

REMOVAL RULES AND PROCEDURES ORDINANCE

Ordinance # 01-150-02

Section 1. Purpose.

1.01. *Purpose.* The purpose of these Removal Hearing Rules and Procedures is to set forth clear processes for receiving requests for removal of members of committees and commissions of the Little River Band of Ottawa Indians created by ordinance, resolution or motion of the Tribal Council.

1.02. *Findings.* The Tribal Council has determined that processes for hearing procedures must include notice and opportunity to be heard in accordance with the Constitution of the Little River Band of Ottawa Indians, Article III, sec. 1(h and i). Further, the Tribal Council finds that:

- a. The Tribal Council has a responsibility to promulgate rules of procedure for meetings of the Tribal Council under Article IV, sec. 6(e) of the Constitution of the Little River Band of Ottawa Indians.
- b. In accordance with charters and ordinances duly adopted by the Tribal Council, the Tribal Council is required to act as a hearing body in the event a member of a committee or commission of the Little River Band of Ottawa Indians is recommended for removal.
- c. There is a need to develop and promulgate procedures which allow for notice and due process in regard to hearing procedures.

Section 2. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by resolution # 01-1107-05.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Section 3. Definitions.

3.01. *General.* For purposes of this Ordinance, certain terms are defined in this Section. The word “shall” is always mandatory and not merely advisory.

3.02. *Entity* means a committee or commission of the Little River Band of Ottawa Indians which is created by the Tribal Council and whose members are appointed by the Tribal Council. This term does not include the Election Board or boards of corporations created by the Tribe.

3.03. *Removal hearing* means a meeting of the Tribal Council during which the member being requested to be removed and the entity requesting removal present the evidence and testimony regarding the matter to the Tribal Council.

3.04. *Member* means the individual holding an appointed position on an entity for which a request for removal has been presented.

Section 4. Hearing Date.

4.01. *Determination.* The Tribal Council, upon receipt of a request for removal, shall determine on the evidence and allegations presented whether a removal hearing is required. A motion to accept or reject a request for removal shall be made and adopted by majority vote of the Tribal Council members present at a meeting where a quorum is met.

4.02. *Date Selection.* The Tribal Council may determine the removal hearing date at a meeting following receipt of a request for removal. The meeting may be a regular, special or emergency meeting called for the purpose of selecting the removal hearing date. Provided that, if time allows at the meeting during which the request for removal was presented, the Tribal Council may select the removal hearing date at that meeting.

The removal hearing date shall be set by motion, which shall include the date, time and place of the removal hearing, and shall identify that this is a special meeting of the Tribal Council with no other items on the agenda.

4.03. *Time.* The Tribal Council should allow for sufficient scheduled time to complete the removal hearing in a single meeting. Provided that, in the interests of due process, additional time may be granted to either the entity or the member being removed to allow for the presentation of additional materials which were not readily or reasonably available prior to the hearing. In no case shall additional evidence or material be presented after completion of the hearing.

4.04. *Agenda.* The Tribal Council shall title the agenda as – “**Tribal Council Special Meeting Agenda: Removal Hearing Regarding [Name of Entity].**” There shall be no other items placed on the agenda of a removal hearing meeting.

4.05. *Conflict of Interest.* Each Tribal Council member shall identify whether he or she has a conflict of interest as defined in Article IV, section 6(f)(2) of the Constitution and a vote on whether the conflict of interest will preclude the Tribal Council member from voting on the removal request shall be conducted as set forth in Article IV, section 6(f)(4) of the Constitution.

Section 5. Notice.

5.01. *General.* Notice shall be defined as a document signed by the Tribal Council Speaker which contains the following elements as minimum criteria.

- (a) Name of member being requested to be removed;
- (b) Name of entity requesting the Tribal Council to take removal action;
- (c) Date identified for the removal hearing, which shall include both time and place of the removal hearing;
- (d) Identification of representatives of the Tribal Council and the entity to which documents or correspondence can be delivered; and
- (e) Copy of the request for removal, whether by resolution or memorandum, outlining the reasons for removal which is signed by either the members of the entity or certified by the member of the entity acting as secretary and/or chairperson.

5.02. *Delivery of Notice.* Notice shall be delivered to the last known address of the member at least ten days prior to the removal hearing. Notice may be delivered by any of the following methods, provided that delivery by hand or certified mail is preferred.

- (a) Hand delivery with signed receipt to the member or an individual who is part of the immediate family of the member provided that the family member is age 18 or over;
- (b) Certified mail, return receipt requested; or
- (c) Posting in the Tribal newspaper or newsletter stating the place and times such notice can be picked up by a member in the event no address or forwarding address is available for the member. Provided that, in no event shall such notice state any information other than –

“This is legal notice of a hearing scheduled regarding [entity name] and [member’s name] which requires both parties to appear at [date, time and place]. [Member’s name] can pick up official notice of this hearing by appearing at [address] between [set time].”

This notice must appear in the Tribal newspaper or newsletter, in the advertisement section, if any, and contain the title “Legal Notice of Hearing” in bold and capital letters fourteen (14) days prior to any scheduled hearing. Posting in the Tribal newspaper or newsletter shall be considered only after attempts have been made to hand deliver or mail notice certified mail, return receipt requested.

5.03. *Legal Counsel.* Both the entity and the member being requested for removal may have legal counsel present, provided that costs of legal counsel shall be the responsibility of the entity or member.

5.04. *Representatives.* The following representatives shall be identified prior to the removal hearing.

- (a) The Tribal Council shall select from among themselves a member to act as the representative of

the Tribal Council for the purposes of receiving verification of notice, evidence submitted by the parties, and any other documents specifically related to the removal hearing.

(b) The entity shall notify the Tribal Council of the member of the entity selected to be the representative for the entity, for the purposes of receiving verification of notice, evidence submitted by the parties, and any other documents specifically related to the removal hearing. The representative of the entity shall also have the responsibility for presentation of allegations and witnesses during the removal hearing unless legal counsel is identified.

Section 6. Hearing Procedures.

6.01. *Closed Hearing.* A removal hearing shall be considered at a closed meeting of the Tribal Council unless specifically requested otherwise by the member being removed. Such request for an open meeting shall be made in writing by the member to Tribal Council.

6.02. *Presentations.* The removal hearing shall begin by the Tribal Council representative reading the following notice.

The Tribal Council is called into a special meeting to hear the allegations regarding a request for removal presented by [name of entity] on [date] at a Tribal Council meeting to remove [name] as a member of [name of entity]. The Tribal Council members present this day are [list names] and either – the following Tribal Council members are excused from this meeting as a result of conflict of interest – [names].

or – there are no Tribal Council members excused from this meeting as a result of a conflict of interest.

The Tribal Council shall hear the allegations, receive evidence and testimony from the representative of the [name of entity]. The Tribal Council shall then receive evidence and testimony from [name]. During all presentations, the Tribal Council shall be free, by any of its members, to ask questions. There shall be no rebuttal or response time allowed, unless in the interests of due process and justice such rebuttal or response is deemed necessary by the Tribal Council.

This hearing shall be recorded, and all persons giving testimony, and Tribal Council members asking questions, shall pause, or repeat his or her questions and/or answers in the event the tape recording is being switched or another tape is being inserted.

Tribal Council members, representatives, members of entities, witnesses, and all other persons are hereby directed to hold all comments during this hearing and request permission of the Tribal Council Speaker prior to asking or responding to questions.

6.03. *Testimony.* The testimony and evidence presented at the removal hearing shall be presented first by the entity requesting removal and then followed by the member. There shall be no rebuttal or response time allowed, unless in the interests of due process and justice such rebuttal or response is deemed necessary by the Tribal Council.

6.04. *Evidence.* All evidence shall be submitted to the Tribal Council representative.

(a) *Submission prior to meeting.* If evidence is submitted prior to the removal hearing, the Tribal Council representative shall have copies available for each member of the Tribal Council, the representative for the entity, and the member. The originals of such prior submitted evidence shall be considered a part of the official record.

(b) *Submission at removal hearing.* If evidence is submitted at the removal hearing the party submitting such evidence shall submit:

1. An original and nine (9) copies for the Tribal Council;
2. A copy for the representative of the entity; and
3. A copy for the member.

Such submission shall be made to the Tribal Council representative prior to discussion regarding the evidence, and all parties will make every attempt to have evidence submitted at the beginning of the

removal hearing.

6.05. *Witnesses.* The representative for the entity and the member shall submit, at the beginning of the removal hearing, a list of witnesses that are intended to be presented. Provided that, in the interests of due process and justice, the Tribal Council may determine that additional witnesses can or should be called after submission of the witness list.

Section 7. Findings and Decision

7.01. *Deliberations.* The deliberations of the Tribal Council shall be in closed session and shall not be recorded. The Tribal Council shall have ten (10) calendar days after completion of the removal hearing to complete deliberations and file a written decision.

7.02. *Decision.* The Tribal Council shall file a written decision which shall contain the following minimum information.

(a) Title, which includes – “Tribal Council Special Meeting: Removal Hearing Regarding [name of entity] held on [date] – Decision.”

(b) Facts set forth with sufficient specificity so as to identify the allegations, evidence, and determination of the Tribal Council regarding the validity of the allegations.

(c) Decision of the Tribal Council which states clearly the decision to remove or to not remove a member,

(d) The decision shall indicate the votes of each Tribal Council member by signature and either a separation into votes for and against removal, or by indication of such motion next to each signature. Provided that, a notation regarding any Tribal Council member who has been excused under section 4.05 be included.

7.03. *Filing and Presentation of Decision.* The decision shall be considered filed when received by the Tribal Council representative. Upon receipt, the Tribal Council representative shall mail by certified return receipt requested service, a copy of the decision to the member and the representative of the entity.

Section 8. Vote.

8.01. *Vote.* The Tribal Council shall be required to pass any decision to remove a member of an entity by two thirds vote of the Tribal Council members, not including those members who have been excused under section 4.05.

Section 9. Temporary Removal.

9.01. *Temporary Removal.* The Tribal Council may, at the request of an entity or upon its own motion, remove a member of the entity immediately on a temporary basis should evidence identify that this action is required to protect the health, safety, property or business interests of the Little River Band, entity, membership or community.

9.02. *Request Requirements.* A request for temporary removal must be made as a part of a request for removal, or upon motion of the Tribal Council, and shall be at the sole determination of the Tribal Council on the basis of the information submitted.

9.03. *Voting.* The Tribal Council must pass a motion identifying the reasons why immediate temporary removal is necessary by a two-thirds vote of the members present.

9.04. *Notice, No Removal Hearing Date Set.* The Tribal Council shall mail notice to the member being immediately and temporarily removed which contains the following minimum information:

(a) Date and type of meeting during which the action of the Tribal Council directing immediate and temporary removal was taken, i.e. regular, special or emergency meeting.

(b) List or other summary of the reasons for taking the action.

(c) Notice that the Tribal Council will be setting the date, time, and place of the removal hearing at a subsequent meeting and shall forward notice as identified in Section 5.

9.05. *Notice, Removal Hearing Date Set.* In the event that the Tribal Council sets the removal hearing date at the meeting during which immediate and temporary removal action was taken, notice as set forth in Section 5 shall be forwarded which shall also include the following statement:

The Tribal Council, on [date], received a request for removal regarding your membership on [entity name] and has taken action on that date to direct your immediate and temporary removal from membership on [entity name].