



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

Resolution #18-0411-117

*Permanent Adoption of the Operation of Recreational Vehicles Ordinance, Ordinance
#18-500-04a*

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 Tribe adopted amendments to the Constitution on July 11, 2016 which became effective upon approval by the Assistant Secretary-Indian Affairs on August 24, 2016; and

WHEREAS, the legislative powers of the Tribe are vested in the Tribal Council according to Article IV, Section 1 of the Constitution; and

WHEREAS, the Tribal Council is authorized by Article IV, Section 7(a)(1) and (2) to exercise the inherent powers of the Tribe by establishing laws through the enactment of ordinances and adoption of resolutions to govern the conduct of Tribal Members and others within the Tribe's jurisdiction and to promote, protect and provide for the public health, peace, morals, education and general welfare of the Tribe and its members; and

WHEREAS, the executive powers of the Tribe are vested in the Tribal Council according to Article V, Section 1 of the Constitution; and

WHEREAS, the Ogema is authorized by Article V, Section 5(a)(1) to enforce and execute the ordinances, resolutions and motions adopted by the Tribal Council consistent with the Constitution; and

WHEREAS, the Tribal Council adopted the Administrative Procedures Act, which identifies the processes by which ordinances may be adopted, amended or repealed; and

WHEREAS, the Tribal Council wishes to adopt this Ordinance that allows for the operation of recreational vehicles at the tribal property known as Aki Maadiziwin Housing Development and outlines the rules for such operation; and

WHEREAS, the Tribal Council posted the proposed Ordinance for a thirty day public comment period and had a final work session on April 2, 2018 to review any comments or issues submitted during the thirty day comment period prior to adopting this Ordinance permanently.

NOW THEREFORE IT IS RESOLVED, that the Tribal Council permanently adopts the Operation of Recreational Vehicles Ordinance, Ordinance #18-500-04a.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 7 FOR, 0 AGAINST, 0 ABSTAINING, and 2 ABSENT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on April 11, 2018, at the Little River Band's Government Center in Manistee, Michigan, with a quorum being present for such vote.


Gary Di Piazza, Acting Council Recorder


Sandra Lewis, Acting Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Legal Department

OPERATION OF RECREATIONAL VEHICLES

Ordinance #18-500-04a

Article I. Purpose, Findings.

1.01. *Purpose.* This Ordinance is promulgated for the following reasons:

- a. To ensure the wise use and conservation of the inland resources for future generations;
- b. To provide for the protection of tribal property including sacred objects and artifacts; and
- c. To allow for the use and enjoyment of property for tribal members wanting to operate recreational vehicles on tribal trust land.

1.02. *Findings.* The Tribal Council makes the following findings:

- a. The Constitution of the Little River Band of Ottawa Indians vests the Tribal Council with the power to exercise the inherent powers of the Band by establishing through the enactment of ordinances and adoption of resolutions that govern the conduct of its members and other persons within its jurisdiction and that promote, protect, and provide for public health, peace morals, education and general welfare of the Band's members (Article IV, Section 7(a));
- b. The Constitution of the Little River Band of Ottawa Indians further vests in the Tribal Council the power to delegate its legislative and rulemaking authority regulatory commissions and subordinate organizations to manage its affairs (Article IV, Section 7(f)); and

Article II. Adoption, Amendment, Repeal, Severability.

2.01. *Adoption.* This Ordinance is adopted by Resolution #18-0411-117.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and the procedures set forth in the Administrative Procedures Act, Ordinance #04-100-07.

2.03. *Repeal.* The Tribal Council may repeal this Ordinance in accordance with the procedures set forth in the Administrative Procedures Act, 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 that end the provisions of this Ordinance are severable.

Article III. Definitions.

- 3.01. *General.* For purposes of this Ordinance, certain terms and phrases are defined in this Article. Use of the word “shall” throughout this Ordinance is always mandatory and never merely advisory.
- 3.02. *Closed Area* means any area of Tribal lands set aside for the exclusive use of enrolled members of the Little River Band of Ottawa Indians and their immediate family members per Tribal Council Resolution #00-1006-01, Paragraph (b) and Interim Land Use Ordinance #00-1212-08.
- 3.03. *Closed Lands* means Tribal Trust Lands or Tribal Fee Lands access to which is prohibited by the Tribal Council because of the cultural sensitivity of the lands or for other reasons; such lands shall remain closed until such time that Tribal Council restores access to them.
- 3.04. *Enforcement Officer* means any officer authorized to enforce this Ordinance as described in this Ordinance.
- 3.05. *Inland Article 13 Rights* means the right to hunt, and other usual privileges of occupancy, secured by Article 13 of the 1836 Treaty of Washington, 7 Stat 491, in the Ceded Territory. For an expansive definition please see Little River Band of Ottawa Indians Natural Resource Commission’s Regulation: Hunting, Trapping, and Gathering Regulations for the 1836 Ceded Territory.
- 3.06. *Member* means an enrolled member of the Little River Band of Ottawa Indians.
- 3.07. *Public Highways* means all roadways open to the public for vehicular travel.
- 3.08. *Recreational Vehicle* includes:
- a. "ATV" means a vehicle with 3 or more wheels that is designed for off-road use, has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 1,000cc gasoline engine or an engine of comparable size using other fuels.
 - b. "ORV" or, unless the context implies a different meaning, "vehicle" means a motor-driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 3 or more wheels, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation may be an ORV. An ATV is an ORV. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.

c. "Snowmobile" means any motor-driven vehicle designed for travel primarily on snow or ice of a type that utilizes sled-type runners or skis, an endless belt tread, or any combination of these or other similar means of contact with the surface upon which it is operated, but is not a vehicle that must be registered under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

3.09. *Registration* means Tribal Registration.

3.10. *Reservation* means lands that are held in trust by the United States for the Little River Band of Ottawa Indians and located in the Michigan counties of Manistee, Mason, Wexford and Lake.

3.11. *Roadways* means any governmental or corporate roadways where vehicular traffic is not restricted and the roadway is routinely used by the general public.

3.12. *Trespass* means:

- a. To enter upon the real property of another that is posted to prohibit trespassing, is fenced, or contains obvious outward signs of habitability, without written permission of the owner or the owner's agent;
- b. To enter upon any Tribal Trust Lands or Tribal Fee Lands designated by Tribal law as closed unless the person:
 1. is a Tribal member;
 2. has in their possession a valid LRB Special Trespass Permit or a Non-member Access Permit; or
 3. is a non-member who is an agent, employee, or sub-contractor of the Little River Band acting in the course of his or her employment or contractual duties with the Tribe per Tribal Council Resolution #00-1006-01, Paragraph (c);
- c. To enter upon and/or refuse to depart from areas deemed as Closed Lands or which are subject to an order of exclusion issued by the Tribal Council;
- d. To take any other action identified as trespassing under this Ordinance.

3.13. *Tribe* means the Little River Band of Ottawa Indians.

3.14. *Tribal Court* means the court of the Little River Band of Ottawa Indians, except where the context clearly refers to a court or hearing body for one of the other Tribes.

3.15. *Tribal Identification Card* means a current and valid identification card issued to a Tribal Member by his or her Tribe.

- 3.16. *Tribal Member* means an enrolled member of the Little River Band of Ottawa Indians, except where the context references enrolled members of one or more of the other Tribes.
- 3.17. *Wanton Waste* means to intentionally or negligently harm a natural resource leaving it damaged against the use, taking, or enjoyment by others.

Article IV. Lands Open for Recreational Vehicle Use.

- 4.01. *Tribal, Public and Private Lands.* Tribal Members may operate recreational vehicles on public lands subject to this Ordinance and the regulations of the State of Michigan, if applicable, on reservation lands or lands held in fee simple by the Tribe, or on private lands owned by non-members with the written permission of the owner or authorized lessee of the lands.
- 4.02. *Prohibitions on Tribal Lands.* The following Tribal parcels are subject to restrictions on recreational vehicle activities:
- a. Justice Center. The Tribal property known as the Justice Center (formerly known as Newland Academy) is closed to the operation of recreational vehicles.
 - b. Bull Property. The Tribal property known as the Bull property or the Orchards on the northwest corner of Dontz Road and M-22 are closed to the operation of recreational vehicles unless amended by the Tribal Council.
 - c. East Lake Property. The Tribal property known as the East Lake property or “Big Blue” is closed to the operation of recreational vehicles.
 - d. Powwow Grounds. The Tribal property known as the Powwow Grounds or Gathering Grounds are closed to the operation of recreational vehicles.
 - e. Parcels in City of Manistee. Parcels owned by the Tribe in fee simple within the City of Manistee are closed to the operation of recreational vehicles, with the exception of parcels leased to a Tribal member by the lessee or with the lessee’s written permission.
 - f. The Devoe parcel is closed to the operation of recreational vehicles.
- 4.03. *Closed Tribal Areas.* The following Tribal lands is closed to the operation of recreational vehicles at all times, unless modified by resolution of the Tribal Council:
- a. The Little River Casino Resort site;
 - b. The Little River Wastewater Treatment Plant and waste treatment pond area;
 - c. The Tribal Governmental Building site, including the C-Store location;
 - d. The Custer Property.

4.04. *Open Tribal Area.* The following Tribal Land is open to the operation of recreational vehicles in accordance with this Ordinance:

- a. Aki Maadiziwin. The Tribal property known as the Aki Maadiziwin Housing Development, including the Tribal Utility Department Pump House.

Article V. Registrations and Permits.

5.01. *Tribal Member Identification.* A Tribal Member operating a recreational vehicle on tribal lands shall at all times carry his or her Tribal Identification Card issued by the Tribe's Enrollment Department. If the issued identification does not bear a photograph of the member, the member shall carry additional identification bearing a photograph. No member shall permit another person to use his or her identification card.

5.02. *Non-Tribal Member Permits/Registration.* Non-Tribal Members may be registered by the Department in on-reservation areas only, subject to the following:

- a. *Trespass Permits.* Immediate family members of Tribal Members shall receive a special trespass permit on submission to the Department. The application shall, at a minimum, identify the enrolled tribal member to whom the applicant is related and identify the nature of the relationship, with verification by the listed tribal member. The permittee must carry the permit and photo I.D. at all times during the operation of recreational vehicles activities on on-reservation lands. The tribal member need not accompany the trespass permit holder.
- b. Members of tribes with reciprocal agreements shall receive a special trespass permit upon submission to the Department. The application shall, at a minimum, identify the applicant's tribe of enrollment and any assigned tribal identification number, whether the applicant's tribe has issued any license or permit to him or her and whether the applicant's tribe has revoked his or her current privileges.
- c. The Department may deny permits to members of tribes with reciprocal agreements if the applicant's tribe has revoked his or her current privileges.

5.03. *Age Limits.*

- a. *Tribal Members Under Age 12.* Tribal Members under the age of twelve may not operate recreational vehicles on Tribal Lands.
- b. *Tribal Members Aged 12 – 16.* Tribal Members aged 12 – 16 years old may operate recreational vehicles on Tribal Lands under the immediate supervision of an adult with a valid Tribal or State registration.

5.04. *Licenses.* Any Tribal Member sixteen (16) years of age or older, who operate recreational vehicles on Tribal Lands must have in his/her possession a valid and current State License.

5.05. *Registration.* If you own a recreational vehicle and plan on operating it on Tribal Land in

accordance with this Ordinance, you shall register it with the Department of Public Safety and display a registration decal. Once a registration number has been assigned, it cannot be transferred to another recreational vehicle.

- 5.05. *Off-Road Vehicle Use related to Hunting and Fishing Regulations.* Tribal members may operate off-road vehicles, snowmobiles, boats or other vessels while engaging in the exercise of Inland Article 13 rights and shall not be subject to State vehicle or vessel registration requirements, provided that the Tribal Member satisfies all licensing requirements for the Inland Article 13 activity in question, is in compliance with applicable tribal hunting, trapping or fishing season limitations in the Tribal regulations and possesses evidence of being so engaged in the Inland Article 13 activity, such as possession of fish, game or common items related to hunting, trapping, fishing or gathering such as fishing rods, tip-ups, firearms, traps or nets. Tribal members shall not operate vehicles other than snowmobiles on dedicated snowmobile paths. Restrictions on the use of ORVs do not apply to those retrieving a legally harvested animal.

Article VI. Prohibitions and Restrictions.

- 6.01. *Use of Alcohol and Controlled Substances.* No person may operate a recreational vehicle under the influence of alcohol or a controlled substance.
- 6.02. *Harassment of Hunters, Trappers, and Gatherers.* No person may harass, impede, or interfere with any licensed hunter, trapper, or gatherer while operating recreational vehicles on Tribal Lands.
- 6.03. *Malicious Destruction of Property or Wanton Waste.* No operator of a recreational vehicle may damage or cause to be damaged Tribal Lands. Destruction of property will be handled in accordance with the Law and Order Criminal Ordinance #11-400-03.
- 6.04. *Public Highways and Roadways.* Nothing in this Ordinance shall be construed as permission to operate recreation vehicles on public highways or roadways within Tribal Lands when it is otherwise prohibited under State Law.
- 6.05. *Signage and Speed Limits.* Operators of recreational vehicles shall obey all posted signs and where no sign is posted, operate at a rate of speed that is reasonable and proper, having due regard for the conditions then existing.
- 6.06. *Helmet required.* A person of any age shall wear a helmet when operating a recreational vehicle or riding as a passenger.
- 6.07. *Federal and State law.* Nothing in this Ordinance shall be construed as permission to operate recreation vehicles within Tribal Lands when it is otherwise prohibited under Federal or State Law.

- 6.08. *Impersonating a Tribal Member.* No person may falsely claim that they are a Tribal Member.

Article VII. Seasons and Limitations.

- 7.01. *Seasonal Vehicles.* Operation of recreational vehicles will be limited to the appropriate season for each vehicle type.
- 7.02. *Night Restriction.* Operation of recreational vehicles will be limited to the hours of thirty (30) minutes after sunrise to thirty (30) minutes before sunset. Operating lights shall be required during this time period.
- 7.03. *Emergency Action.* The Tribal Council may take or enact emergency measures in order to preserve the rights or resources of the Tribe and its members. This may include but is not limited to shortening or closing operation hours or seasons, and/or similar actions up to closing tribal property.

Article VIII. Enforcement.

- 8.01. *General.* The Little River Band of Ottawa Indians' law enforcement and/or conservation enforcement officers, law enforcement and/or conservation enforcement officers employed by the State of Michigan if applicable, and federal law enforcement and/or conservation enforcement officers, are authorized to enforce the provisions of this Ordinance. As defined in Article 3, any officer authorized to enforce this Ordinance is an Enforcement Officer. Violations shall be processed through the Tribal Court of the Little River Band of Ottawa Indians.
- 8.02. *Authorization for Enforcement Officers to Carry Firearms.* The Little River Band of Ottawa Indians' law enforcement and/or conservation enforcement officers are hereby authorized to carry Firearms in the performance of their duties under this Ordinance.
- 8.03. *Reasonable Stops and Detainers.* The Little River Band of Ottawa Indians' law enforcement and/or conservation enforcement officers may stop and if necessary detain any person suspected of committing an offense under this Ordinance to determine whether the person is a Tribal Member. Any Enforcement Officer may detain any Tribal Member committing an offense and may seize any vehicles or vessels used in committing the offense. All seized or confiscated property taken under this Section shall be held as evidence according to applicable Tribal law enforcement policies or turned over to the Tribal Court.
- 8.04. *Searches and Seizures.*
- a. Any Enforcement Officer may, without a search warrant, search any aircraft, watercraft, or motorized vehicle if the officer has probable cause to believe that the

operator is in violation of this Ordinance and that such evidence will not be available absent immediate action.

- b. For all property seized as evidence, the Enforcement Officer shall make an inventory and the evidence shall be managed as per Department of Public Safety policy. After the final disposition of the case, a hearing shall be held by the Tribal Court to determine the disposition of all property taken as evidence. Upon satisfactory proof of ownership, property taken as evidence shall be returned to the owner, except for contraband which shall be disposed pursuant to Tribal policy.

Article IX. Penalties and Fines.

- 9.01. *Registrations and Permits Subject to Revocation.* Any recreational vehicle registrations or permits recognized or authorized by this Ordinance may be suspended or revoked by the Tribe, acting through the Public Safety Department and Tribal Court. This includes suspension or revocation of rights, licenses or permits of members of tribes with reciprocal agreements.
- 9.02. *Venue for Violations.* Any violation of this Ordinance regarding operation of recreational vehicles shall be tried before the Tribal Court under such procedures as are prescribed by Court Rule or Tribal law. The Public Safety Department may act to limit a Tribal Member's exercise of the rights protected under this Ordinance for numerous infractions.
- 9.03. *Civil Infractions.* Except for the provisions of §9.04 this Ordinance are civil in nature. Violations may be punished by suspension or revocation of the recreational vehicles operation rights, licenses and/or permits of the violator, assessment of a fine of not less than \$50.00 and not more than \$1,000.00, assessment of community service hours, forfeitures as set forth in §9.06, restitution as set forth in §9.07, and any other penalty provided for by the civil or criminal code of the Tribe for violations within its jurisdiction.
- 9.04. *Criminal Offenses.* It shall be a criminal offense for any person over whom the Tribe may assert criminal jurisdiction to:
 - a. Assault, resist, oppose, impede, intimidate, bribe, and attempt to bribe, or interfere with an Enforcement Officer engaged in enforcing this Ordinance.
 - b. Violate any right, license or permit suspension or revocation order.
 - c. Fail to obey the hand, voice, emergency light, visual or audible siren signal of an Enforcement Officer or other authorized law enforcement officer.
 - d. Fail to report any injury to or death of any person resulting from the actions of any person taking or attempting to operate recreational vehicles on Tribal Lands. Every

possible assistance shall be rendered to the injured person prior to reporting the incident to the nearest law enforcement agency.

- e. Elude an Enforcement Officer, knowingly flee or attempt to evade an Enforcement Officer following a visible or audible signal to stop. A visible or audible signal under this section may include the use of hands, voice, emergency lights or sirens.
- f. Use unjustified force or violence or threaten the use thereof on an Enforcement Officer for the purpose of interfering or influencing the performance of an official duty.
- g. Fail to consent to any search as authorized in Section 8.04.
- h. Engage in fraud or perjury in procuring a Tribal registration or permit.

9.05. *Criminal Penalties.* The commission of a criminal offense under Section 9.04 shall be punished by a fine of not less than \$500.00 or more than \$5,000.00, or by imprisonment for not less than one (1) day or more than one (1) year, or performance of community service hours, or by any combination of such fine, imprisonment and community service. The criminal penalties in this Section shall be in addition to any forfeitures or restitutions assessed under §§ 9.06 and 9.07.

9.06. *Forfeiture.* The Tribal Court may, upon conviction of any person of any civil or criminal violation of this Ordinance, at the Court's discretion and in addition to any other fines or penalties the Court may impose, order any property seized from such person in accordance with Section 8.04 permanently forfeited.

9.07. *Restitution.* The Tribal Court may, upon conviction of any person of any civil or criminal violation of this Ordinance, at the Court's discretion and in addition to any other fines or penalties the Court may impose, charge such person with the cost of providing equitable restitution to the Tribe for the damage caused by each violation. A person found liable for an infraction, upon a charge Malicious Destruction of Property or Wanton Waste, shall reimburse the Tribe for the destruction.

9.08. *Tribal Member Responsibility.* It shall be no defense in any criminal or civil prosecution under this Ordinance for a Tribal Member to claim a lack of awareness or understanding of this Ordinance or other applicable law.

9.09. *Federal Prosecution.* Nothing in this Ordinance shall be deemed to preclude a federal prosecution for a violation of federal law. Federal prosecution may be pursued in addition to or in lieu of other enforcement procedures provided by this Ordinance.

9.10. *State Jurisdiction Preempted.* It shall not be a defense to any civil infraction or criminal offense under this Ordinance that the alleged activity may be lawful under State law.

- 9.11. *Repeat Offenders.* Repeat offenders may be fined up to \$5,000 and/or lose operation of recreational vehicles rights, registrations, or permits for specified periods of time as deemed appropriate by the Public Safety Department.
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CERTIFICATION

I, Sandra M. Lewis, Tribal Council Recorder, do hereby certify that this a true and correct copy of the Operation of Recreational Vehicles Ordinance, Ordinance #18-500-04a, adopted by Tribal Council on April 11, 2018.

A handwritten signature in black ink, appearing to read 'Sandra Lewis', is written over a horizontal line.

Sandra Lewis, Tribal Council Recorder

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