

Little River Band of Ottawa Indians

2608 Government Center Drive
Manistee, MI 49660
(231) 723-8288

Resolution #18-1107-323

Approval to Amend the Law and Order – Natural Resources – Criminal Offense and Penalty Act

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

WHEREAS, our ancestors reserved the right to hunt, fish and gather within the territories ceded under the 1836 Treaty of Washington ('1836 Ceded Territory'), and is a right which we as Aníshinaábek continue to exercise; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) of the Constitution to establish laws through the enactment of ordinances for the Little River Band; and

WHEREAS, the Tribal Council did pass Ordinance #06-400-07 creating the Natural Resources – Law and Order – Civil Fine, Forfeiture, Penalty Act to identify penalties associated with violation of Tribal laws and regulations regarding the hunting, fishing trapping and gathering rights of Tribal members; and

WHEREAS, the Tribal Council adopted the Administrative Procedures Act, Ordinance #04-100-07, which identifies the processes by which ordinances may be adopted, amended, or repealed; and

WHEREAS, the Tribal Council held a work session on March 19, 2018 on proposed amendments to the Natural Resources – Law and Order – Civil Fine, Forfeiture, Penalty Act; and

WHEREAS, the Tribal Council posted for 30-day comment period those updated revisions on April 25, 2018; and

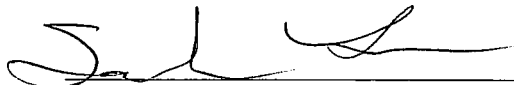
WHEREAS, the Tribal Council held a final work session on October 23, 2018 to review any comments submitted during the 30-day comment period; and

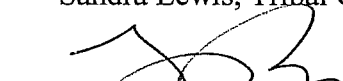
WHEREAS, amendments to the Natural Resources – Law and Order – Civil Fine, Forfeiture, Penalty Act, include: changing the title to reflect the ordinance; adding the definition of Not Useable; updating Article IV Natural Resources Violations Jurisdiction and adding law enforcement provisions; updating Article V Criminal Offenses; removing civil penalties from Article VI Enforcement and Penalties; updating enforcement and penalties in Article VI; and fixing grammatical errors, typos, and formatting.

NOW, THEREFORE, IT IS RESOLVED that the Tribal Council amends the *Natural Resources – Law and Order – Civil Fine, Forfeiture, Penalty Act* to the *Law and Order – Natural Resources – Criminal Offense and Penalty Act*.

CERTIFICATE OF ADOPTION

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


Sandra Lewis, Tribal Council Recorder


Joseph Riley II, Tribal Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Tribal Court
Prosecutor

**LAW AND ORDER – NATURAL RESOURCES — CRIMINAL OFFENSE AND
PENALTY ACT**
Ordinance # 06-400-07

Article I. Purpose; Findings

- 1.01. *Purpose.* The purpose of this Ordinance to identify criminal offenses and the penalties associated violations of Tribal laws and regulations for hunting, fishing, trapping and gathering activities.
- 1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:
- a. The Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to “...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:
 - 1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
 - 2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*
 - b. The Little River Band of Ottawa Indians has the authority and responsibility to manage the natural resources within its jurisdiction in order to provide subsistence hunting, fishing, trapping and gathering resources for current and future Tribal members; and
 - c. Many members of the Little River Band of Ottawa Indians utilize the ability to hunt, fish, trap, and gather to supplement family groceries and as primary resources for family meals; and
 - d. It is necessary to identify illegal activity and establish fines and penalties to discourage unreasonable or unsafe resource utilization practices. Such fines and penalties shall be levied against those person who fail to comply with tribal laws and regulations.

Article II. Adoption; Amendment; Repeal; Severability

- 2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution #06-0830-600.
- a. This Ordinance is amended by Tribal Council Resolution #18-1107-323, consolidating criminal penalties from regulations and correcting grammar, typographical and formatting errors.

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

Repeal. This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances, #04-100-07.

2.03. *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. *Enforcement Officer* means a Public Safety Officer charged with enforcement of Tribal, federal and applicable state laws and regulations regarding hunting, fishing, gathering and trapping within the 1836 Ceded Territory.

3.03. *Not Useable* means the waste of the natural resource other than the commonly understood use of the natural resource

3.04. *Tribal laws and regulations* means those laws and regulations setting forth limitations, restrictions or other guidance or direction regarding the hunting, fishing, gathering and trapping activities within the 1836 Ceded Territory. The application of this phrase includes laws and regulations in conjunction and individually.

Article IV. Natural Resources Violations Jurisdiction and Law Enforcement

4.01. *Tribal Court Jurisdiction.* The Tribal Court shall have jurisdiction over all violations of this Ordinance, whether criminal or civil, and all other violations of hunting, trapping, gathering, licensing, or permitting regulations for conduct occurring in the 1836 Ceded Territory.

4.02. *Law Enforcement.* The following are authorized to enforce the provisions of these regulations:

- a. Little River Band of Ottawa Indians' law enforcement and/or conservation enforcement officers;
- b. Law enforcement and/or conservation enforcement officers of another Michigan

Tribe with whom Little River has entered into a cooperative enforcement agreement;

c. Law enforcement and/or conservation enforcement officers employed by the State of Michigan if the prerequisites stated in the 2007 Inland Consent Decree have been satisfied; and

d. Federal law enforcement and/or conservation enforcement officers.

4.03. *Immunity of Tribal Officers.* Enforcement Officers, Tribal employees, Tribal Attorneys, and Natural Resource Commissioners, and Tribal Court officers and employees shall be immune from civil liability for acts committed in connection with the enforcement of Tribal or federal conservation laws and regulations.

4.04. *Law Enforcement Investigation.* 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 these regulations to determine whether the person is an individual subject to the jurisdiction of the Tribe.. Any Enforcement Officer may detain any individual subject to the jurisdiction of the Tribe committing an offense and may seize or confiscate any fish, game, furbearers, wild animals, their parts or hides and/or any vehicles, vessels, firearms, bows, traps, nets, lines or any other associated paraphernalia used in committing the offense. All seized or confiscated material taken under this Section shall be held as evidence pursuant to Tribal law enforcement policies.

Article V. Criminal Offenses

5.01. *Prosecutorial Discretion.* At the discretion of the Tribal Prosecutor, the below offenses may be charged as a civil infraction or a misdemeanor violation.

5.02. *Trafficking Fish and Game.* A person shall be guilty of the criminal offense of trafficking fish and game if the person:

a. Sells or barter, or has in his possession with intent to sell or barter;

b. Exposes or offers for sale or barter; or

c. Ships for commercial purposes, or has in their possession with intent to ship for commercial purposes, any big or small game or fish or parts thereof.

d. Provided that, this section shall not apply to the sale or possession of fish lawfully taken during commercial treaty fishing season, the possession or sale of hides or antlers of game animals lawfully taken, or the sale or barter between members or descendants of any federally recognized Indian Tribes for the personal use of such members.

5.03. *Interference with Hunting or Fishing Related Property.* A person shall be guilty of the criminal

offense of interference with the hunting or fishing-related property of another if the person, without the permission of the owner, uses, operates, occupies, moves, disturbs, taints or otherwise tampers with fishing gear, firearms, vehicles, boats, blinds, feed plots or other hunting or fishing-related personal property belonging to another.

- 5.04. *Illegal Possession of Harvest or Transportation Tags.* A person shall be guilty of the criminal offense of illegal possession of harvest or transportation tags if an individual is found in possession of harvesting or transportation tags that are not their own. Tags may only be possessed or used by the recipient of the tag with the following exceptions:
- a. A parent or guardian may be in possession of harvest or transportation tags assigned to their minor children under the age of eighteen (18);
 - b. An individual harvesting for a disabled hunter, in accordance to Tribal law, may possess the disabled hunter's harvest or transportation tags; or
 - c. A person harvesting under a ceremonial permit or special needs permit may possess the harvest or transportation tag issued under the ceremonial permit or special needs permit.
- 5.05. *Wanton and Willful Waste.* A person shall be found guilty of the misdemeanor crime of wanton and willful waste when the individual intentionally and negligently harms a natural resource leaving it damaged against the use, taking, or enjoyment by others or when a person takes a resource and intentionally and negligently fails to utilize the resource allowing it to waste to the point that it is not useable by the taker or another individual.
- 5.06. *Interference with Law Enforcement Efforts to Enforce Tribal Law.* A person shall be found guilty of Interference with Law Enforcement Efforts to Enforce Tribal Law if they assault, resist, oppose, impede, intimidate, bribe, or attempt to bribe, or interfere with an Enforcement Officer engaged in enforcing this Ordinance.
- 5.07. *Illegal Taking of Harvested Resource.* A person shall be found guilty of Illegal Taking of Harvested Resource if they molest, disturb, or appropriate any wild animal or plant or carcass thereof, which has been lawfully reduced to possession by or is otherwise owned by another.
- 5.08. *Failure to Cooperate with Law Enforcement Investigation of Harvesting Activity.* A person shall be found guilty of Failure to Cooperate with Law Enforcement Investigation of Harvesting Activity if they:
- a. Fail to obey the hand, verbal command, emergency light, visual, or audible siren signal of an Enforcement Officer or other authorized law enforcement officer;
 - b. Elude, 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);

- c. Use unjustified force, violence, or threat of violence on an Enforcement Officer for the purpose of interfering or influencing the performance of an official duty; or
- d. Fail to consent to any lawful search as authorized.

5.09. *Harvesting of Endangered Species.* A person shall be found guilty of Harvesting of Endangered Species if they take, possess, or harm any threatened or endangered species except as authorized by Tribal Law.

5.10. *Harvesting Specially Permitted Animals without a Permit.* A person shall be found guilty of harvesting a specially permitted animals without a permit if an individual harvests a bear, elk, or sturgeon without a tribally issued permit.

5.11. *Destruction of a Natural Resource or Property of the Tribe's Natural Resource Department.* A person shall be found guilty of destruction of a natural resource or property of the Tribe's Natural Resource Department if an individual takes any action to damage, destroy, pollute, denigrate, or harm a natural resource or property of the Tribe's Natural Resource Department.

5.12. *Defense.*

- a. *Harvester Responsibility.* It shall be no defense in any criminal or civil prosecution under these regulations for an individual to claim a lack of awareness or understanding of these regulations or other applicable law.
- b. *Federal Prosecution.* Nothing in these regulations 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 these regulations.
- c. *State Jurisdiction Preempted.* It shall not be a defense to any civil infraction or criminal offense under these regulations that the alleged activity may be lawful under State law.

Article VI. Enforcement and Penalties

6.01. *Damages, Restitution, Fines, Fees, or other applicable Penalties*

- a. Restitution for Improper/Illegal Harvest or Possession.
 - 1. In addition to any other penalties provided by law, a person found guilty or liable for a criminal or civil violation that involves the illegal taking,

killing, or possession of a plant, fish, migratory bird, or wildlife creature, shall reimburse the Tribe for each plant, fish, migratory bird, or wildlife creature, according to the schedule below:

SPECIES	FINE
Sturgeon, Grayling, Elk, Bear, or any endangered, threatened, or protected species as defined by the LRBOI Natural Resource Department	\$2500
Deer, Muskellunge, Tiger Muskellunge	\$1000
Wild turkey, beaver, mink, otter, badger, bobcat muskellunge, tiger muskellunge, lake trout, brown trout, rainbow trout, brook trout, largemouth bass, smallmouth bass, walleye, northern pike, whitefish, menominee whitefish	\$500
Rabbit, muskrat, squirrel, raccoon, ruffed grouse, woodcock, mourning dove, ringneck pheasant, quail, sharptail grouse	\$100
Any fish or game animal not named	\$50

When the Tribal Court enters an Order declaring bond to be forfeited, the Tribal Court may also order that some or the entire forfeited bond be paid as restitution to the Tribe according to the above schedule.

- b. The Natural Resources Department shall ensure that the Restitution Schedule is posted annually in the Tribal buildings, and published on the Tribe's website.
- c. In any hearing on a suspected criminal violation of the laws or regulations of the Tribe, the Tribal Court shall assign the amount set by this ordinance as restitution owed to the Tribe if the suspected violator is found guilty of a criminal offense.

6.02. *Community Service.*

- a. In addition to any criminal penalty imposed, or community service, set out in Tribal laws or regulations, the Tribal Court may require community service of a type to be determined by the Tribal Court.
- b. Examples of such community services may include, but may not be limited to, serving

a feast for the elders, providing food and services to the membership during the spring or fall feasts, clean-up of Tribal lands, provide assistance to the Natural Resources Department .

- c. The Tribal Court may consult with the Historic Preservation Department in an effort to determine an appropriate remedy that best befits Aníshinaábek traditions.

6.03. *Remedial Harvest Education Course.* In addition to the criminal penalties set out in Tribal laws and regulations, the Tribal Court may require any violator to complete a remedial Tribal Harvest Education Course taught or approved by the Natural Resources Department.

6.04. *Costs.* The Tribal Court also may charge the violator with payment of all reasonable costs associated with the criminal prosecution of Tribal laws and regulations, including collection of any settlement, fine, or restitution costs; witness expenses; accounting expenses; demand letters; hearing costs; and attorney fees.

6.05. *Revocation of Harvest Privileges.*

- a. In addition to any fine imposed by the Tribal Court as a result of a finding of guilt or responsibility, the Tribal Court may revoke a Tribal citizen's harvesting privileges if an individual is found:

1. To be liable for three (3) misdemeanors or infractions during a three (3) year period;
2. To have carelessly handled a firearm, trap, bow, or crossbow that caused accident and injury to a person or property;
3. To have carelessly handled a firearm, trap, bow, or crossbow that caused injury to fish, migratory birds, or wildlife;
4. To have carelessly injured a human being by use of a firearm, trap, bow, cross bow;
5. To have caused accidental injury or death to a person by use of a firearm, trap, bow, or cross bow, and fled or failed to render assistance;
6. To have failed to comply with the terms of any Tribal Court order, or suspension of privileges; or
7. To have otherwise participated in conduct highly offensive to the traditions of the Aníshinaábek people.

- b. Any revocation of an individual's harvesting privileges shall be for a period not to exceed thirty-six (36) months. Prior to revoking an individual's harvesting privileges, notice shall be provided by the Court or the law enforcement agency who investigated the offense.

1. The notice required by this section shall contain the following:

- a. A statement that the Tribal Court will consider whether to revoke

the offender's privilege of exercising harvesting privileges, and that the privilege may be revoked for up to thirty-six (36) months;

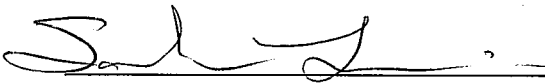
- b. A statement of the basis for the proposed action including a list of the alleged criminal offenses, infractions, or other violations; and
- c. The date of the Tribal Court hearing to consider the case; a statement that the individual has the right to appear before the Tribal Court, to present evidence, to call witnesses, and to be represented by legal counsel at their own expense.

6.06. *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 materials permanently seized from such person.

CERTIFICATION

I, Sandra Lewis, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Law and Order-Natural Resources-Criminal Offense and Penalty Act adopted by the Tribal Council on May 14, 2014 and amended by Tribal Council on November 7, 2018.

11-7-18
Date



Sandra Lewis
Tribal Council Recorder

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