

Office of the Prosecutor Ordinance
#11-400-09

Article I. Purpose; Authority, Findings.

1.01 *Purpose.* The purpose of this Ordinance is to establish an independent Office of the Prosecutor, and define its delegated powers and authority.

1.02. *Authority.* The Tribal Council of the Little River Band of Ottawa Indians enacts this legislation in accordance with the following authority:

a. Article IV, Section 7(a)(1) of the Constitution vests authority in the Tribal Council to govern the conduct of members of the Little River Band and other persons within its jurisdiction.

b. Article IV, Section 7(a)(2) of the Constitution vests authority in the Tribal Council to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members.

c. Article IV, Section 7(a)(3) of the Constitution vests authority in the Tribal Council to provide by ordinance for the jurisdiction of the Tribe over Indian Child Welfare matters, and all other domestic relations matters.

d. Article IV Section 7(j) of the Constitution vests authority in the Tribal Council to take action, not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe.

e. Article IV Section 7(f) of the Constitution vest authority in the Tribal Council to create by ordinance regulatory commissions or subordinate organizations and to delegate to such organizations the power to manage the affairs and enterprises of the Little River Band.

1.03. *Findings.* The Tribal Council finds that:

a. Article V, Section 5(a)(1) of the Constitution grants executive powers to the Ogema to enforce and execute the laws, ordinances and resolutions of the Tribal Council, consistent with the Constitution; and

b. Article V, Section 5(a)(2) of the Constitution assigns the Ogema the responsibility to oversee the administration and management of the Tribal government in accordance with the laws, resolutions, and motions adopted by the Tribal Council.

c. establishing an independent Office of the Prosecutor is the best way to ensure that the Tribal Prosecutor can carry out its prosecutorial discretion and functions without influence from any branch of government and to protect the Tribal community.

Article II. Adoption, Amendment, Repeal, Severability.

2.01. *Adoption.* This Ordinance was adopted by Resolution #11- 0309 – 076.

2.02. *Short Title.* This Ordinance may be referred to as the “Prosecutor’s Ordinance.”

2.03. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances.

2.04. *Repeal.* This Ordinance may be subsequently repealed by the Tribal Council in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances.

2.05. *Severability.* If any provision of this Ordinance or its application to any person or circumstances is found to be invalid or in violation of the LRBOI Constitution by a court of competent jurisdiction, the invalidity or unconstitutionality of that provision shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid

or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions.

3.01. *General.* As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

3.02. The word “shall” is always mandatory and not merely advisory.

3.03. *Ogema* means the member elected or appointed to hold the office of Tribal Ogema identified in Article V of the Constitution of the Little River Band of Ottawa Indians.

3.04. *Tribal Council* means the elected and/or appointed body of individuals identified in Article IV of the Constitution of the Little River Band of Ottawa Indians.

3.05. *Tribal Judiciary* means all judges of the Little River Band of Ottawa Indians Tribal Court as identified in Article VI of the Constitution of the Little River Band of Ottawa Indians.

3.06. *Subpoenas* means a writ issued by the Tribal Court, or court of competent jurisdiction, commanding a person to appear before a court or other tribunal, or commanding documents or other tangible items to be produced, subject to penalty of court, or law, for failing to comply.

Article IV. Office of the Prosecutor Established; Territory and Jurisdiction.

4.01. *Office of the Prosecutor.* The Office of the Prosecutor is hereby established as an independent office. The Office of the Prosecutor shall have full discretionary decision-making authority with respect to carrying out the powers and authority set forth in this Ordinance.

4.02. *Territory.* The Prosecutor shall have authority to act over crimes committed within all lands which are now or hereinafter may be owned by the Little River Band of Ottawa Indians Tribe, or reserved for the Tribe, or held in trust for the Tribe or any member of the Tribe by the United States of America, in accordance with Tribal and Federal law.

4.03. *Jurisdiction.* The criminal jurisdiction of the Little River Band of Ottawa Indians over its members and territory shall be exercised to the fullest extent consistent with the Tribe’s Constitution, the sovereign powers of the Tribe, and federal law.

Article V. Office of Prosecutor Staffing; Funding.

5.01. *Staffing.* The Prosecutor shall have the authority to hire and oversee administrative staff as needed to fulfill the duties of this office, subject to compliance with Tribal laws, including the Indian Preference in Employment Ordinance, and an appropriation of funds and budget approval by the Tribal Council.

5.02. *Funding.* Adequate levels of funding shall be allocated on an annual basis that will allow the Office of the Prosecutor to run effectively. Once funded, the budget for the Office of the Prosecutor shall not be decreased during any fiscal year period.

Article VI. Powers of the Office of the Prosecutor.

6.01 *Powers.* The Office of the Prosecutor shall have the following powers:

a. To review all complaints of violations of Tribal laws and ordinances; conduct or authorize all investigations of such complaints; and determine what, if any, charges will be filed and whom the charge will be against.

b. To review all requests for arrest warrants and search warrants to determine if constitutional and other legal requirements are satisfied prior to approval or authorization.

- c. To sign, file and present all criminal complaints, subpoenas, affidavits, motions, process and papers of any kind.
- d. To authorize subpoenas for compelling or producing documentation or appearances in Tribal Court, in Tribal criminal investigations and for investigations into civil violations of the Tribal Constitution or Tribal law and to submit to the Tribal Court to issue.
- e. To grant immunity, with Tribal Court approval, to any witness. Once indemnified in writing, a witness may not refuse to answer questions covered by the immunity agreement. A person who refuses to testify pursuant to a prosecutorial subpoena, after being granted immunity, may be brought before the Tribal Court to show cause why he/she should not be held in contempt of court.
- f. To ensure the integrity of all investigative processes and procedures and develop written guidelines for the conduct of investigations.
- g. To negotiate prosecutorial agreements on behalf of the Tribe with other Tribal, federal or state officials when that authority has been expressly delegated by the Tribal Council.
- h. To assume responsibility for all criminal investigations and prosecutions on behalf of the Tribe in Tribal Court, including arraignments, motions, trials and appeals.
- i. To prosecute violations of criminal law, Tribal ordinances and resolutions in Tribal Court.
- j. To represent the Tribe in any and all child welfare cases arising under the Indian Child Welfare Act, in accordance with applicable Tribal, federal law or state law.
- k. To oversee and assist with any investigation into crimes committed within the Tribe's jurisdiction in the event the Tribe's jurisdiction is superseded by federal jurisdiction.
- l. To appear before any court, commission or tribunal in relation to exercising any power or authority granted by this Ordinance.
- m. To conduct other investigations as required or mandated by Tribal law.
- n. To act as an agent or liaison between outside agencies and Tribal officials, whether elected or appointed, and employees as deemed appropriate.

Article VII. Eligibility; Term of Office; Hold Over Provision; Vacancy.

7.01. *Eligibility.* The Appointee to the Office of the Prosecutor shall:

- a. Not currently be serving as an elected official of the Tribe or as an elected or appointed official of any other jurisdiction, or must resign that position effective immediately upon confirmation of appointment; and
- b. Be an attorney in good standing who is licensed to practice law in the State of Michigan or shall become licensed in the State of Michigan within six months from the date of appointment; and
- c. Not have been convicted, within ten (10) years of appointment to office, of any felony by a court of competent jurisdiction within the United States; and
- d. Not have been convicted of, or pled guilty to, or pled no contest to, within ten (10) years of appointment to office, any crime involving theft, fraud or dishonesty in any court of competent jurisdiction with the United States; and
- e. Not have been convicted of, or pled guilty to, or pled no contest to, within ten (10) years of appointment to office, any crime of violence or threats of violence, and/or criminal sexual conduct in any court of competent jurisdiction within the United States.

7.02 *Term of Office.* The Prosecutor shall serve a term of office of four (4) years. There shall be no limit on the number of terms an individual may serve in the office of the Prosecutor.

7.03. *Hold Over Provision.* To accommodate the nomination and confirmation provisions for appointing a Prosecutor, the then current serving Prosecutor shall be held over in office until confirmation of the Ogema's nominee for Prosecutor, but in no case for more than sixty (60) days after the expiration of the then current serving Prosecutor's term of office.

7.04. *Vacancy.* Where the Office of the Prosecutor becomes vacant the vacancy shall be filled, in accordance with the provisions of this Ordinance, within sixty (60) days from the effective date of the vacancy, and the appointee shall serve the remainder of the Prosecutor's four-year term.

Article VIII Posting; Appointment; Confirmation; Service in Office; Appointment of First Prosecutor.

8.01. *Prosecutor Posting.* The Human Resource Director shall post the position of Prosecutor no later than sixty (60) days prior to the expiration of the Prosecutor's term of office.

8.02. *Appointment.* No later than fifteen (15) days prior to the expiration of the Prosecutor's term of office, the Ogema shall nominate an individual for the position of Prosecutor from among applicants jointly interviewed by the Ogema and Tribal Council.

8.03. *Confirmation.* The Ogema's nominee shall be subject to confirmation by a Tribal Council Resolution supported by an affirmative vote of six (6) Tribal Council members. The Prosecutor's term of office shall commence upon his or her confirmation by Tribal Council.

8.04. *Service in Office.* Once confirmed, the Prosecutor shall serve until the expiration of his or her term of office, unless removed from Office by an Order of the Tribal Judiciary resulting from the removal hearing held in accordance with the provision of this Ordinance.

8.05. *Appointment of the First Prosecutor.* To stagger the four (4) year term of Prosecutor with the four (4) year term of the Ogema, the first Prosecutor shall be the current Prosecutor and shall serve a term of office that commences upon the effective date of this Ordinance and runs for no more than two years following the expiration the current Ogema's term of office.

Article IX. Compensation. Employment Status.

9.01. *Compensation.* The Tribal Council shall establish a reasonable level of compensation for the Prosecutor. The level of compensation established by the Tribal Council shall not be diminished during the Prosecutor's term of office.

9.02. *Employee Status.* The Prosecutor shall be considered an employee of the Tribe, and is therefore eligible for the same benefits as any other employee, and is subject to all Tribal laws, regulations and policies.

Article X. Appointment of Special Prosecutor

10.01. *Conditions for Special Prosecutor Appointment.* The Tribal Court, upon motion of an interested party or on its own motion, may appoint a licensed attorney to serve as Special Prosecutor under any of the following circumstances:

- a. Where the Prosecutor declares a conflict of interest or it has been determined that the Prosecutor has a conflict of interest.
- b. Where the Prosecutor is unable to perform his/her duty due to a justified absence or temporary disability.
- c. Where the Prosecutor is otherwise unable to act in his/her usual capacity.

10.02. *Appropriation of Funds.* The Office of the Prosecutor shall provide adequate funding for a Special Prosecutor in its annual budget.

- 10.03. *Eligibility for Appointment as Special Prosecutor.* A Special Prosecutor shall:
- a. Be currently serving as a prosecutor in another Tribal Jurisdiction not far from the reservation; or
 - b. Be currently serving as a prosecutor or assistant prosecutor in another state jurisdiction not far from the reservation; or
 - c. Be eligible for appointment as Prosecutor.

Article XI. Removal.

- 11.01. *Causes for Removal.* The Prosecutor may be removed for any of the following:
- a. Unethical conduct, as defined by the American Bar Association, the Michigan State Bar, or any state bar association with which the Prosecutor maintains licensure; or unethical conduct as defined by ethical rules promulgated by the Tribal Court governing the conduct of attorneys; or unethical conduct evidenced by disciplinary action taken by any licensure authority to which the Prosecutor is subject.
 - b. Gross misconduct or malfeasance in office that is clearly prejudicial to the administration of justice.
 - c. Willful neglect of duty.
 - d. Disbarment by any state in which the Prosecutor holds a valid attorney license.
 - e. Inability to fulfill the duties of the office due to mental or physical disability, to the extent that he or she is incapable of exercising judgment about or attending to the duties required of the Prosecutor. Such determination shall be based upon or supported by competent medical evidence or opinion.
 - f. Conviction of a felony in any court of competent jurisdiction within the United States.
 - g. Conviction of, or plea of guilty or no contest to, any crime involving theft, fraud or dishonesty in any court of competent jurisdiction within the United States.
 - h. Conviction of, or plea of guilty or no contest to, any crime involving violence or threats of violence, and/or criminal sexual conduct in any court of competent jurisdiction within the United States.
 - i. Gross misconduct or malfeasance in the administration of the Office of the Prosecutor.
- 11.02. *Referral for Removal.* The following process shall govern the referral of the Prosecutor by the Tribal Council to the Tribal Judiciary for removal.
- a. Petition for removal is provided as follows:
 1. If, in the opinion of the Ogema, there is cause to remove the Prosecutor as provided in this Ordinance, the Ogema shall submit a written request for a special meeting of the Tribal Council to the Tribal Council Recorder to consider referring the Prosecutor to the Tribal Judiciary for removal from office. The Ogema's written request shall set forth, with specificity, the alleged grounds for removal.
 2. If, in the opinion of Tribal Council, there is cause to remove the Prosecutor as provided in this Ordinance, the Tribal Council shall, by resolution, call for a special meeting to consider referring the Prosecutor to the Tribal Judiciary for removal from office. This resolution shall set forth, with specificity, the alleged grounds for removal.
 - c. The Prosecutor shall be provided with notice of the Ogema's written request, or the Tribal Council Resolution, calling for a special meeting of Tribal Council to consider referring the Prosecutor to the Tribal Judiciary for removal from office. This notice shall be delivered to the Prosecutor by registered mail or by personal service, at least ten (10)

days before this special meeting of Tribal Council. The Prosecutor shall be advised in such notice that he or she may appear to answer or rebut the alleged grounds for removal.

d. If seven (7) Tribal Council Members, at that special meeting of Tribal Council, vote to refer the Prosecutor to the Tribal Judiciary, the established grounds for removal shall be set forth with specificity, by the Tribal Council Referring Resolution. Upon referral, the Prosecutor shall be suspended, with pay, from exercising the Powers of the Office of the Prosecutor until disposition of the referral by the Tribal Judiciary.

11.03 *Removal Hearing.* The following process shall govern the removal of the Prosecutor from the Office of the Prosecutor by the Tribal Judiciary.

a. Upon receipt of the Referring Resolution from the Tribal Council, the Tribal Judiciary shall immediately schedule a removal hearing to be held within ten (10) days. The Prosecutor shall be provided with written notice of the removal hearing by registered mail or personal service.

b. At the removal hearing, the Tribal Judiciary shall afford the Prosecutor the opportunity to present evidence and testimony to answer or rebut the established grounds for removal stated in the Referring Resolution from Tribal Council.

11.04. *Order After Hearing.* The Tribal Judiciary's decision to affirm or reject the grounds for removal shall enter by an Order of the Court, after deliberation, at the conclusion of the removal hearing.

a. If the Tribal Judiciary finds that the grounds for removal exist, the Tribal Judiciary shall enter an Order of the Court for Removal of the Prosecutor, immediately removing the Prosecutor from office.

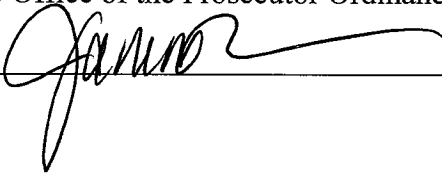
b. If the Tribal Judiciary finds that grounds for removal do not exist, the Tribal Judiciary shall enter an Order of the Court for Reinstatement of the Prosecutor, immediately restoring the Prosecutor's authority to exercise the powers of the Office of the Prosecutor.

c. The Order of Reinstatement shall include an injunctive provision prohibiting the Tribal Council from making a subsequent referral for removal upon the same set of facts and circumstances in support of establishing grounds for a future referring Resolution to the Tribal Judiciary for the removal of this Prosecutor.

d. The decision of the Tribal Judiciary is final.

CERTIFICATION

I, Janine Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Office of the Prosecutor Ordinance adopted by the Tribal Council on 03/09/2011.



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