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**ORDINANCE OF THE GOVERNING BODY**

**OF THE**

**SAUK-SUIATTLE INDIAN TRIBE**

**Ordinance No. 11-10-07 : INDIAN PREFERENCE**

**THEREFORE BE IT ENACTED BY THE TRIBAL COUNCIL OF THE SAUK-SUIATTLE INDIAN TRIBE, AS FOLLOWS:**

**WHEREAS**, The Sauk-Suiattle Tribal Council is the duly constituted governing body of the Sauk-Suiattle Indian Tribe, by authority of the Constitution and Bylaws, approved by the Secretary of the Interior on September 17, 1975 and in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat.984); and

**WHEREAS**, the Sauk-Suiattle Indian Tribal Council is the duly elected governing body of the Sauk-Suiattle Indian Tribe; and

**WHEREAS**, in accordance with the Tribal Constitution and Bylaws of the Sauk-Suiattle Indian Tribe, it shall be the duty of Tribal Council to protect and preserve the people of the Sauk-Suiattle Indian Tribe as provided in Article II, Section 1(a) including the promulgation of laws and ordinances pursuant to Article VII, Section 1(P); and

**WHEREAS**, in order to maintain and provide the peace, health and general welfare of the Sauk-Suiattle Tribe, the Tribal Council is committed to the support and promotion of tribal members in all aspects of the operations and services of the Tribe, unless expressly precluded by applicable law; now

**THEREFORE, BE IT ENACTED THAT**, the Sauk-Suiattle Tribal Council hereby asserts its right as a sovereign power, to mandate the use of Indian Preference, consistent with the intent of true self-determination and as supported by the Indian Self-Determination Act as Amended that "tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of contracts or portions of contract," (P.L. 93-638(7) (c); now

**BE IT FURTHER ENACTED THAT**, this Ordinance is to set forth uniform goals and procedures to be followed in carrying out the aforementioned Indian Preference mandate for all activities and operations under the management and/or authority of the Tribe; now

BE IT FINALLY ENACTED THAT, the Indian Preference policies and procedures shall be followed:

## ARTICLE I

### 1.01 Policy

The members of the Sauk-Suiattle Indian Tribe suffer from economic underdevelopment, unemployment, and poverty. Employment and contracting opportunities for members of the Sauk-Suiattle Indian Tribe and their business enterprises within the jurisdiction of the Tribe directly affect the health and welfare of the Tribe because these opportunities provide the means for members of the Tribe to gain employment, skills, and the dignity that comes with employment and economic well-being.

It shall be the policy of the Sauk-Suiattle Indian Tribe to promote the economic health and welfare of its members through tribal self-sufficiency by employing Sauk-Suiattle Indians, other enrolled Indians and Indian Descendants, to the greatest extent possible, at all levels of tribal government as authorized by the Civil Rights Act of 1964 and the Indian Self-Determination Act.

### 1.02 Repealer

This Ordinance supplements any existing tribal Indian Preference policies and where in conflict this Ordinance shall supersede.

## ARTICLE II

### 2.01 Definitions

1. **Employer:** The term "Employer" includes, but is not limited to, any person who engages in business through paid agents or servants, or who is hired through contracts for services, within the boundaries of the SSIT Reservation and lands owned by, held in trust for, leased or fee lands owned or controlled by the Tribe. The term "Employer" includes any person acting as an agent, contractor or subcontractor of any employer, directly or indirectly, including independent contractors and subcontractors of the United States or wholly owned government corporation of any state or political subdivision thereof. The 1964 Civil Rights Act (Title VII) allows private and government employers on or near a Federal Trust Indian Reservation to exercise Indian preference in employment, 25 USC 450e (b)(1).
2. **Covered Employer.** The term "Covered Employer" includes any employer who employs two or more employees on the SSIT Reservation for an aggregate of sixty (60) working days or more in any twelve month period.
3. **Indian.** The term "Indian" means any member of a federally recognized Indian Tribe.
4. **Indian Preference.** The term "Indian Preference" within the meaning of this Ordinance means Indians, with tribal members receiving the first order of preference, receiving preference in employment, training, promotion, construction, contracting, and housing;
5. **Entry Level Position.** The term "entry level," applies to all positions that do not require specialized skills, degrees, certifications or years of experience.

6. **Indian Owned Firm or Entity.** The term "Indian Owned Firm or Entity" means any commercial, or other business activity owned firm or entity provided that such Indian ownership constitutes not less than 51% of the enterprise and in accordance to section 7(b) of Indian Self Determination and Education Act (25 U.S. C. 450e(b).
7. **Located Near the Reservation.** The term "Located near the Reservation" shall mean any employer located within daily commuting distance of the reservation and/or lands owned by, held in trust for, leased or fee lands owned or controlled by the Tribe.
8. **SSIT or Tribe.** The term "SSIT" or "Tribe" shall mean the Sauk-Suiattle Indian Tribe.
9. **Reservation.** The term "Reservation" shall mean the Sauk-Suiattle Indian Reservation, Darrington, Washington.
10. **Tribal Council.** The term "Tribal Council" means the governing body of the SSIT.
11. **Arbitration:** The hearing and determination of a case in controversy by an arbiter.
12. **Mediation:** The intervention between conflicting parties to promote reconciliation, settlement, or compromise.
13. **Sauk-Suiattle Tribal Court:** the local court of competent jurisdiction.
14. **Tribal Lands.** The term "tribal lands," shall mean those lands owned and controlled by the Sauk-Suiattle Indian Tribe.

### **ARTICLE III - Purposes and Interpretation**

#### **3.01 This Ordinance shall be interpreted and construed to fulfill the following purpose:**

- (A) To protect the rights of the Sauk-Suiattle Tribal members.
- (B) To preserve the peace, harmony, safety, health and general welfare of the people of the SSIT and other Indian tribes and those permitted to seek employment, contracting and sub-contracting with the SSIT.
- (C) To avail the SSIT, tribal entities, and tribal members of Indian Preference employment on tribal trust and non-trust lands within the jurisdiction of the SSIT by prescribing procedures for the recording, preference to secure employment made by or through the SSIT.

### **ARTICLE IV - Jurisdiction**

#### **4.01 Jurisdiction**

Jurisdiction is extended over all SSIT activities and operations under the management and authority of the SSIT, which includes, but is not limited to, the employment, construction, contracting, sub-contracting, housing activities, which may lie within the jurisdiction of the SSIT, as such:

- (1) The exterior boundaries of the SSIT Reservation:
- (2) Lands owned by, held in trust for, leased or fee lands owned and used by the Tribe, its members.

Jurisdiction is extended over all matters arising within the jurisdiction of the SSIT with respect to Indian Preference, and jurisdiction with respect to any person or entity acting or causing actions,

which arise under the Indian Preference policy, shall be exercised through and by the Sauk-Suiattle Tribal Court.

## **ARTICLE V – Indian Employment Preference Policy**

### **5.01 Indian Preference.**

The SSIT shall practice Indian Preference, with the first order of preference to tribal members, in hiring, promotion, training and all other aspects of employment, consistent with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Members of the Sauk-Suiattle Indian Tribe, who meet the minimum qualifications for a position, shall be given preference. If no member of the Sauk-Suiattle Indian Tribe meets the minimum qualifications of a position he or she applies for, other eligible Indians as set for the in Section 5.06, who meet the minimum qualifications for the position shall be given preference in hiring.

### **5.02 Exemption.**

It shall not be a violation of this Ordinance to hire non-members for key positions that require advanced degrees, licenses, or specialized skills.

### **5.03 Applicability.**

Unless clearly and expressly prohibited by federal law, this Ordinance shall apply to all employers, including but limited to: tribal programs, departments, and chartered entities or enterprises; private employers and independent contractors and subcontractors, including those performing work for the State of Washington or the United States.

### **5.04 Covered Positions**

The Indian Employment Preference of this section shall apply to each and every job classification, skill area, or craft recognized or utilized by an employer, including administrative, supervisory, and professional classifications.

Entry level positions that do not require specialized skills and/or degrees shall be filled by Indians with tribal members receiving the first order of preference.

### **5.05 Qualified Indians: Employment Criteria**

An Indian shall be qualified for employment in a position if he or she meets the minimum threshold requirements for such position, and such Indian shall be accorded the preferences to which he or she is entitled under this Ordinance pursuant to Section 5.06. No employer or department may utilize any employment criterion that is not legitimately related to the performance of the position.

Should an outside employer refuse to change the listed minimum requirements for a position that would make a tribal member eligible without adversely impacting the needs of the job and should a listed criterion for the job serve as a barrier to the employment of a member of the Sauk-Suiattle Indian Tribe or other enrolled Native American, the employer

may be subject to sanctions under this Title if the employer cannot prove, by a preponderance of the evidence, that such a criterion is required by business necessity.

#### **5.06 Eligible Indians**

The Tribe, its entities, and private employers contracting with the Tribe shall extend a preference to qualified Indians according to the following priorities:

- 1.) Veteran Sauk-Suiattle Enrolled Members;
- 2.) Sauk-Suiattle Enrolled Members;
- 3.) Other enrolled Indian Veterans;
- 4.) Other enrolled Indians, including descendents of Sauk-Suiattle;
- 5.) Spouses of Enrolled Members who are Veterans;
- 6.) Spouses of Enrolled Members
- 7.) Non – Indians

#### **5.07 Employer Retaliation Prohibited**

It shall be a violation of this Ordinance for any employer to take any adverse personnel or hiring action, or to retaliate in any way, against any person who attempts to enforce the requirements under this Ordinance.

### **Article VI - Grievances**

#### **6.01 Procedure**

The following procedures are applicable to complaints arising out of Tribal preference or other Indian challenges:

1. Each complaint shall be heard by a special purpose ad hoc committee, hereinafter referred to as “the Committee,” appointed by the Tribal Council.
2. Each complaint must be filed in writing, signed, and filed with the Human Resource Department no later than 10 calendar days from the date action, (i.e., date received notice of declination of employment or applicable activity) upon which the complaint is based.
3. Upon receipt of a complaint, Human Resources shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt to complainant in writing by certified mail.
4. Human Resources shall refer the complaint to the Committee within 5 calendar days of receipt of the complaint.
5. The Committee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The Committee shall make a determination on the complaint and notify the complainant, in writing, within 10 calendar days of receipt of the complaint by the Committee. The decision of the Committee shall constitute final administrative action on the complaint.

#### **6.02 Powers of the Committee**

The Committee shall have the authority to either:

- (1) Find the complainant was wrongfully denied preference; or
- (2) Find the complainant was wrongfully denied promotion;
- (3) Dismiss the complaint.

**6.03 Grounds for Determination of Wrongful Denial of Preference.**

To find that the complainant was wrongfully denied preference, the Committee must find based on the preponderance of the evidence that the Indian or tribal member:

- (1) met the minimum job requirements or that the position was an entry level position that would require post training on the job and/or external training, or
- (2) an employment decision described in Sections 5.04 and 5.04 granted to an individual or entity of a lower preference level as indicated in Section 5.06.

**6.04 Outside Non-Tribal Employers and/or Contractors**

(1) A fine not to exceed \$500.00 per violation shall be levied for each day a party is found to be out of compliance with this Ordinance and may be considered as a separate violation.

(2) Suspension or termination of a contracting entity's authorization to engage in business activity on the Reservation; provided that, the contracting entity shall be given a reasonable time to remove its equipment and other property it may have on the Reservation and to arrange with another firm for assumption of any contractual obligation it has.

(3) Prohibit the contracting entity from engaging in future business activity on the Reservation for a specified period or permanently.

(4) Provide monetary or other compensatory relief to the Tribe or certified Indian business or other entity which was harmed by the contracting entity's noncompliance with this Title.

**6.05 Tribal Employer**

- (1) Where the Committee has found that an eligible Indian, as identified in Section 5.06, was denied employment and/or promotion, the Tribe shall during the period of time that background checks are being conducted on the individual wrongfully selected for the position withdraw that application and substitute the eligible Indian's, or;
- (2) Make every effort to find comparable employment.

**CERTIFICATION**

Pursuant to the authority contained in Article VII, Section 1(N) of the Constitution and Bylaws of the Sauk-Suiattle Indian Tribe, ratified by the Tribe on July 19, 1975 and certified by the Secretary of Interior on September 17, 1975, pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), the foregoing Ordinance was adopted this 2nd, day of November at a Regular Council Meeting held at the Sauk-Suiattle Indian Reservation at which a quorum was present, by a vote of 3 for, 0 against, 1 abstain, and 3 absent.

  
Janice W. Mabee, Chairman

ATTEST:  Vice Chair  
Cynthia M. Harris, Secretary