

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

Article I. Purpose, Findings.

- 1.01. *Purposes.* The purposes of this Ordinance are to recruit and employ Tribal Members by instituting a fair and transparent process for applying Indian preference in the employment practices of the Tribe, all entities, enterprises, commissions, agencies, and any other organizations operating under the laws and jurisdiction of the Little River Band of Ottawa Indians. Further to ensure that all entities recruit and retain 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 promotes employment opportunities and the economic security for the tribal nation through the economic advancement of its Members by granting preference in the many employment opportunities in the Tribe, all entities, enterprises, commissions, agencies, and any other organizations operating under the laws and jurisdiction of the Little River Band of Ottawa Indians.

Article II. 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.
- a. Resolution #16-0420-114, adopting amendments including limitations on rehire of Preference candidates previously terminated.
 - b. Resolution #19-1204-320, adopting amendments including applying preference in promotions, recognition of nepotism policies for the government and enterprises,

clarifying non-preference candidates, incorporating Government Business and Accounting Act of 2010, Ordinance #10-100-06, Section 9.02 regarding rehire eligibility for noncompliance with auditing activities, and correcting formatting and grammar errors.

- c. Resolution #21-0811-204, adopting emergency amendments including clarifying application of preference scope of employment activities, clarifying the entities covered by the Ordinance, amending the levels of preference application including the expansion of preference eligible classifications, updating definitions to assist in interpretation of the Ordinance, and encoding a limited waiver of immunity with a limitation on timing and remedies for Tribal Court review.
- 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, 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 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 meanings defined in this Article. Use of the word “shall” is always mandatory and not merely advisory.
- 3.02. *Employment* means, for purposes of this Ordinance, non-exempt or exempt, regular full- or part-time employees, seasonal or temporary employees, interns, and independent contractors used to provide services that would otherwise be performed by employees.
- 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 or eligibility for membership in a federally recognized Indian tribe or citizens of Canadian First Nation as the determinative factor in taking an employment action.

- 3.05. *Minimum Necessary Qualifications* means bona fide occupational qualifications such as professional licensure, specific skills, certifications, permits or education/experience required to perform the job duties of a position. This may include the ability to pass a criminal background which may be heightened in level depending on position and the ability to be insured as a licensed driver, when that is necessary for your job duties. These qualifications shall be separated on any related job postings/descriptions from general or preferred qualifications which are beneficial to the position but can be obtained with training or on the job experience as described in 4.01(c) below.
- 3.06. *Talent Bank* means a comprehensive data base comprised of information supplied by both Tribal Members and the Education Department. This information can include completed forms created for this purpose, resumes, or other documents including information on skills, experience, education and training.
- 3.07. *Tribe* shall mean the Little River Band of Ottawa Indians, including any and all of its enterprises.
- 3.08. *Tribal Descendant* means an individual who is the first generation, biological issue of a Tribal Member of the Little River Band of Ottawa Indians.
- 3.09. *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.
- 3.10. *Tribal Parent* means an individual who, at the time of application of preference, is a non-tribal member parent who has legal and physical custody of a Tribal Member child who is under the age of nineteen (19).
- 3.11. *Tribal Spouse* means an individual who, at the time of application of preference, is married to a Tribal Member, as evidenced by a current and valid marriage license or sworn affidavit for traditional ceremony officiant. This definition includes surviving spouses of Tribal Members until remarriage.

Article IV. Application of Preference.

- 4.01. *Employment.* In accordance with Section 4.02, preference shall be applied to all stages of employment in the Tribe, all entities, enterprises, commissions, agencies, and any other organizations operating under the laws and jurisdiction of the Little River Band of Ottawa Indians. This includes but is not limited to recruitment, hiring, promotion, transfer, and layoffs or reduction of workforce. To ensure the optimum application of preference, the following practices shall be implemented:
- a. *Posting.* Except for instances of temporary employment, any vacant position shall be posted for no less than fifteen (15) days, for Tribal Member applicants only.

- b. *Recruitment and Outreach.* The Human Resources Department shall create and maintain a talent bank of Tribal Members to be used in recruitment of qualified Tribal Members. Nothing in this Ordinance shall be construed to prohibit direct contact and recruitment of Tribal Members for any position.
 - c. *Experiential/Conditional Employment Opportunities.* Except for those positions that require professional licensing, conditional job offers shall be extended to preference candidates who can achieve the required job qualifications through a combination of their previous work experience, on the job training, and educational/vocational opportunities arranged by the tribe. Such offers shall include an employment contract for at-will status with a required training/educational plan.
 - d. *Succession Planning/Promotion.* Education and training opportunities shall be prioritized for preference employees to the greatest extent possible. This includes both academic or vocational pursuits intended to enhance an employee's job related knowledge, skills or abilities. This further includes academic or vocational pursuits intended to enhance an employee's career advancement outside of their current role in tribal employment. Provided that, such opportunities may be limited or restricted based on funding and availability.
- 4.02. *Levels.* If a preference candidate applies for a job position, and possesses the minimum necessary qualifications as posted, the Tribe shall offer interviews for 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 members of all other Federally Recognized Indian Tribes, individuals able to establish eligibility for membership in other Federally Recognized Indian Tribes or individuals who have obtained a Bureau of Indian Affairs Certificate of Degree of Indian or Alaska Native Blood (CDIB), and citizens of Canadian First Nations;
 - c. Third preference for hire shall be for Tribal Spouses and Tribal Parents.
 - d. Fourth preference for hire shall be for Tribal Descendants.

These levels shall control the offer of jobs, hiring, training, promotions, and preservation of workforce during times of reduction.

- 4.03. *Notice of Preference.* Subject to the limitations described in Section 4.04 below, each job description and posting for all employment positions shall contain a statement that Indian preference shall apply.
- 4.04. *Grant-Funded Positions.* In the event that necessary hiring requirements for a grant-funded position contain more limited application or definition of Indian Preference, then those necessary requirements of the grant shall control.
- 4.05. *Nepotism.* Nothing in this Ordinance shall be construed to allow or encourage nepotism. Nepotism for the purposes of employment decisions at any tribal entity shall be defined as the exercise of decision making authority in situations where the decision maker can impact their household income or decisions that may result in personal gain.

Article V. Applicability of Preference to Previously Terminated Employees.

- 5.01. *Previously Terminated Employees.* Application of preference status shall be deferred for forty-five (45) days after involuntary termination or voluntary termination taken in lieu of involuntary termination, not including layoffs.
- 5.02. *Exceptions.* The following circumstances shall result in a further deferment of the application of preference status:
- a. Candidates that were previously terminated for violence, sexual harassment, or sexual misconduct in the work place shall not benefit from preference status for a period of one (1) year.
 - b. Candidates that were previously terminated for a violation of work place drug and alcohol policies shall not benefit from preference status for a period of sixty (60) days.
- 5.03. *Reduction of Deferment Period for Application of Preference.* Entities may extend offers of conditional employment, utilizing at-will status and extended probationary periods to assist preference candidates for reintegration in the tribal workforce in consideration of the following activity:
- a. Demonstrated participation in a rehabilitation program to address previous behavior that lead to termination; and
 - b. Willingness to accept alternate employment, if necessary to address concerns from previous employment

In no event shall the deferment period for application of preference be reduced to fewer than forty-five (45) days.

Article VI. Limited Waiver of Sovereign Immunity; Remedies

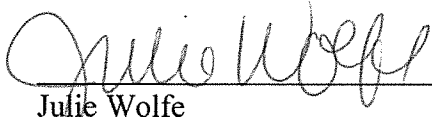
- 6.01. *Limited Waiver of Sovereign Immunity.* The immunity of the Little River Band of Ottawa Indians is hereby waived for civil actions filed in the Little River Band of Ottawa Indians Tribal Court regarding the application of this Ordinance with the express limitation of timeliness and remedies as described below.
- 6.02. *Statute of Limitations.* Any complaint alleging a violation of the application of preference shall be filed with the Tribal Court no later than fifteen (15) business days after real or constructive knowledge of the alleged act denying the individual of his/her rights under this chapter.
- 6.03. *Cause of Action.* Subject to the limitations of Section 6.02, a person may file a civil action with the Tribal Court alleging a violation of the application of preference in employment decisions.
- 6.04. *Standard of Review.* To the extent the employer's actions involve subjective evaluation of an employee's qualifications, the complainant shall have the burden of demonstrating that the employer's determination was unreasonable.
- 6.05. *Remedies.* The limited waiver of sovereign immunity for civil actions filed under this Ordinance, is extended for the following available remedies, if the Court finds that an employer has violated the application of preference:
- a. Equitable remedies which may include an order to cease unlawful practices, an order to interview, hire, promote, reinstate, or provide training to the employee; and
 - b. Monetary damages shall be limited in the following ways:
 1. Back pay of compensation shall be limited to actual loss of salary and actual loss of benefits, calculated at the cost the tribe would have paid at the time of event.
 2. Reasonable front pay. Reasonable front pay shall not exceed ninety (90) days calculation of salary and shall be capped at \$25,000.
 3. Reasonable attorneys' fees and costs, if the party prevails.
 4. Total cumulative monetary damages shall not exceed \$50,000.

The foregoing limitation on remedies shall apply to all civil actions alleging violation of this Ordinance whether the entity is a private or government organization.

CERTIFICATION

I, Julie Wolfe, do hereby certify that this is a true and correct copy of the Indian Preference Ordinance, Ordinance #15-600-02, adopted by Tribal Council Resolution #15-0225-051 and most recently amended by Tribal Council Resolution #21-0811-204, approving emergency amendments.

8/11/2021
Date


Julie Wolfe
Tribal Council Recorder

