Elder's Protection Ordinance
Ordinance # 11-900-03

Article I. Title; Purpose; Findings.

1.01. *Title.* This code may be known and cited as the "Elders Protection Code."

1.02. *Purpose.* The purpose of this code is to protect Elders within the jurisdiction of the Little River Band of Ottawa Indians from abuse and neglect as defined in this code. The code shall be liberally interpreted in order to achieve its purpose. The code provides for:

a. Reporting abuse or neglect to the proper agency;
b. Receiving reports of and investigating suspected abuse or neglect;
c. Delivering Elder protection services.

1.03. *Authority.* The Tribal Council enacts this Ordinance 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(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.

1.04. The Tribal Council finds that:

a. It is necessary to act where it is in the best interests of the Little River Band of Ottawa Indians to continue the traditional respect that members of the Tribe have had for Tribal Elders.

b. Elders are valuable resources to the Tribe because they are the keepers of Tribal history, culture, and tradition and they are the best hope of the Tribe to pass on the Tribal history, culture, and tradition to children of the Tribe.

c. it benefits the Tribe and all Tribal Members to protect Tribal Elders from the risks of any form of abuse.

d. to provide a fair and consistent balance between an Elder's Rights and what may be in the Best Interest of an Elder, the Tribal Council must enact the appropriate policies and practices by ordinance.

Article II. Adoption; Amendment; Repeal; Severability.

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution #11-0420-130

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances, Ordinance #04-100-07.

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances.

2.04. *Severability.* 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.

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. *Abuse* means the intentional, reckless, or negligent infliction of bodily injury, unreasonable confinement, intimidation, or punishment of an Elder with resulting physical harm or pain or mental anguish by any person or entity.

a. *Emotional Abuse* means the intentional infliction of threats, humiliation, or intimidation verbally, directly to the Elder or to a third party, or by electronic communications.

b. *Sexual Abuse* means any physical contact with an Elder intended for sexual gratification of the person making such contact and which is not consented to by the Elder or for which the consent is obtained by intimidation, misrepresentation or fraud.

3.04. *Caretaker* means, at any given time, any of the following:

a. a person(s) who is required by Tribal law or custom, or state law to provide services or resources to an Elder; or

b. a person(s) who has undertaken, either voluntarily or for compensation, to provide care, services or resources to an Elder; or

c. an institution or agency which voluntarily provides or is required by Tribal law or custom, state or federal law, or Tribal-State Agreement to provide services or resources to an Elder, including the duty to follow-up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; or

d. an employee of any such institution or agency.

3.05. *Elder* means a person subject to the jurisdiction of the Little River Band of Ottawa Indians who is at least 55 years of age.

3.06. *Emergency* means a situation in which an Elder is immediately at risk of death or injury.

3.07. *Exploitation* means the unauthorized or improper use of funds, property, or other resources of an Elder; or the unauthorized or improper use of the person of the Elder by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an Elder to the Elder's benefit or according to the Elder's desires.

3.08. *Family* means that which is determined by law and custom.

3.09. *Good Faith* means an honest belief in a legitimate purpose and the lack of intent to defraud or harm.

3.10. *Least Restrictive Alternative* means an approach which allows an Elder independence and freedom from intrusion consistent with the Elder's needs by requiring that the least drastic method of intervention be used when intervention is necessary to protect the Elder from harm.

3.11. *Neglect* means the failure of a caretaker to provide for the basic needs of an Elder, where there is an inability of an Elder to supply such basic needs for himself, by not supplying resources, services, or supervision necessary to maintain an Elder's adequate physical and mental health and includes but is not limited to the following:

a. interfering with delivery of necessary services and resources;

b. failing to report abuse or neglect of an Elder by any person;

c. failing to provide services or resources essential to the Elder's practice of his customs, traditions, or religion.

3.12. *Protective Placement* means the placement of an Elder in a hospital, nursing home, residential care facility, private residence, or transfer of the Elder from one such institution to another with the Elder's consent or appropriate legal authority.
3.14. *Protective Services* means those services provided to an Elder with the Elder's consent or with appropriate legal authority and include, but are not limited to: social case work, behavioral or mental and health assessment, home care, day care, respite care, legal assistance, social services, health care, case management, guardianship and other services consistent with this code.
3.15. *Retaliation* means threatening a reporter of Elder abuse or the reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated, suspended from employment or reprimanded by an employer or damaging the reporter's or the reporter's family's real or personal property in any way.

Article IV. The Rights of Elders, Their Families, and Caretakers.
4.01. *Right To Be Informed.* An Elder, the Elder's family and caretaker shall have a right to be informed about an Elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but no instance later than 24 hours after the investigation begins.
4.02. *Right to Refuse Services.* An Elder has the right to refuse to accept Elder protection services even if there is good cause to believe that the Elder has been abused provided that he or she is able to care for himself or herself and has the capacity to understand the nature of the services offered.
4.03. *Right to Refuse Services, Limited.* The Elder's Family or Caretaker may refuse for themselves, but not for the Elder, Elder protection services offered pursuant to this code.
4.04. *Right to Refuse Entry.* An Elder, the Elder's family or caretaker may refuse to allow an investigator into their home and the investigator shall so inform the Elder, the Elder's family and caretaker of this right and the right of the investigator to seek a court order before seeking entry.
4.05. *Right to Personal Service of Petition.* The Elder, Elder's family and caretaker shall be served personally with a petition filed pursuant to this code.
4.06. *Right to Attend Hearings.* The Elder, Elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the Elder's capacity and the Elder shall be present at all proceedings unless the Tribal Court determines the Elder's health would be at risk at such proceeding.
4.07. *Right to Counsel.* The Elder's family and caretaker have the right to be represented by counsel at all proceedings. Tribal Court shall appoint a guardian ad litem for the Elder.
4.08. *Right to Independent Medical Evaluation.* The Elder, Elder's family and caretaker have the right to seek independent medical, psychological, or psychiatric evaluation of the Elder at their own expense.

Article V. Best Interests of the Elder.
5.01. *General.* Upon the filing of a petition, The Tribal Court shall determine
a. the wishes of the Tribal Elder to exercise the rights provided by this Ordinance.
b. whether a finding of abuse or neglect is in the Best Interests of the Elder.
5.02. *Best Interests of the Elder.* In making its determination, the Tribal Court shall seek to balance and harmonize the Rights of the Elder as set forth in this Ordinance with the Best Interests of the Elder. The Best Interests may be determined by examining the Elder's ability to meet his/her needs in the following areas:
a. Medical and bodily/physical care; or

b. Mental health; or
c. Shelter, utilities, repairs; or
d. Transportation; or
e. Current and projected bills and debts; or
f. Social needs; or
g. Food and nutrition; or
h. Clothing; or
i. Emergency funds; or
j. Contributions (monetary or other) from other household members that contribute to the welfare of the Elder.

Article VI. Elder Protective Services; Services; Advisement; Responsibilities.

6.01. *Protective Services.* Protective services or protective placement are provided either on a voluntary or involuntary basis. Such services or placement may be provided on a voluntary basis by the Family Services Department when requested by any abused or neglected Elder and the Elder is found by the Family Services Department to be in need of such services or placement. Such services or placement shall be provided on an involuntary basis by the Family Services Department only if the Tribal Court determines they are necessary. Such services or placement may be provided on an emergency basis (or, if necessary, on a permanent basis through a guardian appointed pursuant to Tribal law) and shall be provided in a manner least restrictive of the Elder's liberty and rights consistent with the Elder's welfare and needs. The Tribal Court's determination of the degree of incapacity, if any, as well as whether Elder abuse or neglect has occurred is the standard the Family Services Department shall use to develop a plan for the delivery of Elder protection services.

6.02. *Voluntary Protective Services.* Voluntary protective services or protective placement are provided subject to available appropriations and resources and only as determined necessary by the Family Services Department. If the Elder's consent to such services or placement is withdrawn, they shall cease. Such protective services or protective placement shall be provided for a period of no more than 30 days at a time. At the end of each period, the Family Services Department shall reassess the Elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued without a court order permitting continued voluntary placement after the Elder has been in such placement for 3 months.

6.03. *Involuntary Protective Services.* Involuntary protective services or protective placement shall be provided to any Elder who is incapacitated or who is abused or neglected and incapacitated and only upon Tribal Court order as provided by this code.

6.04. *Tribal Family Services.* Services as determined necessary by the Family Services Department may be delivered to the Elder's family or caretaker in order to protect the Elder; and the Family Services Department shall establish a process for conducting a comprehensive, physical, mental and social assessment of an Elder when authorized by the Tribal Court or the Elder.

6.05. *Advisement of Rights.* The Elder, and, where appropriate, the Elder's family and caretaker shall be informed by the Family Services Department of rights as allowed under this code and other Tribal law, including the right to refuse voluntary services and placement and the right to have the Tribal Court determine the necessity of involuntary services and placement.

6.06. *Financial Responsibilities.* The Elder, or where appropriate the Elder's family and caretaker, if able to do so, shall pay for all or part of the costs of services or placement provided to the Elder. In the case of voluntary services or placement, the Elder, and where appropriate the Elder's family and caretaker, shall pay the cost.

Article VII. Duty To Report Abuse Or Neglect Of An Elder.

7.01. Suspected abuse or neglect of an Elder shall be reported to the Family Services Department by any of the following:

a. the Elder's family or caretaker;
b. any Tribal employee;
c. any Tribal elected official;
d. any employee of a Tribally-owned business, even if not managed by the Tribe;
e. Indian Health Service personnel;
f. Bureau of Indian Affairs personnel;
g. any medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, human services worker, Elder's service provider, nursing home provider, or any other health and Elder or human service provider, or its employees who deliver services to Tribal Elders;
h. any person or agency or employee of such agency with a fiduciary duty to the Elder such as a lawyer, accountant, financial institution or property manager;
i. any person who has a good faith reason to suspect that an Elder has been or is being abused or neglected.

7.02. *Immunity For Reporting.* A person who in good faith reports suspected abuse or neglect of an Elder is immune from any civil or criminal suit based on that person's report.

7.03. *Failure To Report; Civil Penalty; Damages; Liability.* Any person who is required by this code to report suspected Elder abuse and intentionally fails to do so is subject to a civil penalty of up to $1000.00. The Tribal Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person had a mandated duty to report, had good reason to suspect Elder abuse or neglect, and failed to report it as required by this code. Further, the person failing to report is subject to any civil suit brought by or on behalf of the Elder for damages suffered as a result of the failure to report and to any penalties set out in the Tribe's criminal code.

7.04. *False Report; Civil Penalty; Damages; Liability*: Any person who makes a report of suspected Elder abuse knowing it is to be false is subject to a civil penalty of up to $1000.00. The Tribal Court shall assess the penalty only after petition, notice, and opportunity for hearing, and a determination that the reporter made the report knowing it to be false. Further, the reporter is subject to any civil suit brought by or on behalf of the person(s) named as suspected abusers in the false report for damages suffered as a result of the false report and to any criminal penalties set out in the Tribe's criminal code.

Article VIII. Investigation; Reports.

8.01. *Investigating Agency.* The Family Services Department shall receive reports of Elder abuse or neglect either orally or in writing.

8.02. *Oral Report Contents.* The person taking an oral report immediately shall complete a written report, indicating on the report the name of the reporter, and, if possible, the reporter shall sign the written report. A report may be made anonymously and it shall be investigated as required by this code.

8.03. *Investigatory Procedure.* The Family Services Department, together with the appropriate Mutli-Disciplinary Response Team, shall initiate the investigation within 24 (hours) and prepare a written report of the investigation which shall include the following:

a. the results of interviews, observations, and assessments and other fact finding.

b. the investigator shall conduct in-person interviews with the Elder, Elder's family and caretaker, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the Elder's circumstances, and any other person the investigator believes has pertinent information.

c. the existence and contents of medical records and other reports of abuse and neglect shall be ascertained.

d. the investigator personally shall assess the Elder's living conditions including the Elder's sleeping quarters in accordance with Tribal standards of housing care in the assessment.

8.04. *Investigative Report Contents.* The report may be oral or in writing and shall contain:

a. the Elder's name, address or location, telephone number; and

b. the name, address or location, telephone number of the person(s) or agency who is suspected of abusing or neglecting the Elder; and

c. the nature and degree of incapacity of the Elder (mental, physical and emotional); and

d. the name, address or location, telephone number of witnesses; and

e. the name, address or location, telephone number of the Elder's caretaker; and

f. a description of the acts which are complained of as abusive or neglectful; and

g. any other information that the reporter believes might be helpful in establishing abuse or neglect.

8.05. *Report Filing.* The investigation report shall be filed with the Family Services Department and remain on file and not be destroyed for a period of seven (7) years, even if it is determined that there is insufficient evidence to pursue any legal action. However, if the investigating agency determines that the investigation report was made in bad faith, it shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect. A copy of the bad faith report shall be forwarded to Tribal Police for criminal investigation.

8.06. *Interference With Investigation And Retaliation Prohibited.* No person shall interfere with a lawful investigation of suspected Elder abuse; or retaliate by any means against any person who has made a good faith report of suspected Elder abuse or who cooperates with an investigation of suspected Elder abuse.

8.07. *Civil Penalty.* Any person who obstructs an investigation shall be enjoined from such activity and shall be subject to a civil penalty of up to $1000.00 per occurrence; and

a. If a Tribal employee, to appropriate disciplinary action as allowed by the Tribal personnel policies and procedures.

b. The penalty shall be assessed by the Tribal Court only after petition, notice, and opportunity to be heard, and a determination that either interference or retaliation as set out in this section occurred.

c. Notice of such determination shall be provided to the person's Tribal employer and appropriate licensing agencies.

8.08. *Privileged Communication.* No evidentiary privilege except for the attorney-client or priest-penitent privilege may be raised as a justifiable defense or reason for failing to report suspected Elder abuse or neglect or for testifying as required by this Ordinance.

8.09. *Referral For Criminal Investigation.* A report of suspected Elder abuse or neglect shall be referred to the Public Safety Department if the investigation indicates that a criminal act may have been committed. The investigation and other procedures allowed by this code shall continue thereafter if the circumstances so warrant.

Article IX. Emergency Protection Orders.

9.01. *Grounds.* The Tribal Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon petition supported by clear and convincing evidence of the following:

a. an emergency exists; and
b. that an Elder is at risk of immediate physical harm; or
c. that an Elder is incapacitated and cannot consent to protective services; or
d. that no one is authorized by law or court order to give consent on an emergency basis.

9.02. *Emergency Authority.* If there is good cause to believe that an emergency exists and that an Elder is at risk of immediate and irreparable physical harm and, based on personal observation, an investigator believes that the Elder will be irreparably harmed during the time an emergency protection order is secured, the investigator shall immediately notify a public safety officer who shall protect the Elder, including, where necessary, transporting the Elder for medical treatment or to an appropriate facility. Immediately after the Elder is protected, a petition for an emergency protection order may be filed as provided by this Article.

9.03. *Petition.* The Tribal Prosecutor shall file petitions and present facts on behalf of the petitioner for legal proceedings authorized or required by this Ordinance.

9.04. *Petition.* The petition for an emergency protection order shall contain the following:

a. the name, address, and interest of the petitioner;
b. the name, address, and condition of the Elder;
c. the nature of the emergency;
d. the nature of the Elder's incapacity;
e. the proposed protective services, and where applicable, protective placement;
f. the attempts, if any to secure the Elder's consent to services;
g. any other facts the petitioner believes will assist the court.

9.05. *Emergency Order.* The emergency protection order shall:

a. set out the specific emergency services to be provided to the Elder to remove the conditions creating the emergency;
b. provide only those services which will remove the emergency;
c. allow protective placement only if the evidence shows that it is necessary;
d. designate the Family Services Department to implement the order;
e. be issued for a maximum of 72 hours and may be renewed only once for a maximum of 48 hours provided the evidence shows that the emergency is continuing.
f. the Tribal Court may authorize forcible entry by law enforcement to enforce the emergency protection order after it has been shown that attempts to gain voluntary access to the Elder have failed.

9.06. *Notice of Entry of Protective Order.* The emergency protection order shall be issued only after notice accompanied by a copy of the petition has been given to the Elder, his family, and caretaker at least 4 hours before a hearing on the petition is scheduled and the Tribal Court has had the opportunity to hear all parties and the evidence. The Tribal Court may waive the waiting period if the emergency is such that the Elder will suffer immediate and irreparable harm or reasonable attempts have been made to notify the parties.

9.07. *Hearing.* The Tribal Court shall hold a hearing on a petition to provide protective services or placement to an Elder prior to the expiration of the emergency protection order.

9.08. *Setting Aside an Order.* An emergency protection order can be set aside by the Tribal Court upon a petition of any party showing good cause.

9.09. *Immunity.* Any person who acts in Good Ffaith pursuant to this section is immune from any civil or criminal suit based on that person's actions.

Article X. Elder Protection Order; Time Limits

10.01. *Elder Protection Order.* If the Tribal Court determines that an Elder has been, and is likely to again be abused or neglected, the Tribal Court shall issue an Elder protection order which provides appropriate protection for the Elder. Such protection may include, but is not limited, to the following:

a. Removing the Elder from the place where the abuse or neglect has taken or is taking place;
b. Removing the person who has abused or neglected an Elder from the Elder's home;
c. Restraining the person who has abused or neglected an Elder from continuing such acts;
d. Requiring an Elder's family or caretaker or any other person with a fiduciary duty to the Elder to account for the Elder's funds and property;
e. Requiring any person who has abused or neglected an Elder to pay restitution to the Elder for damages resulting from that person's wrongdoing;
f. Appointing a representative or guardian ad litem for the Elder;
g. Recommending that a representative payee be named;
h. Ordering the Family Services Department to prepare a plan for and deliver Elder protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the Elder's needs.

10.02. *Petition.* The Tribal Prosecutor shall file petitions and present facts on behalf of the petitioner for legal proceedings authorized or required by this code.

10.03. *Hearing.* A hearing on a petition authorized or required by this code shall be conducted with the purpose of protecting the Elder only where necessary and only to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this code and in the Indian Civil Rights Act shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the Elder and other interested parties, including the Elder's family and caretaker. The Elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The Tribal Court shall issue a written statement of its findings in support of any order allowed by this code.

10.04. *Standard of Proof.* A determination of abuse or neglect shall be supported, by clear and convincing evidence on the record.

10.05. *Duration of Elder Protection Order.* An Elder protection order shall be issued for a period not to exceed six (6) months.

10.06. *Extension of Elder Protection Order.* The Elder Protection Order may be extended as many times as necessary to protect the Elder, but only after petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing proof that such an extension is necessary for the protection of the Elder. Each extension shall be for a period not to exceed six (6) months.

Article XI. Confidentiality: Reporter; Records; Hearings.

11.01. *Reporter Confidentiality.* The name of a reporter who reports abuse or neglect as required by this code is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the Tribal Court. The Tribal Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect

the Elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent determined necessary to protect the Elder.

11.02. *Confidentiality of Records.* Records of an investigation of Elder abuse or of a Tribal Court hearing regarding Elder abuse are confidential. Such records shall be open only to the Elder and the Elder's family and caretaker unless the family or caretaker is the suspected abuser, employees of the Family Services Department, law enforcement officers, Tribal Court officials, coroner or medical examiner who has reason to believe that an Elder died as the result of abuse or neglect, and any other person who the Tribal Court determines has reasonable cause to have access to such record.

11.03. *Confidentiality of Hearings.* A proceeding held pursuant to this code shall be closed and confidential. Persons who may attend are the Elder, the Elder's family and caretaker, the person or representative of an institution or agency accused of Elder abuse, the representative of the Family Services Department, necessary Tribal Court officials and attorneys for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal information about the proceeding without the permission of the Tribal Court.

Article XII. Civil Nature of Code; Penalties.

12.01. *Civil Nature.* This Ordinance is civil and does not subrogate any provision of the Tribal Law and Order Ordinance or bar criminal prosecution for conduct coming within the scope of this ordinance.

12.02. *Penalties.* Any person who violates any section of this Ordinance shall be subject to a civil penalty of up to $500.00 per occurrence and, if a Tribal employee, to the appropriate disciplinary action as allowed by the Tribal personnel policies and procedures. The penalty shall be assessed by the Tribal Court after petition, notice, opportunity to be heard, and a determination that a violation occurred.

12.03. *Publication of Conviction.* Convictions pursuant to the provisions of this Ordnance shall be published in the Tribal newspaper of record.

Article XIII. Promulgation of Regulations.

13.01. *General.* The Family Services Department shall promulgate regulations establishing criteria and procedures which comply with the policy and requirements of this code and which shall become effective only after endorsement by the Tribal Ogema and adoption by Tribal Council Resolution.

CERTIFICATION

I, Janine M. Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Elder's Protection Ordinance adopted by the Tribal Council on April 20, 2011.

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