



Little River Band of Ottawa Indians

375 River Street
Manistee, MI 49660
(231) 723-8288

Resolution # 05-1012-510

Emergency Adoption of Article IX of the Tribal Council Meeting Procedures Ordinance

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (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 has determined that official processes should be adopted to identify how removal hearings should be conducted; and

WHEREAS, the Tribal Council has held at least three work sessions regarding the procedures to be utilized during a removal hearing; and

WHEREAS, the Tribal Council finds that these processes are in final format, unlikely to change as a result of public comment, and should be put into effect immediately with sufficient need as to warrant emergency adoption; and

WHEREAS, the Tribal Council adopted the Administrative Procedures Act - Ordinances which identifies processes by which ordinances may be adopted, amended, or repealed, and which also identifies processes by which emergency amendments may be authorized;

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 Tribal Council Meeting Procedures Ordinance identified in the attachment as "*Article IX. Removal Hearing Before Tribal Council - Elected Officials*" which shall be effective for a six month period or until permanent amendments can be presented for Public Comment and permanently adopted.

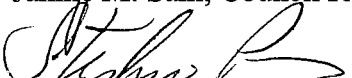
IT IS FURTHER RESOLVED THAT the Tribal Council directs that the amendments be posted for Public Comment.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 6 FOR, 0 AGAINST, 0 ABSTAINING, 2 ABSENT, and 1 VACANT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on October 12, 2005, at the Little River Band's Dome Room in Manistee, Michigan, with a quorum being present for such vote.



Janine M. Sam, Council Recorder



Stephen Parsons, Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Tribal Court

TRIBAL COUNCIL MEETING PROCEDURES ORDINANCE
#04-100-02

Article IX. Removal Hearing Before Tribal Council - Elected Officials

9.01. *General.* The Tribal Council is delegated authority and responsibility to remove elected officials of the Tribe under Article IX, Section 3, of the Constitution of the Little River Band of Ottawa Indians. Requirements to carry out Section 3 removal powers are specifically identified and require notice and an opportunity to answer charges prior to a decision by the Tribal Council.

9.02. *Constitutional Grounds for Removal from Office, Defined.* The constitutional grounds for removal from elected office are defined in this section.

a. *Gross Misconduct or Malfeasance in Office.* Gross misconduct or malfeasance in office is defined to be that generally understood by the community as a failure to carry out the actions and responsibilities, or to act in a way that is contrary to the community expectations of the office.

1. Gross misconduct in office means the complete and/or blatant dereliction of duty, unlawful or improper behavior. Misconduct, to be considered 'gross' under this section, must rise to a absolute, easily seen, extreme, and manifest action. The behavior must be seen as offensive, reprehensible and unmitigated.

2. Malfeasance in office means an action that is plainly bad, doing an action badly. Malfeasance, to be considered under this section, includes, but is not limited to, corruption, illegal action, misgovernment, mismanagement, unjust performance, or abuse of office.

b. *Conviction, while in office of a felony, or a crime involving dishonesty or moral turpitude.* Conviction by a court of competent jurisdiction while in office may include actions that were done prior to taking office, where the conviction itself occurs after taking office. A crime involving dishonesty or moral turpitude is further defined as follows, but is defined as generally understood by the community as an action in violation of the public trust, or personal trust, by the elected official under the purported authority of the office, or in personal actions.

1. Dishonesty means bad faith, cheating, corruption, deception and/or deceitfulness, falsification.

2. Moral turpitude means conduct that is contrary to justice, honesty or morality. In general, it refers to action that is an extreme departure from the community's standards of honesty, justice or ethics as to be shocking to the community.

c. *Inability to fulfill the duties of office due to mental or physical disability.* Inability to fulfill the duties of office refers to the ability to exercise judgement about the responsibilities of the office or to attend to the business of the office, and does not include simply being absent from the physical offices. Inability to fulfill the duties of office means that decisions, or the absence of decisions, are not in the best interests of the Tribe, members, employees, and finances of the Tribe.

9.03. *Resolution - Notice.* The elected official subject to removal shall receive a resolution which sets forth, with specificity, the reasons for removal. The resolution shall be accompanied by a cover letter identifying the date, time and place, of the Special Tribal Council meeting at which the elected official may answer the charges against them.

a. *Content of Resolution.* The resolution shall identify the constitutional authority to take action, the elected official, the date, time and place of the Special Tribal Council meeting scheduled for the public hearing in the first Resolve.

b. The resolution shall have attached a separate document which identifies, in a single, or separate, Count each of the specific reasons for removal. Each allegation shall be specific, and identify dates, times, places, documents, names, and actions which rise to the level of removal. All documentation

shall be included with the List of Counts.

c. *Content of Notice.* The notice shall be the cover letter for the resolution, and shall identify the time and date of presentation to the elected official.

d. *Filing of Notice and Resolution.* A copy of the notice and resolution shall be returned to the Tribal Council Recorder.

9.04. *Confidentiality; Sovereign Immunity.* Notwithstanding any law or regulation to the contrary, nothing shall prohibit or restrict the presentation of information related to removal in a resolution, the Tribal Council Special Meeting, the reading of the allegations, and in the answer to the allegations by the elected official. No law, regulation or other document shall, nor shall closed Tribal Council meeting restrictions, be authorized to prohibit the release of information necessary for presentation of allegations or answers. The constitutional requirements for an open meeting and answer to the allegations do not waive the sovereign immunity of the Tribe, and is not an authorization for action to be brought against the Tribe for any action read and established.

9.05. *Receipt of Removal Resolution; Acceptance.* The Tribal Council Recorder, upon receipt of a resolution for removal of an elected official, shall place the resolution on the Tribal Council agenda, in closed session, for acceptance by the Tribal Council. The Tribal Council shall review the resolution and make a determination that the allegations have sufficient documentation to prove the truth of the allegations. Acceptance of the resolution shall not constitute approval of the reasons presented, and shall not constitute a determination for removal. The Tribal Council may appoint one or more members to verify the accuracy and/or authenticity of documentation presented.

9.06. *Setting Special Meeting for Public Hearing; Providing Notice.* The Recorder shall request a Special Tribal Council meeting to be scheduled which provides for service of notice on the elected official and ten days notice to the elected official after presentation of the removal resolution. The agenda for the special meeting shall contain items for Calling the Meeting to Order and Stating its Purpose, Roll Call, recusal of Councilors for conflict of interest, Reading of the removal resolution, answer to the allegations for removal, Tribal Member Comment, deliberation of Tribal Council, vote on resolution, and adjournment. Upon setting of the meeting date, time and place, the Recorder shall prepare the Notice and copies of the resolution and any supporting documentation submitted, and request the Public Safety Department to serve the elected official.

9.07. *Witnesses; Documents.* The elected official shall submit to the Tribal Council Recorder, no later than 48 hours prior to the hearing date and time, a list of proposed witnesses that will be called and/or a copy of all documents that will be presented at the public hearing.

9.08. *Special Meeting for Public Hearing - Procedures.* A Public Hearing regarding removal shall be heard in the following order. The hearing shall be conducted regarding each individual count, in the order as presented in the List of Counts.

- a. The Speaker shall call the Special Meeting to order, by identifying the purpose of the meeting – “A Special Meeting to Consider the Removal of [Name], [Office], from office under Article IX, Section 3 of the Constitution” – and request the Recorder to conduct a Roll Call.
- b. The Speaker shall request any Councilor to assert any conflicts of interests and requests for a determination on the conflict under Article IV, Section 6(f)(2) of the Constitution.
- c. The Speaker shall read the removal resolution.
- d. The Speaker shall then identify the List of Counts, and reach each count individually.
- e. The Speaker, upon conclusion of reading each count, shall call upon the elected official and offer them the ability to answer the charges if they so desire. In all cases, the next count shall not be read until such time as the elected official has either identified that he or she has concluded their response or intends not to respond.

1. An elected official may choose not to answer the charges, provided that a decision to not answer the charges, either verbally, with a written statement, or by presentation of other documentation, shall be considered a waiver of this constitutional right by the elected official.
 2. The right to answer the charges is offered at the Public Hearing, and is not subject to a request for additional time, delay or other method to extend the time of the scheduled Special Tribal Council Meeting - Public Hearing.
 3. The elected official may not request another to speak on his or her behalf, and must answer the charges personally. Provided that, the elected official may have representation to assist in their presentation.
- f. Upon conclusion of the answer to each individual count by the elected official, the Speaker shall ask the Tribal Council if they wish to recess for deliberations and review of the information submitted. If a recess is requested, the Speaker shall set a recommended time for the Tribal Council to re-convene.
- g. Upon conclusion of the recess, or if no recess is taken, the Speaker shall ask for a motion to adopt the resolution and a second. Upon receipt of a motion, the Speaker shall request the Recorder to take a roll call vote on the motion. The Speaker shall not accept a motion to reject the resolution. If no motion to adopt the resolution, or a second to such a motion, is received upon the third call by the Speaker, the removal resolution shall be considered to have failed.
- h. If 7, or more, of the 9 members of Tribal Council vote in favor of removal, the elected official shall have been removed from office as of the time of the vote in favor of removal. If less than 7 of the nine members of Tribal Council vote in favor of removal, the removal resolution shall have failed.
- i. A removal resolution that fails to be adopted shall be considered to have had Tribal Council opinion rendered on the actions of the elected officials, and those actions may not be brought before the Tribal Council as reasons for removal of that elected official on any other occasion. Provided that, nothing in this subsection shall prohibit a member from filing a petition for removal before the Election Board, and nothing in the decision of the Tribal Council shall be considered determinative by the Election Board regarding those actions as being sufficient to authorize a removal petition.
- j. Upon conclusion of the vote, the Speaker shall announce the meeting as being adjourned as the sole item of business having been concluded and no other action is authorized.