to take every step feasible to identify or locate Indian-owned businesses. 10% preference will be given to qualified Indian owned businesses located

in Rolette County. These businesses then must assume the responsibility of submitting timely bids or otherwise lose the right of being considered.

32.0409 Lay-Offs

In all lay-offs and reduction in force, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed unless the termination is pursuant to a prior lay-off procedure agreed to by the Commission in writing. Unless otherwise agreed in advance per such lay-off procedure, the non-Indian must first be terminated if the Indian possesses the minimum qualifications for the job classification.

32.0410 Promotion

Every employer shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For every supervisory position filled by a non-Indian, the employer shall file a report with the Commission stating what efforts were made to inform Indian workers about the position, what Indians, if any, applied for the position, and the reasons why each Indian was not hired for the position.

32.0411 Summer Students

Every employer shall give Indian students preferential consideration for summer student employment. The employer shall make every effort to promote after school, summer and vacation employment for Indian students.

CHAPTER 32.05

Fee Assessment to Provide Tribal Revenue and Operation of the Commission Pursuant to Article 9, Sections 3 and 4 of the Turtle Mountain Band of Chippewa Indian Constitution

32.0501 Contractors, Subcontractors and Minority Businesses

Every contractor, subcontractor or business entity with a negotiated contract of \$10,000 including all change orders or more shall pay a one time fee of 3% of the total amount of the contract. The fee will be paid in full when receiving first progress payment of within 45 days from date of award, or whichever comes later.

This Ordinance shall apply, but not be limited to, the following categories of contractors, subcontractor or

employers: Construction Contractors, Manufacturers Material men and Suppliers. 3% will also apply to Professional Services, A/E Firms, Consultants and Legal Services regardless of dollar amount.

32.0502 Accounting

Fees shall be paid to the Tero Office and placed in the general account and the Council shall appropriate funds for use by the Commission.

32.0503 Tribal Business License

Any person, employer, or vendor doing business in the reservation shall be required to obtain and maintain in force a tribal business license before any work will commence. All licenses are issued annually, and must be renewed before due date of each calendar year. Tribal business license applications will be obtained at the TERO Office. Title 18, which has been adopted as part of the TERO Ordinance, is located in back of this Ordinance.

CHAPTER 32.06
Compliance by Unions

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Ordinance and the rules, regulations and orders of the Commission. Until such agreement is filed with the Commission or Director, the employer may not commence work on the reservation.

32.0601 Contents of Union Agreements

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

1. Indian Preference. The union will give absolute preference to Indian residents in job referrals regardless of which union referral list they are on.
2. Cooperation with Commission. The union will cooperate with the Commission or Director in all respects.
3. Registration. The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.
4. Training Programs. The union will establish a journeyman upgrade and advanced apprenticeship program.

5. Include all Indians. The union will "include" all Indians who qualify for journeyman or apprenticeship status and wish to join the union.
6. Temporary Work Permits. The union will grant temporary work permits to Indians who do not wish to join the union.

32.0602 Model Union Agreement

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

32.0603 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 on the reservation. No union activities shall take place without prior approval of the Turtle Mountain Chippewa Tribal Council.

32.0604 No Waiver of Sovereign Immunity

Nothing in this Ordinance is a waiver of the Turtle Mountain Band of Chippewa Indian's sovereign immunity as against any person, agency or governmental entity including, but not limited to, the National Labor Relations Board and the Federal Office of Contract Compliance. Nothing in this Ordinance is a "consent to be sued" as defined by the Turtle Mountain Chippewa Tribal Code, Section. The Tribe's sovereign immunity also extends to members of the TERO Commission and Staff.

CHAPTER 32.07
Complaints and Hearings

32.0701 Notice

If a hearing is requested by the Commission or Director, an individual employee, or union pursuant to this section, a written notice of hearing shall be given to all parties concerned of the nature, time and place of the hearing and the evidence to be presented, and shall advise such parties of their rights to be present at the hearing, to present any testimony of witness and other evidence to be represented by counsel at their own expense, and that the Commission may be represented by general counsel for the Turtle Mountain Chippewa Tribe.

32.0702 Commission Complaint and Procedure

If the Commission or Director believes that an employer, contractor, subcontractor, or union has failed to comply with the 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 or Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the Commission or Director may request a hearing upon the matter pursuant Section 32.0701

32.0703 Individual Complaint Procedure

If an Indian believes that an employer has failed to comply with this Ordinance or rules, regulation or orders of the Commission, or believes he/she has been discriminated against by an employer because he/she is an Indian, he/she may file a complaint in writing with the Director specifying the alleged violation. Upon receipt of the complaint, the Director shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or Director may request a hearing upon the matter pursuant to Section 32.0701.

If an employer fires, lays off, or penalizes in any manner, an Indian employee who utilizes the individual complaint procedure provided herein or exercises any right provided herein, the employer shall be subject to the penalties in Chapter 32.08 of this Ordinance.

32.0704 Employer or Union Complaint Procedure

If an employer or union believes that any provision of this Ordinance or any rule, regulations or order of the Commission or Director is illegal or unclear, it may file a complaint in writing with the Director specifying the alleged illegality or error. Upon receipt of the complaint, the Director shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the employer, union or Commission may request a hearing upon the matter pursuant to Section 32.0701.

32.0705 Hearing Procedure

Hearing before the Commission shall be governed by the following rules of procedure:

1. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.
2. The Commission shall be responsible for taping the proceedings and preserving such tapes and all pleading and physical evidence submitted at the hearing. These items shall constitute the record on appeal if any appeal should be taken after the hearing.
3. The Commission may have the advice and assistance at the hearing of general counsel for the Tribe.
4. The Chairman of the Commission or the Vice Chairman may preside. No formal rules of evidence of procedure need to be followed, but the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
5. Any matter to be proven must be proven to the satisfaction of the Commission or by the preponderance of the evidence.
6. The hearing may be continued at the discretion of the Commission or Director.
7. At the final close of the hearing, the Commission may take immediate action or take the matter under advisement.
8. The Commission or Director shall notify all parties within 30 days after its decision in the matter.
9. The Commission may require the presence of persons and documents at the hearing by service of subpoena(s) issued by the Commission.
10. Any party leaving a scheduled meeting will be subject to entry of an adverse finding by default, unless authorized by the Commission.
11. Any party not appearing for a scheduled meeting will be subject to an adverse finding by default unless prior written approval must be submitted in writing to the Director.
12. Complaints must be filed within 30 days of incident with the TERO Office otherwise complaint will not be processed.

CHAPTER 32.08
Penalties for Violation

Any employer, contractor, subcontractor or union who violates this Ordinance or rules, regulations or orders of this Commission shall be subject to penalties for such violations, including, but not limited to:

1. Denial of right to commence or continue business inside the reservation or Adjacent Tribal Land.
2. Suspension of all operations inside the reservation.
3. Payment of back pay and damages to compensate any injured party.
4. An order to summarily remove employees hired in violation of this Ordinance or rules, regulations and orders of the Commission.
5. Imposition of monetary civil penalties.
6. Prohibition from engaging in any future operations on the reservation.
7. An order requiring employment, promotion and training of Indians injured by the violation.
8. An order requiring changes in procedures and policies necessary to eliminate the violation.
9. An order making any other provision deemed by the Commission necessary to eliminate violations.

The maximum civil penalty, which may be imposed, is \$500.00 for each violation. Each day during which a violation exists shall constitute a separate violation.

The Commission or Director may apply to the Tribal Court of the Turtle Mountain Band of Chippewa Indians for a judicial order or decree after notice and hearing to the other party or parties to enforce any final ruling or order of the Commission. The Tribal Court shall act on such requests on an expedited basis. The Tribal Court shall not have jurisdiction to re-examine the merits of any such Commission determination, but may grant, deny, or modify the relief sought as applicable law and equitable circumstances warrant.

CHAPTER 32.09
Appeals

Any party to a Commission hearing shall have the right to appeal any decision, ruling or order of the Commission to the Tribal Court of Appeals of the Turtle Mountain Chippewa Tribe of the Turtle Mountain Indian Reservation, North Dakota. The Court of Appeals (with a law trained judge presiding) shall have

jurisdiction to reverse, affirm or modify any Commission decision, order or ruling if such Court determines on the basis of the record made at the Commission hearing that the Commission

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action was (a) not supported by substantial evidence: or, (b) was clearly erroneous as a matter of law. Otherwise, the Commission decisions shall be affirmed.

CHAPTER 32.010
Tribal Training Program

The Tribe shall appropriate such tribal funds necessary and available to establish training programs to prepare the tribal members for job opportunities developed pursuant to the Turtle Mountain Chippewa Tribal Employment Rights Ordinance. The Commission shall negotiate a training program in cooperation with employers, state, federal and tribal officials. Such programs shall follow applicable federal standards (if any).

CHAPTER 32.011
Publication of Ordinance

The Commission or Director shall notify all employers of this Ordinance and their obligations to comply. All bid announcements issued by any tribal, federal, state or private or public entities shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and all rules, regulations and orders of the Commission.

The Tribal Council may issue business licenses to prospective employers planning to work on the reservation upon review and approval of the prospective employers business license application in conformity with applicable tribal law and procedure. The TERO office shall make available to the Council the name of each business to whom a tribal business license has been issued. The Commission shall advise such employer or prospective employers of their obligations under this Ordinance, rules, regulations and order of the Commission.

The Director shall send a copy of this Ordinance to every employer operating on the reservation and any amendments or revisions thereto. A small fee may be charged for this service.

**CHAPTER 32.012
Compliance Plan**

As of the effective date of this Ordinance, no new employer may commence work on the reservation until it has been issued a license from the Tribe and consulted with the Commission or Director and developed a plan occupied by the Commission for meeting its obligations under this Ordinance.

**CHAPTER 32.013
Reporting and On-Site Inspection**

Employers shall submit reports and other information requested by the Director or Commission. The Director or his designee 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 Director or his Designee shall have the right to inspect and copy all relevant records of any employer, of any signatory union or subcontractor of any employer and shall have a right to speak to workers and conduct an investigation on the job site. All information collected by the Director or his Designee shall be kept confidential unless disclosure is required during a hearing or appeal as provided in Chapter 32.07, 32.08 and 32.09.

**CHAPTER 32.014
Tribal Minimum Wage Scale.
Revised March 23, 2007:**

Apprentice Bricklayer	\$17.00
Apprentice Electrician	\$16.00
Apprentice Plumber	\$16.00
Apprentice Sheet Metal	\$17.00
Asbestos Removal	\$16.00
Bricklayer	\$18.00
Carpet & Floor Tile Layer	\$16.00
Carpenter	\$18.00
Cement Finisher	\$19.00
Cleaning / Janitorial	\$12.50
Construction Foreman	\$20.00
Construction Worker / Labor	\$14.00
Drywall Hanger	\$17.00
Diesel Mechanic	\$20.00
Finish Carpenter	\$20.00
Flag Person	\$13.00
Foreman	\$19.00
Form Setter	\$18.00

Glazier	\$19.00
Heavy Equipment Operator (Heavy)	\$21.00
Heavy Equipment Operator (Light)	\$16.00
Heating / Air Conditioning	\$22.00
Inspector	\$22.00
Insulator	\$16.00
Journeyman Electrician	\$19.00
Journeyman Plumber	\$18.00
Journeyman Sheet Metal	\$19.00
Master Electrician	\$22.00
Master Plumber	\$22.00
Painter - Brush / Roller	\$16.00
Perfa-Taper	\$17.00
Pilot Car Driver	\$14.00
Pipe Fitter / Steam Sprinkler	\$18.00
Pipe Layer - Underground	\$16.00
Project Manager	\$25.00
Roofer - Asphalt / Shingles	\$16.00
Secretary	\$12.00
Security Guard	\$14.00
Spray Painter	\$18.00
Steel or Rod Buster	\$16.00
Structural Ironworker	\$22.00
Surveyor (Certified)	\$19.00
Surveyor Helper / Rodman	\$15.00
Tractor - Trailer Truck Driver (Diesel)	\$19.00
Truck Driver - Light	\$16.00
Welder - Light / Cutting Torch	\$16.00
Welder - Pipe / Heavy Iron	\$17.00

*This is the most current Tribal Minimum Wage Rates as of July 30, 2013. The foregoing tribal wage scale is subject to revision on an annual or other periodic basis by the Tribe. Employers may secure the most current rates from the TERO Director.

CHAPTER 32.015
Severeability

If any provision of this Ordinance, or its application to any person or circumstances is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances is not affected.

CHAPTER 32.016

Relation to Federal Indian Preference Requirements

The Tribal Indian preference requirements imposed by this Ordinance is separate from the supplemental to any and all applicable federal Indian preference requirements.

CHAPTER 32.017

Special TERO Rules for Large Tribal Construction Projects

For construction projects in amounts over \$500,000, where the Tribe, the Turtle Mountain Housing Authority or any other tribal agency or instrumentality solicits bids for section of one or more prime contractors, the following special TERO rules shall apply:

1. For all such projects which the entity soliciting bids for one or more prime construction contractors has appointed a project team to oversee the project the TERO Director shall serve as a non-voting member of the project team during the pre-bid and construction phases of the project.
2. For all such projects, the minimum numerical goals and timetables for Indian employment under Section 32.0403 for the prime contractor(s)
3. And all subcontractors and the approved plan for how the contractor or subcontractors are to meet these goals under this ordinance shall not be finalized by the TERO Director or Commission or become legally effective until approved by the project team for that project, and no TERO enforcement proceedings (including the conduct of hearings under Section 32.0705 and the imposition of penalties under Chapter 32.08 or application for tribal court action there under) shall be initiated by the TERO Director or Commission as to said projects until cleared by the project team.
4. All written requests for pre-bid interpretations of TERO requirements received by the TERO office on such projects shall be answered in writing by the TERO office or the Tribe's legal counsel for the project after clearance of said answers by the tribal project manager for the project.
5. All day-to-day TERO office functions including, but not limited to, compliance review, hiring hall, labor survey, employee referral, hiring plan negotiations and other TERO efforts to secure TERO compliance through informal means, shall continue

to apply to such projects as otherwise set out in
this ordinance.

CHAPTER 32.018
Effective Date

This Ordinance is a revision of Tribal Ordinance No. 32 approved July, 28, 1981, Amended June 25, 1991. Provisions in this Ordinance regarding Indian Preference are continuous. The provisions of Chapter 32.05 and 32.014 were and remain effective from and after January 27, 1997, when the Tribal Council approved amendments to Ordinance No. 32.

This Ordinance as hereby amended supersedes any all prior resolutions and ordinance of the Tribal Council of the Turtle Mountain Band of Chippewa Indians to the extent of any conflict or inconsistency.

Dated August 24, 2001

TITLE 18
BUSINESS REGULATIONS AND LICENSES

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Title 18

BUSINESS REGULATIONS AND LICENSES

Chapter 18.01

Administration and Enforcement

- 18.0101 General.
The administration and enforcement of this Title is vested in and shall be exercised by the Director of the "Tribal Employment Rights Ordinance" (TERO). All payments and fees regarding business shall be made to the Director of TERO.
- 18.0102 Regulatory License.
If any other title, ordinance, or law of the Turtle Mountain Band of Chippewa requires a person or business license under this Title to obtain a license or permit for regulatory purposes, no license or permit under this Title shall be issued until the business has obtained the required license or permit.
- 18.0103 Business License.
Unless otherwise specifically provided in this Title, all persons, association, companies, firms or corporations conducting or engaged in any business or trade within the Turtle Mountain Band of Chippewa (reservation) jurisdiction must obtain a license or permit. Application for, issuance, termination and revocation of such license shall be governed by the terms of this Title.
- 18.0104 License; Application.
Any person desiring a license or permit shall make a written application to the Director of TERO therefore upon application blanks furnished by the TERO Commission and file the same with the Director of TERO, stating a description of the business, the name and address of the business, the purpose for which the same is desired, for what length of time, and specifying the place where the business is to be carried on; if required to file a bond before being licensed the

person shall also name the proposed sureties on the bond in his application.

18.0105 License; Granting.

1. The TERO Director shall receive applications for licenses and permits and upon approval grant the same in all cases where expressly authorized upon the terms and conditions specified by this Title. The Director will refer any applications for any purpose not named by this Title to the TERO Commission for a determination of the Director's authority to grant any license or permit.
2. Upon receipt of each application the TERO Director shall conduct such investigation of the applicant's business and moral character, as he deems necessary for the protection of the public good. If an investigation is conducted and the applicant's character or business responsibility is found to be unsatisfactory, the TERO Director shall notify the applicant that his application is disapproved and that no license will be issued; or the TERO Director at his discretion may issue a temporary license and allow the applicant time to clear any questions of the TERO Director concerning the applicant that may exist. If the character and business responsibility of the applicant are found to be satisfactory, the TERO Director shall recommend approval to the TERO Commission. If approved by the TERO Commission, the TERO Director shall endorse the license and deliver it to the applicant.
3. Upon approval of the application by the TERO Commission and payment of the fee, a business license shall be issued to the applicant on a form approved by the TERO Commission. The license shall be signed by the TERO Director or his authorized representative. The license shall specifically describe the business or trade to be conducted, the name of the business, and the name of the owner or principal owners, and the location at which the business or trade will be conducted.

4. If an application for a license or permit is denied, the applicant is entitled to a hearing within ten (10) days of the denial. The hearing will be informal and with the TERO Director. If the denial is not reversed the applicant may appeal the denial through Title 22, Tribal Administrative Procedures Act.

18.0106 Persons engaging in more than One Business.
Persons who engage in more than one business shall pay a fee and obtain a business license for each type of business. The TERO Director will have full discretion to determine if each business is non-integrated or separate and apart from the other or if each business is one and the same.

18.0107 Jurisdiction.
All persons subject to the provisions of this Title shall be deemed to have consented to the full and exclusive jurisdiction of the Turtle Mountain Court as a condition of doing business within the boundaries of the Turtle Mountain Band of Chippewa jurisdiction. In any action in which the Tribal Court determines that the position of the TERO Director is substantially upheld, the licensee shall be liable for costs incurred by the Tribe including reasonable attorneys fees.

18.0108 License, Term

1. Annual Business License: No License or permit shall be granted for a longer period than one (1) year.
2. All annual business licenses are issued annually and must be renewed before due date of each calendar year.
3. Short term (temporary) Business License: A short term or temporary business license is any license issued for a period not to exceed three months.
4. Permit: A permit may be issued on a daily basis and for contractors as provided for in Section 18.0203 of this Title.

5. No license or permit shall be valid until signed and sealed, nor shall any person be deemed licensed until a license ~~shall~~ is duly issued to him by the TERO Director.
6. Each license shall be dated the day of issuance thereof, but if the applicant or applicants shall have been acting without a license, the license shall commence with the date business commenced; if the business calls for a yearly license then the license shall commence on the date of approval of the business for which the license shall be issued.
7. The date of issuance of the license, together with the time of commencing and expiration shall be specifically set forth if the license and license record.

18.0109 Transacting a Business Without a License.

1. A person, company, association, firm partnership or corporation conduction or engaging in any business within the Turtle Mountain jurisdiction without a valid business license shall be notified of their liability for the business license fee and shall be sent a notice for the amount due. The notice shall inform the person that no further business may be conducted on the Turtle Mountain Tribal land unless the person obtained a business license. There shall also be imposed a penalty of twenty-five dollars (\$25.00) per day, exclusive of any other provisions of this Title, upon any person for each day that his business is conducted without a valid tribal license. The TERO Director will determine when the business first started without a license.
2. If a person continues to conduct or engage in a business or trade without a business license, in addition to any other rights accorded by this Title or Tribal Code, The TERO Director may institute an action in the Turtle Mountain Tribal Court to enjoin the

activity until a business license is obtained. The court may also take such other action as is necessary to enforce the provisions of this Title, including imposing a penalty equal to the business license fee due along with costs and expenses.

18.0110 Complying with Laws and Regulations.

Any person or business operating within the jurisdiction of the Turtle Mountain Band of Chippewa shall comply with all laws and regulations of the Turtle Mountain Tribal Community.

18.0111 License; Not Transferable.

No License or permit shall be assignable or transferable except by permission of the TERO Commission. No person other than the person to whom the license is granted shall be authorized to do business or act under such license at any other than the place specified therein. The TERO Commission may grant the continuance of the business licensed to any other portion of the Reservation, such permission to be certified on the license by the TERO Director. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

18.0112 Licenses; Revocation.

1. All licenses granted shall be subject to laws and regulations in force at the time of issuing thereof or which may be subsequently passed by the Tribal Council or TERO Commission. Any person who shall violate any provision of this Title relating to his license may be processed against for any fine or penalty imposed thereby, and his license may be revoked or forfeited in the discretion of the TERO Director, the TERO Commission or the Tribal Court if an action is brought for the recovery of any fine or penalty.

Where not otherwise provided, any license may be terminated or revoked by the TERO Director or the TERO Commission at any time for cause. "Cause" shall include, but not be limited to, the following:

- a. Violation of the Turtle Mountain Tribal Code dealing with or pertaining to the business or trade licensed;
- b. The willful making of any false statement or misrepresentation as to a material fact in the application for license;
- c. The death of a licensee;
- d. When the licensee ceases business at the location licensed;
- e. Conviction of any crime; or
- f. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the Tribe or permitting any disorderly or immoral practices upon the premises where the licensee is licensed to carry on the business or trade.

When the license is terminated or revoked for cause, the licensee or those claiming under him shall not be entitled to any return of any portion of the license fee previously paid to the TERO Commission.

2. When a license is terminated or revoked it will be effective immediately, and the licensee is entitled to a hearing with the TERO Director within ten (10) days of termination or revocation.
3. Notice of the hearing for revocation of a license shall be given by the TERO Director in writing setting forth specifically the grounds for complaint and the time and place for hearing. Such notice shall be mailed to the

licensee at his last known address at least forty-eight hours prior to the date set for the hearing, or shall be delivered by a law enforcement officer in the same manner as a summons at least forty-eight (48) hours prior to the date set for the hearing. The hearing will be informal and with the TERO Director. If the termination or revocation is not reversed, the licensee can appeal the decision through Title 22, Tribal Administrative Procedures Act.

18.0113 Licenses; Posting Of.

All licenses and permits issued by the TERO Director for the operation of any business establishment, trade, or any part of the operation thereof, shall be posted in a conspicuous place in the main business area of the business establishment; where badges representing permits or licenses are issued to be worn by an individual such licensee shall wear such badge during the normal course of employment for which said badge was issued.

18.0114 Licenses; Enforcement.

All Tribal officials having duties to perform with reference to licensed premises, including all police officers, shall have authority to enter the license premises with or without a search warrant to check for violations of Tribal laws by the licensee.

18.0115 License Fee-Deposition Of.

All license fees collected under this Title shall be transferable to the Finance Dept. of the Tribe and credited to the general fund of the Turtle Mountain Band of Chippewa Indians, unless otherwise provided in this Title.

18.0116 Violations; Criminal; Indian.

Unless otherwise provided in this Title, any person violating any of the provisions of this Title shall be guilty of an offense and shall be punished pursuant to Section 26.0601 of the Tribal Code.

- 18.0117 Violation; Punishment; Persons not Subject to Turtle Mountain Criminal Jurisdiction.
Unless otherwise provided in this Title, persons determined not to be subject to Turtle Mountain Criminal jurisdiction violating any of the provisions of this Title shall be removed from the Reservation pursuant to Article IX, Section 4 of the Constitution and Bylaws of the Turtle Mountain Band of Chippewa Indians.
- 18.0118 Civil Penalty.
Instead of proceeding under Sections 18.0116 or 18.0117 of this or any other provisions provided by this Title, the TERO Director may assess a civil penalty against any person who he shall have probable cause to believe is in violation of, this Title. Said civil penalty shall not be less than twenty-five dollars (\$25.00) per violation or per day of violation.
- 18.0119 License Fees.
Every person or business issued or reissued a business license shall pay a license fee as follows:
1. annual business license - \$150.00 per year;
 2. short term or temporary business license fee for members of Turtle Mountain - \$50.00 for any period up to 3 months;
 3. short term or temporary business license fee for non-members of Turtle Mountain - \$75.00 for any period up to 3 months; and
 4. short term or temporary business license fee for a period of one (1) day or less would be \$25.00 per day.
- 18.0120 Authorization for Inspection of Customer Records.
1. Except as otherwise specifically provided by tribal law, any tribal governmental body (other than the Tribe itself) board, bureau, commission, utility, or agency, or any political subdivision of the Tribe, or organizations or agencies supported, in whole or in part, by tribal funds, or expending tribal funds may not disclosure customer

information to any other person, tribal agency, or law enforcement agency unless disclosure is made in accordance with any of the following:

- a. Consent is granted by the customer in writing and signed by the customer;
- b. To a tribal agency, other governmental agency, or law enforcement agency pursuant to valid legal process.
- c. To any other person pursuant to valid legal process; or
- d. for the purposes of reporting a suspected violation of the law when the tribal entity reasonably believes that the customer is engaged in unlawful activity.

Customer information refers to any information derived from a customer's records.

2. Intentional violations of this section by a tribal agency or any other person or a willful failure by the tribal agency or any other person to make these records available within ten (10) days after written authorization or within the time limits prescribed by legal process, may result in a liability for an amount up to two hundred fifty dollars (\$250.00), plus attorneys fees incurred in any proceeding to enforce this section. Any tribal agency or other person acting in good faith on any provision in this Section, may not be held liable to the customer or any other person.
3. Any agency or person requiring or requesting access to customer information Shall make such request in writing and pay to the tribal entity that assembles or provides the customer information reasonable costs incurred for supplying the information.

Chapter 18.02
Definitions

18.0201 Definitions.

1. "Business" includes all activities or acts, personal or corporate, engaged in with the object of gain, benefit, or advantage, either direct or indirect. For the purposes of this definition business does not include occasional or casual activities and sales. An occasional or casual activity occurs when a person engages in an isolated transaction that is not conducted with such frequency or is not one of a series of activities as to be sufficient to consider the person as regularly conducting the activity. "Business" shall include, but not be limited to:
 - a. Construction companies, contractors, repair services, or installation services;
 - b. Manufacturing or industrial concerns;
 - c. Retail and mercantile merchants;
 - d. Automobile service stations, garages, repair or body shops;
 - e. Retailer, wholesaler, manufacturer, contractors or any other business not located or having a place of business on the Turtle Mountain Reservation, but making sales and deliveries or providing services within the jurisdiction of the (Turtle Mountain Band of Chippewa Indians);
 - f. A farming or agricultural operation making use of land belonging to the Turtle Mountain Band of Chippewa, but shall not include such an operation primarily owned and operated by a tribal member of the Turtle Mountain Band of Chippewa;
 - g. Any casino, enterprise, amusement park, sports arena, or center which is open to the public and conducted for profit;

- h. A motel hotel rooming house, trailer court, mobile home park, bowling alley, or Laundromat;
 - i. A restaurant, bar, café, or snack bar; or
 - j. Traveling merchants, food vendors, or peddlers.
2. "Contractor" means a person, firm, partnership, corporation, limited liability company or any of them, who undertakes to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, irrigation system, excavation or other structure, project, development or improvement, or to do any part thereof, including the erecting of scaffolding or other structure or works in connection therewith, and includes subcontractors.
3. "Person" includes an individual, officer, agent, company firm, partnership, joint venue, association, corporation, state, trust or any other group or combination acting as unit, and shall include the singular and the plural.
4. "Short term or temporary business" shall include the same definition as under "business" but the business is only intended to be conducted for a limited duration of time, not to exceed 3 months and the person does not intend to become an annual yearly business.

18.0202 Bond.

As a condition of transacting business within the Turtle Mountain jurisdiction, the TERO Director may require a person or business to give a bond to TERO to secure the license provided for herein, payable in the event that such a person fails to abide under the terms of this Title. Such bond shall be in the sum of not less than one hundred dollars (\$100), and not more than one

thousand (\$1,000) with sureties to be approved by the TERO Commission.

18.0203 Contractor.

1. Any person desiring a permit as a contractor shall pay to the TERO Director a fee of twenty-five dollars (\$25.00). In the case of a construction contract, such permit shall be valid only for those construction contractors for which the permit was issued. The performance of an additional construction contract shall require an additional permit.
2. In the alternative, and applicant may apply for an annual contractor's license and shall upon receipt of such license, pay to the TERO Director a fee of one-hundred and fifty dollars (\$150.00). Such annual license permits the applicant to operate within the Turtle Mountain jurisdiction as a contractor for the period for which such license is issued, and shall permit the applicant to perform any number of construction contracts during such period.

**Chapter 18.05
Licensure and Regulations of Child Care Centers**

18.0501 Purposes and Definition.

1. The purpose of this chapter is to secure the safety and well being of the children residing on the reservation or within Indian country who are under the supervision of a childcare center. This purpose shall be achieved by establishing standards for the licensure and regulation of all childcare centers operating within the jurisdiction of the Turtle Mountain Band of Chippewa Indians.
2. Definitions:
 - a. "Child Care Center" means an early childhood facility where early childhood services are provided to four or more children for a fee.
 - b. "Parent" as used for the purposes of this Chapter only, means the natural parent,

step-parent, grandparents or legal guardian or temporary or permanent custodian of a minor child.

18.0502 Application for Licensure.

1. Application for an unrestricted license to operate a childcare center shall be made through the TERO office and in accordance with the reasonable requirements of that office. The fee for such license shall be established by TERO, subject to approval of the TERO Commission.
2. The TERO office shall develop and make available a standardized application for licensure. Such applications must include the following information at a minimum:
 - a. business name, address, and phone number of child care center.
 - b. Statement of tribal fire authorities that center is in compliance with applicable fire code regulations;
 - c. Name, address, and telephone number of child care center operator;
 - d. Name, address, and telephone number of child care center director; and
 - e. Total area of childcare center measured in square feet.
3. Should a licensed child care center or applicant for a child care license change ownership or location, a new application for licensure must be filed within thirty (30) days.

18.0503 Review of Application.

1. The TERO office shall review all applications for childcare licensure. A representative of the TERO office shall visit the childcare center to view the facility and interview the director and operator of the center. During such interview such representative shall inquire about and determine that the minimum

standards for licensure under this chapter are met by the center.

2. Within sixty (60) days after receipt of an application for licensure by TERO, the TERO Director shall recommend approval to the TERO Commission. If approved by the TERO Commission, the TERO Director shall endorse the license and deliver it to the applicant.
3. All decisions of the TERO Commission are final. No person denied a license shall be eligible to reapply for a period of three (3) months.

18.0504 Unrestricted Child Care License.

An Unrestricted Child Care License shall contain the following information:

1. name of center and operation;
2. date of issuance and signature of the designated tribal licensing office;
3. the maximum number of children which may be cared for by the center;
4. the center is in compliance with the minimum licensing requirements for child care centers set out under this Title; and
5. the term of the license.

18.0505 Provisional License.

1. In the event the designated tribal licensing office determines that a childcare center has had inadequate time to comply with the requirements set out in this chapter, it may, in its discretion, issue a provisional child care license.
2. The Provisional License shall contain the following information:
 - a. Name of center and operator;
 - b. Date of issuance and signature of representative of designated tribal licensing office;

- c. The center has failed to meet the minimum licensing requirements set out under Section 18.0130, but has been granted a one year period of time in which to bring the center into compliance;
- d. The maximum number of children which may be cared for by the center;
- e. Each area of noncompliance has been documented by the designated tribal licensing office and a copy may be obtained by contacting the designated tribal licensing office;
- f. The license expires automatically upon one year from the date of issuance; and
- g. Upon proof of compliance with the minimum licensing requirements set out under Chapter 18, the center shall be issued an unrestricted child care license.

18.0506 Rights of Provisional Licensee.

- 1. An applicant receiving a provisional license has the right to:
 - a. Receive a written statement of all areas of the center, which are presently in noncompliance;
 - b. Receive a written statement of the rationale of the designated tribal licensing office for the denial of an unrestricted child care license; and
 - c. Appeal the denial of an unrestricted license to the TERO Commission within fifteen (15) days of the denial. The TERO Commission shall provide the applicant with notice and an informal hearing on the licensure before at least three (3) members of the TERO Commission within fifteen (15) days of receipt of the request for appeal.

2. A provisional license, subject to the exceptions contained in this chapter, entitles the licensee to all rights and privileges afforded the holder of an unrestricted childcare license. Receipt of a provisional license will be recognized by the Tribe as evidence of compliance with licensure requirements of this chapter.
3. The licensee must publicly post or display the provisional license in clear view of patrons of the childcare center.

18.0507 Minimum Qualifications and Duties of the Operator of a Child Care Center.

The operator shall be at least twenty-one (21) years of age.

1. The operator may be any person, firm, partnership, corporation, limited liability company or any entity as designated by the TERO Commission.
2. The operator must:
 - a. Ensure that the center is in compliance with all licensure standards set out in this Chapter;
 - b. Establish a child care program;
 - c. Apply for a child care license;
 - d. Develop and make available to parents, staff and the designated tribal licensing office, upon request, a plan for operation of the center, a policy of enrollment for children, and a statement of the rights and responsibilities of staff and parents;
 - e. Maintain records of enrollment, attendance, and health of the children and all other records required to be maintained under this Chapter;
3. The operator shall be responsible for all center staff volunteers, and others providing services within the center.

4. Ensure that parents of children enrolled in the center are informed of the center's policies and procedures, including the center schedule and content of the child care programming, policy on discipline, and policy in the case of a child's illness or accident.
5. Develop a written agreement to govern the center's relationship with parents of children enrolled in the center which shall contain the amount of fees to be charged for care, the method of payment of those fees, and the center's policy, if any, on payment of delinquent fees. This written agreement should include information on any governmental or other childcare program in which the parent is enrolled. Examples of such programs include the Childcare Block Grant, the Cross Roads Program, and T.A.N.F. childcare program. The written agreement shall include the percentage of fees, which are paid for by the governmental or other program and the amount, which is the parent's responsibility.
6. Develop written policies governing the emergency medical care and treatment of children enrolled in the program, and policies providing for the care of children with special physical, emotional, or psychological needs.
7. Develop a written policy for assuring the care and safety of personal property of children enrolled in the center.
8. Comply with all North Dakota requirements for the mandatory reporting of suspected child abuse or neglect made applicable by this Title and develop a policy and procedure for the reporting of suspected abuse or neglect by staff.
9. Develop a schedule for employees of the center which ensures that a staff member with current C.P.R. certification, in accordance with the Turtle Mountain Tribal Code or North Dakota certification requirements, made applicable by this Title, is present in the center at all times when children are receiving care in the center.

18.0508 Minimum Requirements for Care Givers Employed in a Licensed Child Care Center.

1. The child care center shall maintain a record of all employees and volunteers of the center which shall contain the person's name, address, and phone number, and shall provide a copy of such to the designated tribal licensing office upon request.
2. All care givers employed or volunteering at a child care center shall certify to the designated tribal licensing office, within thirty (30) days of employment with a center, that he or she does not have a health problem which will interfere with the ability to provide adequate child care or would be detrimental to the health of the children or center staff.
3. Any care giver or applicant for a position as a care giver with access to children enrolled at the center who has been arrested for, charged civilly or criminally with, or been convicted of child abuse or neglect of his or her own children or those of another person, shall disclose that fact to the designated tribal licensing office and furnish, upon request, information demonstrating that the individual has the ability to provide satisfactory care to children enrolled in the center. The designated tribal licensing office may, at its discretion, require the caregiver or applicant provide it with copies of criminal and civil records, medical records, and other documentation normally accorded privilege or confidential status. If the designated tribal licensing office determines that the caregiver or applicant is present a potential threat to the safety or well being of the children enrolled in the center it may prohibit that person from working in a licensed childcare center.

18.0509 Minimum Standards for Records Maintained by Center on Children Enrolled in Center.

1. The following information shall be obtained and maintained for each child enrolled in the center and shall be updated as necessary and at least once annually:
 - a. The child's full name, birth date, and current address;
 - b. Name, address, phone number, place of employment, and business phone number of parent.
 - c. Name, address, phone number of all persons able to assume responsibility for the child in the event the parent cannot be reached in an emergency;
 - d. Written consent form signed by parent permitting emergency medical treatment of the child;
 - e. Signed authorization of the parent, listing the name, address, and telephone number of all persons authorized to take the child off the premises of the center.
 - f. Copies of written authorizations signed by the child's parent, which permit the center to dispenser administer medication, prescription or otherwise. The child's name must be printed on all prescription medication and the container must bear written instructions containing dosage amount and frequency; and
 - g. Verification that the child's immunizations are current.
2. All information pertaining to the admission, progress, health, finances and discharge of the child care enrollee shall be confidential and release of that information limited to the parent, the designated representative of the parent and the child care center.

18.0510 Emergency Plan Requirement.

A center must have a plan demonstrating the ability to respond to emergency events, which must include the following:

1. Annual fire inspection completed by the tribal fire authorities.
2. Emergency response procedures, including a plan for emergency evacuation in the event of fire or other disaster, conspicuously posted in the center.
3. At least one staff member present at all times when care is being provided to children who has completed a minimum of five hours of first-aid training;
4. At least one approved first-aid kit maintained and kept in designated location which is inaccessible to children yet readily accessible to staff.
5. Storage facility for medicine, which is inaccessible to children yet readily accessible to staff and appropriate for the storage of medicine.
6. Provision for transportation by an adult to a hospital or other facility in the event of an emergency, which adult must remain at the hospital or other facility until such time as the parent or other responsible adult, designated by the parent can be reached to supervise the child's medical or other treatment.

18.0511 Sanitation and Safety Requirements.

1. The facility must have an annual health and sanitation inspection completed by an environmental health practitioner. All reports of such inspection shall be filed with the TERO office including a written explanation of how any problems identified in such report are to be corrected by the center.

2. The center's building, grounds and equipment must be maintained in a sanitary, safe and reasonable manner, and if located near a busy street the yard must be fenced to protect the health and safety of children.
3. All center buildings erected prior to 1970 must be stripped and resurfaced so surfaces do not contain lead-bearing paint.
4. Indoor floors must not be slippery, and all steps and walkways must be kept clean and free from snow and ice. Stairs or porches must have rails.
5. There must be adequate ventilation and proper humidity and a HVAC system capable of maintaining a temperature of not less than 68 degrees Fahrenheit and not more than 20 degrees less than the outside temperature when such outside temperatures exceeds 88 degrees Fahrenheit.
6. Childcare center must be cleaned daily and personal items such as toys, pacifiers, and combs must be stored in a sanitary manner.
7. Hazardous or poisonous substances must be kept in locked storage and inaccessible to children.
8. Caregivers and staff shall wash hands before preparing or serving meals, after diapering, and after using bathroom facilities.
9. When food is prepared, served or stored in a childcare center it will be done in a sanitary and safe manner.
10. Drinking water must be accessible to children and hot water temperature in bathrooms must not be no greater that 120 degrees Fahrenheit.
11. Bathroom must be cleaned daily and located in separate rooms from those used for cooking, eating, and sleeping.

12. Centers shall take steps to keep the facility free of insects and rodents. Chemicals for insects and rodent control may not be available in areas accessible to children.
13. The minimum ratio of care givers or programs staff to children in child care centers shall be:
 - a. If all children in care are less than twenty-four months of age, one staff member per four children.
 - b. If all children in care are twenty-four months of age to thirty-six months of age, one staff member per five children.
 - c. If all children in care are three years of age to four years of age, one staff member per seven children.
 - d. If all children in care are four years of age to five years of age, one staff member per ten children.
 - e. If all children in care are five years of age to six years of age, one staff member per twelve children.
 - f. If all children in care are six years of age to twelve years of age, one staff member per eighteen children.
 - g. If children in care are of mixed age categories the minimum ratio of care givers or staff to children shall be determined by calculating the average age of the children and applying the corresponding ratio; however, in no event shall a single care giver or staff member care for more than two children twenty-four months of age or younger or more than four thirty-six months or younger at any one time.

14. These ratios shall apply to the total number of children present at the center at any one time and not the total number of children enrolled.

18.0512 Minimum Standards for Food and Nutrition.

1. Food suppliers must be properly prepared, sufficient in amount, varied according to child's diet and served at appropriate hours.
2. Staff must discuss with parents child's habits, activities and special concerns about their children.
3. Each facility shall have a designated area where a child can sit quietly or lie down to rest.
4. No child shall be confined to a crib or playpen during the entire time at center.
5. Children shall never be shaken or jostled.
6. At no time shall infants be left unattended while feeding.
7. Physical discipline shall not be used by any staff or volunteer on the children. Children may not be locked in any room for disciplinary action.

18.0513 Other Regulations.

Rules and regulations as defined in this document may be changed or added to according to need.

18.0514 Revocation of a Child Care License.

The TERO office may revoke a childcare center's license for noncompliance with any of the regulations set out in this chapter. The revocation of a childcare license, provisional or temporary may be appealed to the TERO Commission. The child care center may continue to operate the child care center pending a determination by the TERO Commission, or until such time as the license expires if its own accord, whichever occurs first. A center may not appeal the expiration of a provisional license.