



Little River Band of Ottawa Indians
2608 Government Center Drive
Manistee, MI 49660
(231) 723-8288

Resolution #16-0420-114

Authorizing Amendments to Indian Preference Ordinance, Ordinance #15-600-02

WHEREAS, the status of the *Gaá Čhíng Zíibi 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 directed under Article IV, Section 7(a) of the Constitution 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 is empowered by Article IV, Section 7(a) of the Constitution to establish laws through the enactment of ordinances and adoption of resolutions; and

WHEREAS, the Tribal Council is authorized by the Administrative Procedures Ordinance, Ordinance #04-100-07, to adopt, amend, and repeal ordinances; and

WHEREAS, the amendments to the Ordinance were posted for public comment; comments were received; and a final work session was held; and

WHEREAS, the amended Article V of the Ordinance now includes limitations on rehire of Preference candidates previously terminated; and

WHEREAS, the amended Article V limitations shall also be applied to non-preference candidates;

WHEREAS, if the Indian Preference Ordinance is amended and continues to include any permanent or temporary bans for employment for preference candidates, those rules regarding permanent or temporary bans of employment will also apply to non-preference candidates.

NOW THEREFORE IT IS RESOLVED that the Tribal Council of the Little River Band of Ottawa Indians hereby permanently adopts, under authority of the Administrative Procedures Act, the following amendments to the Indian Preference Ordinance, Ordinance #15-600-02:

**Indian Preference in Employment Ordinance
Ordinance #15-600-02**

Article 1. Purpose, Findings.

- 1.01. *Purposes.* The purposes of this Ordinance are to institute a fair and transparent process for applying Indian preference in hiring decisions made by the Tribe and its enterprises and to ensure that the Tribe recruits and retains the best-qualified candidates to work for the welfare of the Tribe and its Members.
- 1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:
 - a. It is vested with the authority to promote, protect and provide for the public health, peace, morals, education and welfare of the Band and its members; to govern the conduct of the Band's Members and others within its jurisdiction; and to take necessary and proper action to carry out the sovereign legislative powers of the Band. (Constitution of the Little River Band, Article IV, Sections 7(a)(1) – (2) and Section 7(j));
 - b. The Tribal Ogema is vested with the authority to oversee the administration and management of the Tribal government and its enterprises, consistent with the laws, ordinances and resolutions of Tribal Council. (Constitution of the Little River Band, Article V, Sections 5(a)(2) and (8)); and
 - c. It is in the Tribe's best interest to institute a policy that encourages the economic advancement of its Members by granting preference in hiring for the many employment opportunities in the Tribe and its enterprises.

Article 2. Adoption, Amendment, Repeal, Severability.

- 2.01. *Adoption.* This Ordinance is adopted by resolution #15-0225-051, which repeals resolution #11-0504-143 and replaces Ordinance #11-600-02 with this Ordinance.
- 2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act, 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, Ordinance #04-100-07.

- 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 3. 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 meanings defined in this Article. Use of the word “shall” is always mandatory and not merely advisory.
- 3.03. *Federally-Recognized Indian Tribe* means any Indian tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and that is listed in the most recent Federal Register prepared pursuant to 25 USC §83.5(a).
- 3.04. *Indian Preference* means the practice of using an individual’s membership in a federally recognized Indian tribe as the determinative factor in taking an employment action.
- 3.05. *Regular Employment* means non-exempt, regular full- or part-time employment. It does not include full- or part-time exempt employees whose employment is contingent on possession of a license to practice a particular profession, including, but not limited to, medical doctors, pharmacists, attorneys and accountants.
- 3.06. *Tribe* shall mean the Little River Band of Ottawa Indians, including any and all of its enterprises.
- 3.07. *Tribal Descendant* means a person who is the first generation, biological issue of a Tribal Member of the Little River Band of Ottawa Indians.
- 3.08. *Tribal Member* means an individual who is enrolled in the Little River Band of Ottawa Indians, or who held such membership at the time of his or her death.
- 3.09. *Tribal Spouse* means an individual who, at the time of application for employment, is married to a Tribal Member, as evidenced by a current and valid marriage license. This definition includes surviving spouses of Tribal Members until remarriage.

Article 4. Application of Preference.

- 4.01. *Regular Employment.* If a preference candidate is qualified for a regular employment job position as posted, the Tribe shall offer the position based on the

following levels of preference:

- a. First preference for hire shall be for Tribal Members;
 - b. Second preference for hire shall be for Tribal Descendants, Tribal Spouses and members of all other federally recognized Indian tribes; and
- 4.03. *Notice of Preference.* Each job description for a regular employment position that meet the qualifications listed in section 3.05 or 4.05 of this ordinance, shall contain a statement that Indian preference shall apply.
- 4.04. *Grant-Funded Positions.* In the event that hiring requirements for a grant-funded position contain preference requirements that conflict with this Ordinance, the conditions of the grant shall control.
- 4.05. *Contract Employment Exempt.* This ordinance does not apply to job positions for full- or part-time exempt employees whose employment is contingent on possession of a license to practice a particular profession, including, but not limited to, medical doctors, pharmacists, attorneys and accountants.

Article 5. Applicability of Preference to Previously Terminated Employees

5.01. *Rehire Provided for Previously Terminated Employees.* A preference candidate is eligible for rehire 90 days after termination or self-termination unless one of the following apply:

- a. The preference candidate was terminated for one of the following reasons:
 - 1. Fraud, misrepresentation, or theft from the Tribe, its enterprises, or a Tribal employee; or
 - 2. Violence, sexual harassment, or sexual misconduct in the work place; or
- b. The preference candidate was convicted of a crime that occurred in the course of their duties as an employee of the Tribe, of which the Tribe was a victim.

5.02. *Rehire Provided for Employees Previously Terminated for Violations of Work Place Drug and Alcohol Policies*

- a. If a preference candidate was terminated for a violation of work place drug and alcohol policies, they are not eligible for rehire for one (1) year from their termination date.
- 5.03. *Employees Not Eligible for Rehire.* No preference candidate is eligible for rehire for a period of three (3) years if they have been terminated three or more times within a ten (10) year period. After the three (3) year ban from employment has ended, the preference candidate may apply for employment at the Tribe again.

Article 6. No Property Interest; Sovereign Immunity Preserved.

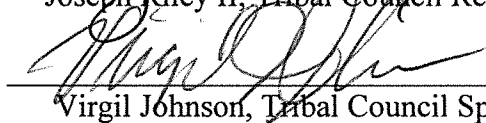
- 6.01. *No Property Interest.* Nothing in this Ordinance shall be construed to create a right or prerogative of employment in any individual, nor shall it be construed to create a contract or agreement for employment out of any application for or conversation regarding employment.
- 6.02. *Sovereign Immunity Preserved.* Nothing in this Ordinance shall be construed to waive or modify the sovereign immunity of the Tribe against suit in any court.

CERTIFICATION:

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 5 FOR, 4 AGAINST, 0 ABSTAINING, and 0 ABSENT, at a Regular Open Session Meeting of the Little River Band of Ottawa Indians Tribal Council held on April 20, 2016, at the Little River Band's Government Center in Manistee, Michigan, with a quorum being present for such vote.



Joseph Riley II, Tribal Council Recorder



Virgil Johnson, Tribal Council Speaker