

ADMINISTRATIVE PROCEDURES ACT
Ordinance # 04-100-07

Article I. Purpose; Findings

1.01. *Purpose.* The purpose of this Ordinance is to provide guidance and format to the development of ordinances of the Tribe; to manage the process of the development of ordinances of the Tribe; and to allow for the greatest amount of input from members and community affected by the development of ordinances of the Tribe.

1.02. *Authority.* The Tribal Council of the Little River Band of Ottawa Indians enacts this legislation in accordance with the following authority:

a. It is delegated responsibility, in Article IV, Section 7(a) of the Constitution, “to exercise the inherent powers of the Little River Band by establishing ordinances 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;”

b. It is further delegated responsibility, in Article IV, Section 7(j) of the Constitution, “to take action, not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe.

c. The Ogema is delegated the responsibility, in Article V, Section 5(a)(2) of the Constitution, to oversee the administration and management of the Tribal government in accordance with the laws, resolution, and motions adopted by Tribal Council.

1.03. *Findings.* The Tribal Council finds that:

a. It is necessary to set forth directions and processes for the adoption of ordinances of the Tribe which allow for notice and comment prior to the adoption and amendment of such ordinances.

b. It is necessary to provide direction and processes for the collection and publication of ordinances of the Tribe in order to provide for adequate notice to the public regarding the adoption, repeal, amendment or application of ordinances.

c. It is necessary to provide the Membership adequate information regarding actions of the Council or Ogema that have an impact on operations of Tribal Government, programmatic changes, and require adequate notice and public posting processes to ensure that Membership has the opportunity to comment on the functions of its Government.

d. The practice of issuing Executive Orders by the Ogema is a process

adopted from Foreign Governments, and is not a practice that is provided by the Constitution of the Little River Band or any Law of the Band enacted by the Tribal Council through prior action.

e. There are no statutory requirements prescribed in Law that enable the Ogema independent authority for public policy within the Little River Band of Ottawa Indians, exposing the Tribe to risk of liability for actions that have no foundation in law, including Executive Orders.

f. It is necessary to set forth mechanisms and processes that enable the Ogema to issue, publish or Execute Orders to manage the government, while providing notice and comment period for Membership input on the operations of its government, prior to the execution or signature by the Ogema.

g. Ogemuk, past and present, have acted independently, absent law or authorizing resolution of the Tribal Council, to set forth what can be characterized as public policy, in a manner that is not delegated to the Ogema or allowed by the Constitution of the Band. The Tribal Council finds that adopting law to rectify this gap in legislation by providing statutory requirements and enabling processes will minimize risk of exposure to the Band for actions executed by its Ogema.

h. Ogemuk, past and present, have executed Orders that resulted in actions which, by Constitutional limitation, are required to be authorized by Tribal Council or adopted by Tribal Council resolution. The Tribal Council finds that it is necessary to adopt Statute that further solidifies those actions that are enabled to be carried out by Order.

i. It is necessary to provide direction and processes for the collection and publication of Executive Orders, Internal Regulations, Standard Operating Procedures and policy utilized by Departments of the Government, in the administration of Government operations of the Tribe in order to provide for adequate notice to the public regarding the adoption, repeal, amendment of any actions of the Ogema.

Article II. Adoption; Amendment; Repeal

2.01. *Adoption.* This ordinance is adopted by the Tribal Council by resolution # 04-1110-447.

2.02. *Amendment.* This ordinance may be amended by the Tribal Council in accordance with the Constitution and the procedures set forth herein.

a. This Ordinance was amended by the Tribal Council by Resolution #11-1109-379.

2.03. *Repeal.* Prior to repeal of this Ordinance, the Tribal Council shall post notice of the intent to repeal this ordinance at two weeks prior to such action. Notice shall be posted in the Tribal buildings as may be identified in the Tribal Council Meeting Procedures Ordinance.

2.04. *Short Title.* This Ordinance may be cited to as the *Administrative Procedures Act*, or APA.

2.05. *Severability Clause for this Act.* 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 Definitions.* 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. *Ordinance* means a law adopted by the Tribal Council intended to give general direction over a subject matter or jurisdiction. An ordinance may contain specific direction where necessary.

3.03. *Person* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any legal or commercial entity.

3.04. *Executive Order* means an instrument signed and dated by the Ogema that directs, delegates, mandates, or otherwise enacts an executive action or process within the Tribal Government. Executive Orders may be applicable to Membership Conduct when designated by Ordinance.

3.05. *Executive Proclamation* means an instrument that is signed and dated by the Ogema that memorializes in writing any ceremonial proclamation or special recognition by the Ogema for events or persons.

Article IV. Ordinances

4.01. *General.* This Article shall govern the adoption, amendment and repeal of ordinances of the Tribe. It is the intent of the Tribal Council that substantial compliance, not absolute or complete compliance, with this Article shall be required in the adoption or amendment of any ordinance after adoption of this ordinance.

4.02. *Format.* Ordinances shall be identified by a title that clearly sets forth the subject of the ordinance which is followed by the ordinance number. Thereafter, all ordinances shall be set forth as follows. Each ordinance shall be broken into "Articles" and which is made up of "sections." Articles shall be numbered consecutively, and sections shall be numbered individually, with the Article number first, followed by a period, and the section number thereafter. Example: Article I, and section 1.01. Each section may be broken into the following numbered subsections – section 1.01(a)(1)(A)(i).

a. *Article 1. Purpose; Findings.* This Article shall identify the general purpose of the ordinance and, in a separate section, the legislative findings

or history for developing and adopting the ordinance.

b. *Article 2. Adoption; Amendment; Repeal; Severability.* This Article shall contain four sections.

1. *Section 2.01. Adoption.* This section shall identify the adoption history, and shall include references to all resolutions and motions of the Tribal Council which affects the ordinance.

“This Ordinance is adopted by Tribal Council resolution # , and subsequently amended by [action].”

2. *Section 2.02. Amendment.* This section shall identify any limitations on amending the ordinance which are more than those required in this ordinance.

“This Ordinance may be amended in accordance with the procedures set forth in the APA-O, [identify additional restrictions/limitations].”

3. *Section 2.03. Repeal.* This section shall identify any limitations on repealing the ordinance which are more than those required in this ordinance.

“This Ordinance may be repealed in accordance with the procedures set forth in the APA-O, [identify additional restrictions/limitations/requirements].”

4. *Section 2.04. Severability.* This section shall identify severability language, if necessary.

“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.”

c. *Article 3. Definitions.* This Article shall contain all words or phrases that have a specified meaning within the Ordinance. All words or phrases defined shall be numbered separately, and placed in alphabetical order. The first section shall be as follows.

“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.

d. *All Other Articles.* The remainder of the Ordinance shall be organized from the general to the specific and contain separate Articles and sections as may be necessary to clearly identify the subject and intent of the legislation.

4.03. *Notice.* Prior to adoption or amendment of ordinances, the Tribal Council shall present the draft ordinance for Public Comment.

a. *Posting Notice.* The Tribal Council shall present a notice of request for

Public Comment which shall be posted on the Tribal Council's "Public Comment" internet site for Ordinances, and physically at all Little River Band Community and Tribal Office Locations by presenting such notice to the main receptionist or other person responsible for posting notices for the building. The Public Comment period shall be no less than 30 days.

b. *Comments.* The Tribal Council shall have all comments made included in a draft of the ordinance which annotates all comments. Such annotations may include responses, corrections, explanations or other comments. The annotated ordinance shall be made available for copying by interested parties.

c. *Form of Comments.* Individuals may present written testimony that may be received via fax, e-mail, regular mail, or other method which can reasonably be read and received on or before the closure of the Public Comment period.

4.04. *Final Work Session.* The Tribal Council shall review the annotated ordinance resulting from the Public Comment period in a final work session. At which time, approval of final revisions, additions, or deletions will be made to the ordinance.

4.05. *Adoption.* The Tribal Council shall adopt ordinances by resolution which set forth the following minimum information.

a. *Whereas Sections.* In the Whereas sections, the date of posting notice and the date the final work session was held and the subject matter of the ordinance.

b. *Resolve Sections.* In the Resolve sections, the following information in separate resolves.

1. The name of the ordinance to be adopted.
2. The date the ordinance will be effective.
3. The parties who shall need specific notice of such ordinance for implementation purposes.

4.06. *Amendment.* The Tribal Council shall adopt amendments to ordinances by resolutions that contain substantially the same information as set forth in section 5.05. Further, such resolution shall contain, in the first Resolve, the text of all amendments being adopted.

Article V. Emergency Action

5.01. *Emergency.* In the interests of protecting the health, safety, or welfare of the Tribe, its members or the community, the Tribal Council may take emergency action to amend or adopt an ordinance for a six month period. An emergency must be imminent and not allow the normal rule making processes to be conducted without causing or resulting in danger to the health, safety or welfare of the Tribe, its members or the community. Such emergency action may include injury to person, property, business, or finances.

5.02. *Form of Action.* The Tribal Council, upon presentation of a request to amend

or adopt an ordinance, shall bring such matter forward at a regular, special or emergency meeting in a timely manner. No emergency action can take place without a resolution being presented. Such resolution shall clearly state the nature of the emergency and the potential harm that could be caused by a failure to act, and clearly stated amendments or directions which will be taken to avoid or lessen the potential harm. No resolution may allow an emergency action to be in effect for longer than six months.

5.03. *Follow-up on Emergency Action.* In all circumstances, the Tribal Council shall review the emergency action during the six month period to determine the effect of the emergency action, whether the action should be made permanent, and receive comments by affected persons.

5.04. *Extension.* The Tribal Council may extend an emergency action for an additional six months where it is in the best interests of the Tribe to do so. No emergency action shall be in place for longer than one year.

Article VI. Publication

6.01. *General.* The Tribal Council shall cause to be published, either in paper or electronic version, or both, a collection of all ordinances, and regulations of the Tribe which shall be titled the “Little River Band of Ottawa Indians Tribal Code,” and may be referred to as the “Tribal Code.” If made available in paper version, the Code shall be available to the general public and shall be re-issued on a bi-annual basis.

6.02. *Organization.* The Tribal Code shall be organized into two parts – ordinances and regulations. The parts shall be further organized as follows.

a. *Ordinances.* This part shall be organized in titles numbered with the following subject matters:

- 100 - Government Operations;
- 150 - Commissions; Governmental Entities;
- 200 - Membership; Election;
- 300 - Judiciary;
- 400 - Law and Order;
- 500 - Environmental;
- 550 - Building; Construction;
- 600 - Employment;
- 700 - Programs;
- 800 - Business; Finance;
- 900 - Family.

Additional titles may be added from time to time as determined necessary by Tribal Council.

b. *Regulations.* Regulations shall be organized as set forth for ordinances, provided that the title numbers shall be preceded by the letter “R,” for example – R100, R200, etc. Where no regulations exist, there shall be

placed a blank sheet with the following text – “There are no regulations promulgated for this Title in the Tribal Code.”

Article VII. Executive Order(s)

7.01. *General.* The Ogema, as an Office of Government created by the People of Little River Band, is empowered to administer public policy, manage government operations, and oversee other interests of the Tribe through the Execution of Executive Orders. Absolute or complete compliance with this Article shall be required in order for the Ogema’s Executive Orders to bear any weight or enforceability.

7.02. *Format-Title.* Executive Orders shall be identified by a title that clearly sets forth the subject of the order. Executive Orders shall be numbered in a manner that identifies the year, date and sequential number of the order as follows:

*Delegation of Disciplinary Oversight for Departmental Directors to the Tribal Manager
Executive Order #11-1003-053*

a. Where the title is: “*Delegation of Disciplinary Oversight for Departmental Directors to the Tribal Manager.*”

b. Where the year is “11” for the year 2011;

c. Where the date is “1003” or October 3rd;

d. Where the sequential number “053” for the 53rd Executive order issued for that calendar year.

7.03. *Format-Content.* Executive Orders shall include the following content:

a. *Section 1. Constitutional or Statutory Authority to Act.* This Section shall identify the Constitutional delegation of authority to the Ogema and the Tribal Council Ordinance, Motion or Resolution that enables the Ogema to set forth the action He/She is executing.

b. *Section 2. Purpose; Findings.* This Section shall identify the general purpose of the order and, in a separate section, the history or justification for developing and executing the order.

c. *Section 3. Specific Action.* This Section shall identify the action being ordered by the Ogema, in a concise statement, including its intended application either on departments, entities, individuals or persons, with specificity.

d. *Section 4. Repeal.* This section shall identify, by number and title, any former Executive Order that by its adoption the present Executive Order supersedes, in whole or in part.

e. *All Other Sections.* The remainder of the Order shall be organized from the general to the specific, and contain separate Articles and sections as may be necessary to clearly identify the subject and intent of the legislation.

f. *Effective Date, Expiration or Duration of the Order.* Each Order must include a statement of its Effective Date, the intended duration of the Order, or in the alternative, the Expiration date on which the Order becomes null.

g. *Original Signature and Date.* The Ogema shall affix an original signature to each Order by blue or black ink, and shall memorialize his/her signature by affixing the date the Order was signed.

7.04. *Notice.* Prior to Execution of an Order, the Ogema shall present the draft Order for Public Comment.

a. *Posting Notice.* The Ogema shall present a notice of request for Public Comment which shall be posted on the Little River Band's "Public Comment" internet site for Government Publications, and physically at all Little River Band Community and Tribal Office Locations by presenting such notice to the main receptionist or other person responsible for posting notices for the building. The Public Comment period shall be no less than 15 days. The Ogema shall send a copy of the draft Order to the Office of Tribal Council Recorder.

b. *Comments.* The Ogema shall copy to the Tribal Council any public comment that is received during the comment period.

c. *Form of Comments.* Individuals may present written testimony that may be received via fax, e-mail, regular mail, or other method which can reasonably be read and received on or before the closure of the Public Comment period.

7.05. *Amendment Prohibited.* The Ogema is prohibited from amending Executive Orders. The Ogema shall issue a new Executive Order, to supersede any existing Executive Order, and shall indicate the Repeal of any former Executive Order in a Section as defined by section 7.03(d).

7.06. *Emergency Action.* In the interests of protecting the health, safety, or welfare of the Tribe, its members or the community, the Ogema may take emergency action to execute an Order that has immediate effect. An emergency must be imminent and not allow the normal public notice processes to be conducted without causing or resulting in danger to the health, safety or welfare of the Tribe, its members or the community. Such emergency shall be clearly stated within the Order at Section 2, to justify the act.

7.07. *Execution, Filing Requirements.* The Ogema shall file every Executive Order with the Office of the Recorder within three (3) days of its execution. The Recorder shall then publish notice by way of Council Agenda that the Order(s) was received and is on file in the public record of the Tribal Council.

Article VIII. Publication

8.01. *General.* The Ogema shall cause to be published, both in paper and electronically on the public access area of the Tribal website, all Executive Orders and Proclamations within three (3) days of execution. Executive Orders and

Proclamations shall remain on the website until rescinded or amended.

Article IX. Prohibition-Orders Conflicting with Tribal Law Invalid

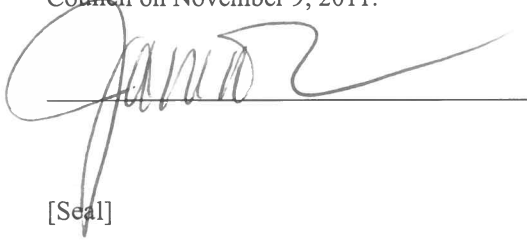
9.01 *General.* The Ogema, by way of limitations contained within the Constitution of the Little River Band of Ottawa Indians, may only act within the subject matters delegated to his/her specific duty and any Executive Order shall be in accordance with, and not in conflict with, the Little River Band Constitution, existing Tribal Law, or existing Council Resolution.

9.02. *Prohibited Executive Orders.* The Ogema shall not implement any Executive Order that would impinge upon the Constitutional or independent authority of another branch of Tribal Government, or invalidate, amend, or overturn any duly adopted action of the Tribal Council, including but not limited to:

- a. authorize the expenditure of Tribal Government funds that are not approved by Tribal Council Resolution or included in the approved budget;
- b. amend or modify any Employment Policy, Regulation or Standard Operating Procedure approved by Tribal Council Resolution,
- c. create, suspend, modify, or terminate any Tribal Program or Service to the Tribal Membership approved by Tribal Council Resolution or funded in the approved budget.

CERTIFICATION

I, Janine M. Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Administrative Procedures Act, Ordinance #04-100-07 adopted by the Tribal Council on November 9, 2011.



[Seal]