Resolution # 09-1202-334

Emergency Adoption of Amendments to the Fair Employment Practices Code

WHEREAS, the status of the Gađ Čhing Ziibi Daawaa Anishinabek (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council adopted Ordinance #05-600-03 Fair Employment Practices Code on November 2, 2005; and

WHEREAS, the Tribal Council adopted amendments to the Fair Employment Practices Code on June 20, 2007 (emergency amendments), August 1, 2007 (permanent adoption), February 6, 2008 (emergency amendments), March 19, 2008 (permanent adoption), October 15, 2008 (emergency adoption), March 4, 2009 (permanent adoption), and July 15, 2009 (permanent adoption), all in accordance with the Administrative Procedures Act; and
WHEREAS, the Tribal Council has determined that revisions and additions are needed to protect the integrity of procedures, rights, and remedies under the Code in the face of employees' efforts to bypass procedures provided for by the Code and their failure to exhaust remedies under the Code, which threaten duplicative procedures and resource drains upon employers and witnesses; and

WHEREAS, the Tribal Council has determined that said revisions and additions are necessary to allow the Tribe to best establish the case for why remedies provided under the Code must be exhausted by allowing the Fair Employment Practice Investigator reports to be referenced for such purposes; and

WHEREA, the Tribal Council has determined that said revisions and additions are necessary to allow the Tribe to best establish the case for why remedies provided under the Code must be exhausted, by prohibiting employers from forced testimony or production of documents in external proceedings without the express permission of the Tribal Council; and

WHEREAS, the Tribal Council finds that the amendments to the Fair Employment Practices Code should be adopted on an emergency basis in order to protect the integrity of the Tribe when faced with infringements to its inherent authority to enact, adopt, implement, and enforce Tribal law; and

WHEREAS, the Tribal Council finds that failure to adopt said revisions in the face of employees' immediate efforts to bypass the procedures, rights and remedies provided for by the Code threatens to harm the Tribe by undermining the public policies reflected in the Code and that such threatened harm will be lessened by enacting said revisions on an emergency basis; and

WHEREAS, Tribal Council finds that the additional limited waiver of sovereign immunity contained in Article XVII is appropriate and necessary in order to protect the interests of the Tribe.

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby adopts, under authority of Article V of the Administrative Procedures Act – Ordinances, the emergency amendments to the Fair Employment Practices Code, Ordinance #05-600-03, which shall be effective for a six month period or until the amendments can be presented for Public Comment and permanently adopted.

IT IS FURTHER RESOLVED THAT the Tribal Council directs that the amendment be posted for Public Comment.

IT IS FURTHER RESOLVED THAT the Tribal Council authorizes the limited waivers of sovereign immunity contained in the Fair Employment Practices Code.
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IT IS FINALLY RESOLVED THAT the amendments are effective immediately.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with _5_ FOR, _1_ AGAINST, _0_ ABSTAINING, _3_ and ABSENT at a regular session of the Little River Band of Ottawa Indians Tribal Council held on December 2, 2009, at the Little River Band’s Dome Room in Manistee, Michigan, with a quorum being present for such vote.

[Signature]
Janine M. Sam, Council Recorder

[Signature]
Stephen Parsons, Council Speaker

Attest:

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