

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

Article I. Purpose, Findings.

- 1.01. *Purposes.* The purposes of this Ordinance are to institute a fair and transparent process for applying Indian preference in hiring decisions made by the Tribe and its enterprises and to ensure that the Tribe recruits and retains 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 encourages the economic advancement of its Members by granting preference in hiring or promotions for the many employment opportunities in the Tribe and its enterprises.

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.

- 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 *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act-Ordinances, Ordinance #04-100-07.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 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. *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).
- 3.03. *Indian Preference* means the practice of using an individual’s membership in a federally recognized Indian tribe as the determinative factor in taking an employment action.
- 3.04. *Licensed Professional Employee* means, for purposes of this Ordinance, an exempt employee whose employment is contingent on possession of a license to practice in a particular profession, including but not limited to physicians, pharmacists, attorneys, and accountants.
- 3.05. *Regular Employment* means, for purposes of this Ordinance, non-exempt or exempt, regular full- or part-time employees.
- 3.06. *Tribe* shall mean the Little River Band of Ottawa Indians, including any and all of its enterprises.
- 3.07. *Tribal Descendant* means an individual who is the first generation, biological issue of a Tribal Member of the Little River Band of Ottawa Indians.
- 3.08. *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.

3.09. *Tribal Spouse* means an individual who, at the time of application for employment, is married to a Tribal Member, as evidenced by a current and valid marriage license. This definition includes surviving spouses of Tribal Members until remarriage.

Article IV. Application of Preference.

4.01. *Regular Employment*. If a preference candidate is qualified for job position, that does not require professional licensing, as posted, the Tribe shall offer 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 Tribal Descendants, Tribal Spouses and members of all other Federally Recognized Indian Tribes.

4.02. *Notice of Preference*. Each job description for a regular employment position that meet the qualifications listed in section 3.05 or 4.03 of this Ordinance, shall contain a statement that Indian preference shall apply.

4.03. *Grant-Funded Positions*. In the event that hiring requirements for a grant-funded position contain preference requirements that conflict with this Ordinance, the conditions of the grant shall control.

4.04. *Licensed Professional Employee Exemption*. This Ordinance does not apply to job positions for licensed professional employees who are full- or part-time exempt employees whose employment is contingent on possession of a license to practice a particular profession, including but not limited to physicians, pharmacists, attorneys, and accountants.

4.05. *Nepotism*. In the event that hiring of a preference candidate would violate the Tribe's or its enterprise's nepotism policy, the nepotism policy shall control.

Article V. Applicability of Preference to Previously Terminated Employees.

5.01. *Rehire Provided for Previously Terminated Employees*. A candidate is eligible for rehire ninety (90) days after involuntary termination not including layoffs, unless one of the following apply:

- a. The candidate was terminated for one of the following reasons:
 - 1. Fraud, misrepresentation, or theft from the Tribe, its enterprises, or a Tribal employee; or

2. Violence, sexual harassment, or sexual misconduct in the work place; or

b. The candidate was convicted of a crime that occurred in the course of their duties as an employee of the Tribe, of which the Tribe was a victim.

5.02. *Rehire Provided for Employees Previously Terminated for Violations of Work Place Drug and Alcohol Policies.*

a. If a candidate was terminated for a violation of work place drug and alcohol policies, they are not eligible for rehire for one (1) year from their termination date.

5.03. *Rehire Provided for Employees Terminated for Noncompliance of Auditing Activities.*

a. A candidate terminated for failure to comply with auditing activities whether internal or external shall not be considered eligible for rehire for a period of five (5) years.

5.04. *Employees Not Eligible for Rehire.* No candidate is eligible for rehire for a period of three (3) years if they have been terminated or self-terminated three or more times within a ten (10) year period. After the three (3) year ban from employment has ended, the candidate may apply for employment with the Tribe or it's enterprises.

5.05. *Non-Preference Candidates.* This Section shall also apply to all non-preference candidates.

Article VI. No Property Interest; Sovereign Immunity Preserved.

6.01. *No Property Interest.* Nothing in this Ordinance shall be construed to create a right or prerogative of employment in any individual, nor shall it be construed to create a contract or agreement for employment out of any application for or conversation regarding employment.

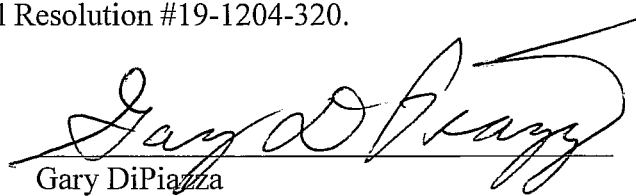
6.02. *Sovereign Immunity Preserved.* Nothing in this Ordinance shall be construed to waive or modify the sovereign immunity of the Tribe against suit in any court.

CERTIFICATION

I, Gary DiPiazza, 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 #19-1204-320.

17-04-2019

Date



Gary DiPiazza
Tribal Council Recorder