ELECTED OFFICIALS ETHICS ORDINANCE
Ordinance #14-100-10

Article 1. Purpose; Findings.

1.01. *Purpose.* This Ordinance is intended to create a base from which all elected officials are expected to work upwards toward improving the health, safety and welfare of the Little River Band of Ottawa Indians, citizens of the Tribe, employees of the Tribe, and persons living in and around the jurisdiction of the Little River Band of Ottawa Indians.

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; [and]

(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 policy of the Little River Band of Ottawa Indians is to promote the highest ethical conduct in all of its elected and appointed officials.

(c) the Anishinaabe have long been guided and instructed by *Niizhwaaswi Mishoomisak*, the Seven Grandfathers. The Creator saw that people were living their lives darkly; they let their actions be directed by selfishness and greed. When young Nanabozho visited the *manidook* during his vision quest, the *Niizhwaaswi Mishoomisak* gave him several gifts to take back to the Anishinaabe. The gifts were:

(1) *Nbwaakaawin*, or wisdom. To have wisdom is to cherish knowledge; to recognize that other individuals have unique knowledge that one's self may lack; and to use this wisdom for the benefit of all people.

(2) *Zaagidewin*, or love. The Grandfathers gave each person the power to love one's self. This gift is the source of empathy because when a person loves who he or she is, the love can then move outward towards others. To know this love is to know peace.

(3) *Mnaadenmowin*, or respect. All of creation deserves respect and all people

should be honored equally, regardless of race, language, belief, gender or status. Respect is especially important between two people who disagree, because both of those people are equal in Creation.

(4) *Aakidehewin*, or bravery. Bravery is facing adversity with personal integrity and taking an action that is right even – or especially – at personal expense.

(5) *Gwekwaadeziwin*, or honesty. Honesty is a candid understanding of a person's private motivations, abilities and shortcomings. A person must constantly search his or her inner thoughts to discern the truth as it must be shared with others.

(6) *Dbaadendiziwin*, or humility. Humility is an honest recognition of one's relatively small place among Creation and the ability to respect one's peers as absolute equals, whether that means raising up another or lowering one's concept of self. Humility also accepts the wise premise that others may know more or know different things that you must humbly learn from them to live your life bravely.

(7) *Debwewin*, or truth. Where honesty flows inward, truth flows outward and prevents false statements to other people.

(d) the Teachings of the *Niizhwaaswi Mishoomisak* are good standards for every person to live by; if every person truly sought to live by these standards, the world would be a better place. Though the Tribal Council finds that each person must be free to embrace these standards of their own will, it nevertheless draws inspiration from these standards to formulate a specific code of conduct for governmental elected officials who are specially entrusted with responsibility for and accountability to the Little River Band of Ottawa Indians.

Article 2. Adoption; Amendment; Repeal; Severability.

2.01. *Adoption.* This Ordinance is adopted by Tribal Council Resolution #14-0723-220.
a. Resolution #17-0816-277, amending the Ordinance to increase the number of business days for the Preliminary Investigation.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances, 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.* For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.

3.02. *Board of Ethics* means the Board created and convened pursuant to Article 5 of this Ordinance.

3.03. *Councilor* means an individual member of Tribal Council.

3.04. *Elected Official* means any person in an elected position within the Little River Band of Ottawa Indians, whether that person was elected or appointed to the office for any term, except for judges in Tribal Court or the Tribal Court of Appeals.

3.05. *Ministerial Act* means an act performed pursuant to a legal duty or other requirement that does not require the independent exercise of discretion, judgment or a unique skill.

3.06. *Tribal Council* means the elected body identified in Article IV of the Constitution of the Little River Band of Ottawa Indians.

3.07. *Tribal Court* means the Tribal Court for the Little River Band of Ottawa Indians.

3.08. *Removal* means the reasons for, and processes outlined, in Article IX of the Constitution of the Little River Band of Ottawa Indians.

3.09. *Ogema* means the member elected or appointed to hold the office of or act as Ogema as identified in Article V of the Constitution of the Little River Band of Ottawa Indians.

3.10. *Personal Relationship* means a relationship based on immediate family relationship, including brother, sister, father, mother, grandparent, child or grandchild. It also means a member of the elected official's household, or one who is in a close personal, romantic or business relationship.

Article 4. Ethical Standards.

4.01. *General.* This article contains specific rules of ethics for Tribal elected officials. This article is not all inclusive and does not limit the Ethics Board from finding that an elected official's behavior constituted unethical conduct.

4.02. *Conflicts of Interests.* A conflict of interest arises when elected officials' personal or private considerations impact their official decision-making process. Accordingly:

(a) Elected officials shall not knowingly take or attempt to take an official action, other than a ministerial act, that is or appears likely to substantially impact their personal or financial interests that are separate from the common interests of the tribe as a whole.

(b) An elected official shall not knowingly take or attempt to take an official action, other than a ministerial act, that is likely or appears to be likely to substantially impact the personal or financial interests, separate from the interests of the tribe as a whole, of an individual in a personal relationship to the elected official.

4.03. *Conflicting External Activities*. Elected officials shall not engage in outside employment or other external activities that conflict with their official duties if prohibited by tribal or federal law or if it would require the elected officials to refrain from official actions.

4.04. *Nepotism*. Elected officials shall not participate in nor seek to influence any official action or employment related matter concerning an individual with whom they are in a personal relationship.

4.05. *False Statements*. Elected officials shall not knowingly and willfully make a false statement concerning any person or subject matter in while acting in an official capacity. Further, elected officials have a duty to determine the truthfulness of statements they make in any forum that could reasonably be perceived as related to an official capacity.

4.06. *Confidential Information*. Elected officials have a duty to protect confidential information in perpetuity and this duty outlives their term of office. Elected officials shall not:

(a) Disclose to any unauthorized person or entity any confidential information gained during the performance of their duties;

(b) Use confidential information to further their personal or financial interests;

(c) Use confidential information to further the personal interests, including the personal financial interests, of an individual with whom they are in a personal relationship; or

(d) Solicit or attempt to solicit confidential information which they are unauthorized to receive.

4.07. *Access to Information*. Elected officials shall not delete, destroy or remove physical or electronic documents containing government information, nor shall elected officials interfere with others' authorized access to government information.

4.08. *Unauthorized Income*. Elected officials shall not solicit, receive or accept any income for fulfilling his or her official duties except as authorized compensation from the Tribal government.

4.09. *Use of Public Office for Private Gain.* Elected officials shall not use their office to gain any personal benefit for themselves, or for an individual with whom they are in a personal relationship, including without limitation by endorsements to services, vendors, products, enterprises or political campaigns.

4.10. *Supervisory Authority.* Elected official may, in the course of their official duties, have departmental responsibility over employees. An elected official shall not:

(a) Influence, coerce, threaten, request or attempt to influence, coerce, threaten or request a subordinate employee to take any action that, if committed by an elected official, would be a violation of this Code of Ethics;

(b) Threaten, harass, intimidate, bribe or attempt to threaten, harass, intimidate or bribe an employee to prevent a report of unethical conduct under this Ordinance;

(c) Retaliate against an employee for filing a complaint under Tribal or federal law.

4.11. *Personal Financial Interests in Government Contracts.* Elected officials shall not participate in the selection or award of government contracts to themselves, or to a person with whom they are in a personal relationship. However, elected officials or a person in a personal relationship with an elected official may be party to a government contract provided that all of the following are met:

(a) The contract follows notice to the general public and an open bidding process;

(b) The conflicting bid was submitted prior to the elected official assuming office; and

(b) The elected official notifies in writing the Department, Commission or government body selecting the bid, recuses himself or herself from the decision-making process and makes no attempt to discuss the process with the remaining decision-makers.

4.12. *Assisting Other Interests for Income.* Elected officials shall not assist another individual in obtaining income or benefits before any government entity. Nothing in this subsection prevents elected officials from appearing to testify on their personal knowledge when summoned or subpoenaed by a government body, provided that the testimony does not disclose confidential information.

4.13. *Gifts.* Elected officials shall not solicit gifts, remuneration or in-kind services in exchange for official actions, nor shall elected officials offer gifts to third parties except as specifically authorized by law. Elected officials shall report the receipt of all gifts to Tribal Council on a form developed for that purpose. Tribal Council shall allow elected officials to personally retain gifts with a value under $75.00 and shall determine by majority vote the disposition of gifts over $75.00 in value by accepting the gift as a donation to the Tribe, donating the gift to a separate charity or allowing the elected official to retain the gift.

Nothing in this subsection shall be construed to prohibit elected officials from giving or receiving traditional gifts of any value consistent with the customary practices of this Tribe.

4.14. *Use of Tribal Property*. Elected officials shall respect and conserve Tribal property and shall not use it for personal benefit or private gain.

4.15. *Compliance with Laws*. Elected officials shall respect and comply with all applicable laws, policies and customs of the tribe, including but not limited to demonstrating good faith efforts to satisfy all justly imposed debts and tax obligations.

4.16. *Professional Conduct*. Elected officials shall at all times conduct themselves with model behavior and shall not engage in behavior that is threatening, intimidating, degrading, denigrating or harassing against another person.

4.17. *Prohibition on Firearms.* Elected officials shall not carry firearms of any type within government buildings, even when under permit from a State or other jurisdiction.

4.18. *Employment Limitation*. Elected officials shall not seek or hold employment with the Tribal government, its enterprises, vendors or contractors, including but not limited to lobbyists, during their tenure in office.

4.19. *Mandatory Reporting.* Elected officials shall also be obligated to report known breaches of Tribal law and policies, including this Ethics Ordinance, committed by other elected officials. Elected officials may also be responsible under this Ordinance for breaches of laws or policies by their subordinate staff if the staff of the elected official knew or should have known about the misconduct.

Article 5. Board of Ethics.

5.01. *Creation*. There is hereby created the Little River Band of Ottawa Indians Board of Ethics. The Board is delegated limited legislative authority from Tribal Council under Article IV, Section 7(f) of the Little River Band of Ottawa Indians Constitution.

5.02. *Purpose*. The purpose of the Board of Ethics is to hold hearings on allegations of unethical conduct by elected officials and to develop and recommend further regulations deemed necessary to meet the purposes of this Ordinance.

5.03. *Membership*. The Board of Ethics shall be populated by five members randomly drawn by Council in open session of a regular meeting from a list of all active Commissioners, except for members of the Gaming Commission or Commissioners currently sitting on a Board of Ethics on a different complaint. Commissioners shall recuse themselves and a new name shall be substituted in the event of a conflict of interest as defined in Section 4.02 of this Ordinance. New names shall be drawn for each allegation received.

This provision is specifically meant to operate as an exception to the usual process for populating boards, as allowed in Boards Ordinance, Ordinance #4-11-07, §4.02.

5.04. *Jurisdiction.* The Board of Ethics shall only exist during the pendency of an active complaint, except that the first Board shall convene immediately following passage of this Ordinance to create and adopt by-laws pursuant to Boards Ordinance, Ordinance #07-150-11.

5.05. *Authority.* The Board of Ethics shall have the delegated authority to conduct investigations and hold hearings on allegations of unethical conduct by elected officials. Accordingly, a sitting Board of Ethics has the authority to:

(a) Summon and / or subpoena individuals and documents relevant to a pending complaint;

(b) Swear witnesses for testimony under penalty of perjury;

(c) Hold in civil contempt individuals who refuse to appear or testify or who intentionally delay or deceive the Board by imposing a fine of not more than $100.00; and

5.06. *Attorney.* Tribal Council shall assign from its Legal Department an attorney to represent the Board in any appellate proceedings in Tribal Court.

5.07. *By-Laws.* Upon adoption of this Ordinance, Tribal Council shall convene a Board of Ethics for the sole and limited purpose of creating and adopting by-laws.

Article 6. Filing a Complaint.

6.01. *General.* A system of accountability is implemented to provide members and officials with a forum.

6.02. *Standing to File.* Any person who is a tribal member, a tribal employee or in a *bona fide* socio-economic relationship to the tribe may file a complaint with the Tribal Council Recorder alleging unethical conduct by an elected official in violation of this Ordinance. Allegations of unethical conduct by a judge in Tribal Court or the Tribal Court of Appeals will not be accepted and should be filed according to Tribal Court Rules.

6.03. *Form of Complaint.* A complaint must contain the following minimum elements for review by the Board:

(a) The name and position of the accused elected official;

(b) Specific facts alleging unethical conduct, including the time and place of the conduct and whether the conduct is continuing;

(c) The subsection of this Ordinance that the conduct violates;

(d) Supporting documentation and list of witnesses to the conduct, if any; and

(e) A signed affirmation by the complainant that the information in the complaint is true under penalty of perjury.

6.04. *Manner of Filing*. Complaints shall be filed to the Tribal Council Recorder by placing five copies of the complaint in a sealed envelope with a separate agenda request form for the drawing of names for a Board of Ethics. Upon receipt of a complaint, the Recorder shall place an item to draw names on the agenda for Council's next regular meeting according to Article 6 of Tribal Council Meeting Procedures, Ordinance #06-100-02.6.04. The sealed complaint shall be sent to the Board for immediate distribution and review.

6.05. *Option of Confidentiality*. A complainant may request confidentiality and if such a request is made, his or her identify will be kept confidential from the accused elected official until the Board votes that the complaint is meritorious.

6.06. *Preliminary Investigations*. Within ten (10) business days of receiving a complaint, the Board shall conduct a preliminary review of the allegations in a closed session meeting. The preliminary investigation shall be conducted by a review of the allegations and supporting documentation, and interviews with the complainant or witnesses. The Board shall vote on whether the complaint is meritorious at the conclusion of the preliminary investigation and the final vote shall be adopted into public minutes following the closed session.

6.07. *Non-Meritorious Complaints*. If the Board determines that a complaint is not meritorious and was filed in bad faith to harass, embarrass or defame another person, to delay tribal government functions or to advance any person's political interests, it shall impose one or both of the following sanctions:

(a) an injunction against future complaints for a period of one year and a fine of not more than $1,000.00; or

(b) a referral to the prosecutor's office for investigation into perjury charges.

6.08. *Meritorious Complaints; Notice of Hearing.* If the Board determines that the complaint is meritorious, it shall serve the accused elected official with a copy of the complaint, a written finding of merit and notice of a hearing. The hearing shall be held within 21 days of the Board's finding of merit and the elected official shall be given notice at least 14 days prior to the hearing. The elected official shall be allowed to respond to the allegations in the complaint not less than 7 days before the hearing by serving six copies of the response to the Tribal Council Recorder for distribution to the Board and the complainant.

6.09. *Hearing.* The hearing shall be conducted on record in a closed meeting. Any witnesses, including the complainant, shall be sequestered during any other witness's testimony, but the accused shall have the opportunity to confront and question each witness. The Board shall have the power to subpoena witnesses or documents, compel testimony and hold in contempt uncooperative participants or witnesses. Rules of evidence shall not apply.

6.10. *Sanctions.* If the Board determines that an elected official engaged in unethical conduct, it shall make all reasonable attempts to agree on a remedy with the elected official and any individual directly harmed by the conduct. If the elected official will not agree to any remedial action, the Board shall impose any of the following sanctions:

(a) a punitive fine not to exceed $1,000.00;

(b) full restitution or reparations for monetary or financial damage done to the tribe or to any individual or entity;

(c) a public reprimand;

(d) suspension from office without pay for no more than 14 consecutive calendar days or;

(e) a recommendation to Tribal Council to commence removal proceedings under Article X, §3 of the Little River Band of Ottawa Indians Constitution.

6.11. *Factors.* In imposing any sanction, the Board shall consider the following factors:

(a) whether the conduct was intentional or unintentional;

(b) whether the harm was negligible;

(c) who was harmed by the conduct and to what extent; and

(d) any mitigating factors presented by the elected official.

6.12. *Written Finding.* Within five business days of the hearing, the Board shall issue a written finding that includes a statement of facts, any sanctions imposed and the weight of each factor in reaching its decision. The written finding shall be moved from closed session to open session before the Board is dissolved.

Article 7. Appeals.

7.01. *Standing to Appeal.* Only the following individuals shall have standing to appeal a finding or sanction by the Ethics Board:

(a) A complainant has standing to appeal a finding that his or her complaint was not meritorious or that a sanction imposed is unreasonably harsh; and

(b) An elected official may appeal a finding that he or she engaged in unethical conduct as unsupported by the record or that an imposed sanction was unreasonably harsh.

7.02. *Venue*. Appeals under this Article shall be made only to the Tribal Court.

7.03. *Standard of Review*. Appellate review shall be limited to the record for plain error with deference to the Board's findings and decisions.

7.04. *No Jury*. Appellate review shall not be conducted by jury.

7.05. *Referral to Prosecutor not Subject to Review*. Neither a complainant nor an elected official shall appeal a decision by the Board to refer his or her conduct to the Tribal Prosecutor.

7.06. *Time to Appeal*. The Tribal Court shall not accept appeals under this Article that are filed more than thirty days after the Board of Ethics issues its findings and decisions.

7.07. *No Stay*. The filing of an appeal under this Article shall not operate as a stay against the application or enforcement of any sanction entered by the Board of Ethics.

7.08. *Dissolution of Board*. Upon final disposition of the complaint, the composition of the Board assigned to that complaint shall be dissolved.

Article 8. Sovereign Immunity.

8.01. *Sovereign Immunity Preserved*. Nothing contained within this Ordinance waives the inherent sovereign immunity of the Little River Band of Ottawa Indians or the tribe's immunity from suit without express consent.

CERTIFICATION

I, Sandra Lewis, Tribal Council Recorder, do hereby certify that this a true and correct copy of the Ethics Ordinance approved on August 16, 2017.

Sandra Lewis, Tribal Council Recorder

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