

# WAGANAKISING ODAWA



## TRIBAL CODE of LAW

### TITLE I. LTBB CONSTITUTION AND INTRODUCTION

2024.2

# LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS WAGANAKISING ODAWAK TRIBAL CODE of LAW

## INTRODUCTION

The first title in the Code is the Tribal Constitution that was adopted on February 1, 2005. The remainder of the titles are located in their own separate files in succession and named accordingly. Since all the titles should be considered as one document in their entirety, in order to preserve the continuity in the Waganakising Odawak Tribal Code of Law (WOTCL) for convenience the Titles have also been merged to one document and posted on the LTBB Website. Additionally the Titles have been posted separately as well as the Chapters within the Titles.

This Code contains all laws enacted by the Little Traverse Bay Bands of Odawa Indians that were current and in effect through the current codification date located in the footer of each Title. To ensure that all legislative information is up to date, users should check the LTBB Website at [www.ltbodawa-nsn.gov](http://www.ltbodawa-nsn.gov) to obtain any Tribal Statutes or Resolutions that are enacted after the current codification date.

Included in the Code of Law are Resolutions. Resolutions carry the force of law and are categorized by “pre- “and “post-” Constitution. Absence within the pre-Constitution section is years 2002-2005, and years 2005 through June of 2008 from the post-Constitution section. Please see the Tribal web-site for these additional Resolutions.

Under Title XVI. “RESCISSION AND REPEALED RESOLUTUIONS” is a section of the Code that categorizes all of the Resolutions that “rescind and repeal” prior Resolutions. This section is divided by “pre” and “post” Constitution.

**TERMINOLOGY AND ABBREVIATIONS:** The Tribal Council chronologically identifies the statutes it passes as "Waganakising Odawak Statute *year+number*." For instance, the first statute enacted in 1999 was "Waganakising Odawak Statute 1999-001," the tenth statute enacted in 2005 was "Waganakising Odawak Statute 2005-010," etc. In this Code "Waganakising Odawak Statute" is abbreviated to WOS. The statutory source of each section of this Code is identified in parentheses

immediately following each section showing the statute number and date of passage by Tribal Council. This Waganakising Odawak Tribal Code is abbreviated to WOTCL. Resolutions are sourced by the date and order of adoption by Tribal Council, i.e. the first Resolution passed on September 9, 2010 would be 09092010-001.

NUMBERING: The enacted statutes are organized in this WOTCL by subject matter in a series of Titles and Chapters. The numbering of the Constitution, which appears as Title I, is left in its original format. All subsequent WOTCL sections are numbered by title, chapter and section. For instance, 6.501 is Title VI, chapter 5, section 1. Statutes are compiled within Title 2-15 and Resolutions can be found in Title 16-18.

In mid-2016 the section numbering for resolutions was re-structured to assure that each codified resolution has a new unique number assigned to it. Due to the substantial amount of resolutions being codified it was identified that the current numbering system became cumbersome and outdated. The new unique number for each codified Resolution contains the section, the month/year adopted and a consecutive alpha identifier that relates to the number of Resolutions adopted during that month and year within the respective Title, i.e. for a Funding Resolution adopted in March 2017 the Resolution would be codified in Title 18, Chapter 1 and the unique identifying number would look like this: 18.200(3.17)(a). If another Funding Resolution was adopted in the same month the identifying number would be 18.200(3.17)(b). Additionally for further clarification, if there was a Budgetary Matter Resolution adopted the same month and it was the 256<sup>th</sup> Budgetary Resolution codified it would be located in Title 18, Chapter 2 and the identifying number would look like this: 18.256(3.17)(a). Even though it was adopted the same month the Budgetary Resolution does not carry the next consecutive alpha identifier “(c)” because it is located in a different chapter.

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***Introduction Revised – April 4, 2023***

WAGANAKISING ODAWA TRIBAL CODE of LAW

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## TITLE I. LTBB CONSTITUTION

*[The Constitution, adopted by the Tribal membership on February 1, 2005 and deemed approved by operation of Federal law on March 18, 2005, is reprinted below without any changes to the original numbering format. The remainder of this Code is numbered by title and chapter with a citation to the Waganakising Odawak Statute source below each code section. The previous Tribal Court Statute, WOS 1995020, as amended, was effectively repealed and replaced by Article IX of the Constitution.]*

### PREAMBLE

IN THE WAYS OF OUR ANCESTORS, to perpetuate our way of life for future generations, we the Little Traverse Bay Bands of Odawa Indians, called in our own language the WAGANAKISING ODAWAK, a sovereign, self-governing people who follow the Anishinaabe Traditions, Heritage, and Cultural Values, set forth within this Constitution the foundation of our governance. This Constitution is solemnly pledged to respect the individuality of all our members and their spiritual beliefs and practices, while recognizing the importance of preserving a strong, unified Tribal identity in accordance with our Anishinaabe Heritage. We will work together in a constructive, cooperative spirit to preserve and protect our lands, resources and Treaty Rights, and the right to an education and a decent standard of living for all our people. In keeping faith with our Ancestors, we shall preserve our Heritage while adapting to the present world around us.

We have created this document as an act of inherent self-governance pursuant to the government-to-government relationship that was reaffirmed by the United States Congress on September 21, 1994 in Public Law 103-324 “Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act.” The nine (9) Bands of Odawak who historically lived within and near Waganakising are hereby included within the term “Little Traverse Bay Bands of Odawa Indians.” The nine Bands are: 1) North Shore (Naubinway west to Escanaba); 2) the Beaver Islands; 3) Cross Village; 4) Burt Lake; 5) Good Hart (Middle Village); 6) Harbor Springs; 7) Petoskey; 8) Bay Shore; and 9) Charlevoix. The Bands are a single governmental body under this one Constitution. This Constitution shall supersede all previous constitutions and bylaws of the Little Traverse Bay Bands of Odawa Indians.



## **ARTICLE I. RESERVED RIGHTS OF TRIBAL MEMBERSHIP**

### **A. Purpose**

This Article enumerates certain rights as reserved by the Tribal membership. All governing authority rests with the Tribal membership. Through this Constitution, the Tribal membership delegates specific powers and functions to the branches of government, which can only be added to or removed by amendments to this Constitution. All powers and functions not so delegated remain with the Tribal membership. To assure that the power of our government rests with the membership of the Little Traverse Bay Bands of Odawa Indians, the membership reserves the right to hold at a minimum an annual meeting and such other meetings as the membership deems necessary, as provided for in this Article.

### **B. Directive Principles**

In consideration of the next seven generations, each generation of the Tribal Membership to assert tribal sovereignty directs the Legislative, Executive and Judicial branches of government to:

1. Promote the preservation and revitalization of Anishinaabemowin and Anishinaabe culture;
2. Promote with special care the health, educational and economic interests of all the people, especially our children and elders, and shall protect them from social injustice and all forms of exploitation;
3. Regard the raising of the level of nutrition and the standard of living of our people, and the improvement of public health as among their primary duties;
4. Establish and maintain within the limits of their economic capacity and development, effective provision for securing the right to work, to education and assistance in cases of unemployment, old age, sickness and disablement, and in other cases of need; and

5. Assure and promote that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that youth and elders are protected against exploitation.

**C. Annual Meeting**

The Tribal Membership, through this document, directs the Executive Branch of the Little Traverse Bay Bands of Odawa Indians to be responsible to call an annual meeting of the Tribal Membership each spring. This meeting is to be held within the boundaries of our reservation as defined in by the Ottawa-Chippewa Treaty of Detroit of 1855, 11 Stat. 621, in Article I, paragraphs third and fourth of the Treaty. Notice shall be provided to all adult tribal members by first class mail or an equivalent method at least thirty (30) days prior to the annual meeting.

**D. Quorum**

Twenty percent (20%) of all registered voters shall constitute a quorum, as certified by the Election Board. A quorum shall be necessary to transact official business except as noted in sections E(1) and E(2) of this Article. A quorum is not necessary for general information and discussion.

**E. Conduct of Tribal Membership Meetings**

All Tribal Membership meetings shall be open to all Tribal members so long as they maintain acceptable social order and do not interfere with the conducting of the meeting. The Election Board shall be responsible for developing acceptable rules of conduct at the first Tribal Membership meeting. Subsequent meetings will be conducted in accordance with rules of conduct adopted by the Tribal Membership at a membership meeting.

1. The Tribal member who will preside over the first meeting shall be elected at the meeting from nominees from the Tribal Membership in accordance with the rules of conduct and procedure developed by the Election Board. A quorum will not be necessary to conduct this election.

2. Thereafter, the Tribal Membership shall elect a Tribal member to preside over the next annual or special meeting of the Tribal Membership prior to adjournment of the Tribal Membership meeting. A quorum will not be necessary to conduct this election. Provided, that if the person elected is not available or present at the following meeting, then a member shall be elected to preside over the meeting under the same procedures as for the first meeting.

**F. Special Meetings of the Tribal Membership**

Special Meetings of the Tribal Membership shall be called by the Executive Branch upon receipt from the Election Board of a certified petition signed by no less than twenty percent (20%) of the registered voters, or upon written request of a majority of the Tribal Council. Notice shall be provided to all adult Tribal members by first class mail or equivalent method sent to their last known address at least two (2) weeks prior to all Special Meetings of the Tribal Membership.

**G. Right to Legal Representation**

The Tribal Membership, by majority vote at a meeting at which a quorum is present, may employ an attorney to represent the interests of the Tribal Membership as a whole when an issue exists as to whether Tribal government has functioned in conformity with Tribal law. If the Tribal Membership’s attorney substantially prevails on the merits of the claims filed against Tribal government, or if settlement occurs which accomplishes the same, the Tribal Council shall appropriate funds to pay attorney’s fees and costs, as may be determined and ordered by the Tribal Judiciary.

**H. Duties and Functions Reserved by the Tribal Membership**

The Tribal Membership reserves the following specific duties and functions:

1. Receive and review the Annual Report from the Tribal Council Treasurer under Article VII(C)(3)(a) of this Constitution;
2. Approve sales of Tribal lands under Article VII (D)(13) of this Constitution;

3. Make recommendations to the Tribal Council for future Tribal enterprises, services and policies;
4. Initiate a recall of a Tribal Council member, the Chairperson or Vice-Chairperson under Article XIII (A); and
5. Petition for a special election for constitutional amendments under Article XVII.

## **ARTICLE II. INDIVIDUAL RIGHTS**

The Little Traverse Bay Bands of Odawa Indians, in exercising powers of self-governance, shall NOT:

1. Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;
2. Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, or issue warrants, unless based upon probable cause, and supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. Subject any person for the same offense to be twice put in jeopardy;
4. Compel any person in any criminal case to be a witness against him/herself;
5. Take any private property for a public use without just compensation;
6. Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against her/him, to have compulsory process for obtaining witnesses in his/her favor, and at his/her own expense to have the assistance of counsel for his/her defense and to have these rights explained at the time of arrest;
7. Require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
8. Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
9. Pass any bill of attainder or ex post facto law; or
10. Deny to any person accused of an offense punishable by imprisonment the right,

upon request, to a trial by jury of not less than six (6) persons.

### ARTICLE III. DEFINITIONS

For purposes of this Constitution, the following definitions apply:

- A. **Adult** An “adult” is a person eighteen (18) years of age or older.
- B. **Anishinaabemowin.** The traditional language of the Little Traverse Bay Bands of Odawa Indians.
- C. **Federal.** The United States Federal government.
- D. **Felony.** The term “felony” shall be defined by Tribal Council statute and shall not include any reasonable actions taken pursuant to or in furtherance of Tribal sovereignty or Treaty Rights.
- E. **Immediate Family.** “Immediate family” means: wife, husband, son, daughter, mother, father, brother, sister, step-mother, step-father, step-brother, step-sister, father-in-law, mother-in-law, child and step-child, grandmother, grandfather, brother-in-law and sister-in-law.
- F. **Minor.** A “minor” is a person under eighteen (18) years of age.
- G. **Odawa (singular, “Ottawa” in English), Odawak (plural).** For purposes of this Constitution “Odawak” refers to all Indian people that are listed on the Durant Roll within the nine (9) bands listed in the Preamble of this Constitution and their descendants.
- H. **Reservation.** Unless otherwise specified in this Constitution “Reservation” means all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior.

## **ARTICLE IV. TERRITORY, JURISDICTION, LANGUAGE, & SERVICE AREA**

### **A. Territory**

The territory of the Little Traverse Bay Bands of Odawa Indians shall encompass all lands and waters within the Reservation as defined in Article III (H) and any other lands which are now and hereafter owned or acquired by the Little Traverse Bay Bands of Odawa Indians or held in trust for the Tribe by the United States.

### **B. Jurisdiction**

The jurisdiction of the Little Traverse Bay Bands of Odawa Indians shall extend to all territory set forth in Section (A) of this Article and to any and all persons or activities therein based upon the inherent sovereign authority of the Little Traverse Bay Bands of Odawa Indians and Federal law. The jurisdiction includes but is not limited to air, water, surface, subsurface, natural and cultural resources, and any interests therein. Jurisdiction over members of the Little Traverse Bay Bands of Odawa Indians shall extend beyond the territory set out in Section (A) whenever they are acting pursuant to, or jurisdiction is created or affirmed by, either:

1. Rights reserved or created by treaty,
2. Little Traverse Bay Bands of Odawa Indians statute, ordinance, resolution, or other authorization,
3. Federal statute, regulation or other authorization pertaining to the Tribe or its members, or
4. Any compact, contract or other agreement entered into pursuant to applicable law pertaining to the Little Traverse Bay Bands of Odawa Indians or its members.

### **C. Language**

No law shall be passed that precludes the use of Anishinaabemowin in the conduct of the Little Traverse Bay Bands of Odawa Indians' official business, or in the daily affairs of the Tribe and its members.



**D. Service Area**

For purposes of the delivery of Federal services to the enrolled members of the Little Traverse Bay Bands of Odawa Indians, the area of the State of Michigan within 70 miles of the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs "third" and "fourth" of the Treaty of 1855, 11 Stat. 621, shall be deemed to be within or near the Reservation. Services may be provided to members outside the named service area unless prohibited by Federal law or program regulations.

## ARTICLE V. MEMBERSHIP

### A. Requirements

#### 1. Definitions:

a. For purposes of this section “Reservation” means the areas referenced in Public Law 103-324, 25 U.S.C. §1300k-2(b)(2)(A) as “the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621.”

b. “Durant Roll” means the Durant Roll of 1908 as approved by the Secretary of the Interior on February 18, 1910, and as clarified by Durant’s corresponding field notes.

2. March 31, 2003 Roll. All persons whose names appear on the Roll prepared by the Little Traverse Bay Bands of Odawa Indians and submitted to the Department of the Interior, Bureau of Indian Affairs, notice of receipt of which was published in the Federal Register on March 31, 2003, are members of the Little Traverse Bay Bands of Odawa Indians.

3. Eligibility. The following persons shall be eligible for membership in the Little Traverse Bay Bands of Odawa Indians:

a. All persons who are one fourth (1/4) or more North American Indian blood quantum, and can prove direct lineal descent from a person or persons identified in one or more of the sub-sections below:

i. All persons listed on the Durant Roll under the following Ogemuk (leaders or “chiefs”) or areas of residency:

Nawwemaishcotay – Cross Village

Shawwawdayse – Charlevoix

Shawwawnegwnaybe – Bay Shore

Louis Micksawbay – Charlevoix  
Awmegwawbay – Petoskey  
Nawogemaw – Good Hart / Middle Village  
Simon Kewaydezhick – Harbor Springs  
Joseph Waybwaydum – Burt Lake  
Daniel Nesawwawquot – Harbor Springs  
Payzhickwaywedung – Beaver Island  
Nawoquaygawbowe – Manistique  
Kawgegaypenayse – North Shore

**ii.** All persons whose name appears on the Durant Roll who resided within the Reservation at the time the Durant Roll was compiled;

**iii.** All persons listed on any of the Annuity payrolls of Ottawa & Chippewa Indians of Michigan from 1836 to 1871 and referenced in the 1850 through the 1920 Federal Population Enumeration (Census Records) who resided within our Reservation boundaries at the time the payrolls were written.

**b.** All descendants of persons enrolled under subsection 2 or 3(a) who are at least one fourth (1/4) North American Indian blood quantum.

## **B. Adoption**

**1.** Membership by Adoption into the Tribe.

**a.** Any person who can verify at least one fourth (1/4) North American Indian blood quantum may be adopted into the Little Traverse Bay Bands of Odawa Indians by a majority vote of the full Tribal Council, if that person can also demonstrate, by other means, substantial community ties to the Tribe, as defined by Tribal statute.

**b.** Adult persons who become members of the Little Traverse Bay Bands of Odawa Indians through the adoption procedure developed by the Tribal Council

to implement this section shall thereupon enjoy and be entitled to the rights and privileges associated with membership in the Tribe except the elected positions of Tribal government.

2. Membership Rights of Children Who Have Been Adopted By Members of The Little Traverse Bay Bands of Odawa Indians. Indian minor children who are at least one fourth (1/4) North American Indian who have been legally adopted by members of the Little Traverse Bay Bands of Odawa Indians, in a Tribal Court or any other court of competent jurisdiction, are also eligible to be adopted by the Tribe. They shall thereupon enjoy and be entitled to the rights and privileges associated with membership in the Little Traverse Bay Bands of Odawa Indians except the elected positions of Tribal government.
3. Membership Rights of Indian Children Who Have Been Legally Adopted BY Non-Member Indian or Non-Indian Families. Any Indian child eligible for membership pursuant to Section A(3) of this Article who is legally adopted in a Tribal Court or any other court of competent jurisdiction by a non-member Indian or non-Indian family shall be eligible for membership in the Little Traverse Bay Bands of Odawa Indians, notwithstanding such adoption.

**C. Dual Membership Prohibition.**

No person shall be a member of the Little Traverse Bay Bands of Odawa Indians if that person is enrolled in another federally recognized tribe. Any person enrolled in another federally recognized tribe shall be subject to disenrollment from the Little Traverse Bay Bands of Odawa Indians.

**D. Relinquishment of Membership**

1. Enrollment in any other federally recognized Tribe shall be deemed voluntary relinquishment of membership from the Little Traverse Bay Bands of Odawa Indians and such individual shall be subject to disenrollment.
2. Individual members may relinquish their Little Traverse Bay Bands of Odawa

Indians membership, which shall be done in writing and presented to the Tribal Council according to procedures developed by the Tribal Council.

3. A Tribal Judicial review shall be required should a parent or legal guardian submit a voluntary relinquishment of Little Traverse Bay Bands of Odawa Indians membership for a minor or for a person deemed incompetent by the Tribal Court. Such relinquishment shall only become effective upon approval of the Tribal Court based on a finding that the relinquishment is in the best interests of the child or the person deemed incompetent.

**E. Minor Re-Enrollment**

Any minor whose membership has been relinquished by a parent(s) or legal guardian, shall be eligible for re-enrollment at any time after reaching the age of eighteen (18). A minor may be re-enrolled before reaching the age of eighteen (18) upon recommendation of the Tribal Court and approval of the Tribal Council.

**F. Re-Enrollment**

Once removed from the Tribal membership roll, an adult individual shall not be eligible for re-enrollment for a period of five (5) years.

**G. Membership Roll**

1. The Executive Branch shall maintain the official Tribal roll of all Tribal members.
2. Membership shall be final upon affirmative vote of a majority of the full Tribal Council, provided that the Tribal Council must accept or reject new membership applications within sixty (60) days of receipt of recommendations from appropriate staff and committees.
3. The Executive Branch shall prepare and submit an annual report to the Tribal Council on the past year's changes to the membership roll.

## **H. Disenrollment**

- 1.** No person on the March 31, 2003 roll may be involuntarily disenrolled unless they are shown to have knowingly presented falsified documents or become a member of another Federally recognized Tribe.
- 2.** Other members may not be disenrolled unless the Tribal Council determines by an affirmative vote of at least seven (7) of the nine (9) members of the Tribal Council that such persons do not meet the eligibility requirements of this Article.
- 3.** No enrolled Tribal member who meets the eligibility requirements in this Article shall be subject to disenrollment.
- 4.** No person may be disenrolled unless they are first notified in writing of the reason(s) that their eligibility is in question, and given one hundred eighty (180) days after such notification to present documentation and arguments to the Tribal Council. Upon request of the individual or after one hundred eighty (180) days, the Tribal Council shall give such person a fair hearing before the Council. The Tribal Council shall give such person at least thirty (30) days written notice before the hearing on their case before the Tribal Council. Until disenrollment is finalized, the individual shall have all rights of a Tribal member including services and any monetary entitlements. The hearing shall be open unless the member in question requests that the hearing be held in closed session.
- 5. Right of Appeal.**
  - a.** Any person whose application for membership has been denied, or who has relinquished or been disenrolled, shall have a right of appeal to the Tribal Judiciary within one (1) year of such action.
  - b.** Such appeal rights do not extend to any person whose petition for membership by adoption into the Little Traverse Bay Bands of Odawa Indians has been denied.
  - c.** Nothing in this section is intended to prevent a person whose application

has been denied from reapplying for membership at some future date.

**I. Membership Statute**

The Tribal Council shall have the power to enact laws not inconsistent with this Article to implement these provisions.

## **ARTICLE VI. ORGANIZATION OF THE GOVERNMENT**

### **A. Purpose, Fundamental Rights**

We, the Little Traverse Bay Bands of Odawa Indians, speak through this document to assert that we are a distinct nation of Anishinaabek of North America that possess the right to: self-determination; freely determine our political status; freely pursue our economic, social, religious and cultural development, and determine our membership, without external interference. These same rights and principles the Little Traverse Bay Bands of Odawa Indians acknowledge to be inherent among other peoples, nations and governments throughout the world. We recognize their sovereignty and pledge to maintain relations with those peoples, nations and governments who acknowledge those same fundamental human rights and principles, and who recognize the sovereignty of the Little Traverse Bay Bands of Odawa Indians.

### **B. Branches of Government**

The government of the Little Traverse Bay Bands of Odawa Indians shall be composed of three (3) branches: Tribal Council (Legislative), Tribal Chairperson (Executive), and Tribal Court (Judicial).

### **C. Delegation of Authority**

The Tribal membership, through this document, authorizes: the Tribal Council to be the Legislative body and to make laws and appropriate funds in accordance with Article VII; the Executive Branch to administer such funds, enforce this Constitution and laws passed thereunder, and implement policies and procedures enacted by the Tribal Council in accordance with Article VIII; and the Judicial Branch to interpret this Tribal Constitution and to apply the laws of the Little Traverse Bay Bands of Odawa Indians in accordance with Article IX.

### **D. Separation of Functions**

No branch of the government shall exercise the powers, duties or functions delegated to another branch.



**E. Supremacy Clause**

This Constitution shall be the supreme law over all territory and persons subject to the jurisdiction of the Little Traverse Bay Bands of Odawa Indians.

## **ARTICLE VII. TRIBAL COUNCIL**

### **A. Composition of the Tribal Council**

Legislative powers shall be vested in the Tribal Council. The Tribal Council shall be composed of nine (9) Tribal members elected in an open election by popular vote.

### **B. Tribal Council Officers**

The officers of the Tribal Council shall be the Legislative Leader, Secretary and Treasurer, and shall be filled from among the Tribal Council members after each general election, by majority vote of the Tribal Council. No member may simultaneously serve as more than one officer. In the event of a vacancy in a Tribal Council office, the Tribal Council shall appoint a Tribal Council member to fill the vacated office until new officers are selected following the next general election.

### **C. Duties of Officers**

- 1.** The Legislative Leader shall:
  - a.** Monitor all Tribal mandates and directives approved by the Tribal Council for compliance through the Executive Branch;
  - b.** Make recommendations to the Tribal Council on the matter of laws, statutes, programs, or policies that would be of interest or benefit to the Little Traverse Bay Bands of Odawa Indians;
  - c.** Acquire a surety bond, in an amount and with a surety company satisfactory to the Tribal Council;
  - d.** Preside over meetings of the Tribal Council;
  - e.** The Legislative Leader shall vote on all issues except in cases in which he or she would have a conflict of interest; and

- f.** Perform such other duties as required by the Tribal Council.
- 2.** The Secretary shall:
- a.** At each Tribal Council meeting, submit the minutes of the previous meeting to the Tribal Council for approval;
  - b.** Acquire a surety bond, in an amount and with a surety company satisfactory to the Tribal Council;
  - c.** Post minutes approved by the Tribal Council in the Tribal administrative office within seven (7) days of approval;
  - d.** Maintain and protect the Tribal Seal;
  - e.** Preside over meetings of the Tribal Council in the absence of the Legislative Leader; and
  - f.** Perform such other duties as required by the Tribal Council.
- 3.** The Treasurer shall:
- a.** Submit an annual report, prepared by the Tribal accounting department, to the Tribal Membership at its annual meeting. This report shall include all funds received by the Little Traverse Bay Bands of Odawa Indians or through Tribal enterprises. This report shall also include all appropriations of operating funds and Tribal enterprises by department showing how the funds were spent and to include profit and loss statements where applicable;
  - b.** Acquire a surety bond, in an amount and with a surety company satisfactory to the Tribal Council;
  - c.** Preside over meetings of the Tribal Council in the absence of the

Legislative Leader and Secretary; and

- d. Perform such other duties as required by the Tribal Council.

#### **D. Powers of the Tribal Council**

The Tribal Council shall have the power to:

1. Make laws not inconsistent with this Constitution, including statutes and resolutions necessary to exercise Tribal jurisdiction, including civil and criminal authority and the regulation of commerce, and send them to the Executive for signature. They shall be deemed enacted if not expressly vetoed by the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override a veto by the Executive.
2. Approve or disapprove policies, resolutions and regulations presented from the Executive branch;
3. Provide by law for the jurisdiction of the Little Traverse Bay Bands of Odawa Indians over Indian Child Welfare matters and all other domestic relations matters;
4. Enact laws governing the issuance of the Little Traverse Bay Bands of Odawa Indians charters of incorporation for economic or other purposes, and to regulate the activities of these corporations;
5. Implement, by statute not inconsistent with this Constitution, the Little Traverse Bay Bands of Odawa Indians' inherent right to exclude person(s) or other parties from Tribal lands;
6. Adopt rules of conduct to govern all levels of Tribal government;
7. Shall establish rules and procedures to provide access for review by any Tribal member or his/her authorized representative, who is a Tribal member, of the records of the Little Traverse Bay Bands of Odawa Indians. Such review shall be conducted during

normal office hours, in accordance with the rules and procedures established by the Tribal Council, and not inconsistent with any other provision of this Constitution. All Tribal records are subject to this review by the membership unless specifically excluded by this Constitution or applicable law;

**8.** Enact laws governing the encumbrance of Tribal lands or other intangible assets, and the encumbrance and disposition of non-real estate tangible assets;

**9.** Purchase, receive by gift, or otherwise acquire land, interests in land, personal property or other intangible assets which the Tribal Council may deem beneficial to the Little Traverse Bay Bands of Odawa Indians;

**10.** Request lands be placed in trust with the United States for the benefit of the Little Traverse Bay Bands of Odawa Indians when the Tribal Council deems this beneficial to the Tribe;

**11.** Approve land use plans and zoning of lands subject to the jurisdiction of the Little Traverse Bay Bands of Odawa Indians;

**12.** Approve leases for Tribally owned land and lands held in trust for the Little Traverse Bay Bands of Odawa Indians by the United States subject to the approval of the Secretary of the Interior if required by Federal law;

**13.** Approve all sales, or dispositions of Tribal lands, provided that such sale or disposition must also be approved by a majority vote by referendum, or by a quorum at an annual membership meeting;

**14.** Employ legal counsel;

**15.** Approve the filing of lawsuits in the name of the Tribe as proposed by the Executive, provided, the Tribal Council may approve the filing of a lawsuit in the name of the Tribe without Executive concurrence by an affirmative vote of six (6) members of the Tribal Council;

- 16.** Establish committees, commissions, and boards, and approve appointments as presented by the Executive. The Tribal Council shall develop laws setting out qualifications for appointees and ensuring that the Tribal membership is given reasonable notification of available positions;
- 17.** Establish and maintain government offices for the Little Traverse Bay Bands of Odawa Indians;
- 18.** Appropriate funds, and enact a budget formulation statute that allows for public input from the Tribal membership;
- 19.** Raise revenue, including the power to enact laws to levy taxes and govern the collection of taxes and license fees;
- 20.** Develop policies for receiving any grants, donations, or other funding from any person, corporation, municipality, government, or other entity, and the policy shall provide that such receipts are a matter of Tribal record;
- 21.** May establish such lower courts as may be deemed necessary upon request from the Judiciary;
- 22.** Approve the creation or dissolution of Executive divisions or departments to promote and protect the peace, health, safety, education, and general welfare, including but not limited to cultural and natural resources, of the Little Traverse Bay Bands of Odawa Indians and its members;
- 23.** Approve negotiations with any other governments, businesses or individuals by a majority vote of the Tribal Council; and
- 24.** To provide by statute for the management of any and all economic affairs and enterprises of the Little Traverse Bay Bands of Odawa Indians that will further the economic development of the Tribe or its members. Such statutes will delegate management responsibilities to Tribally chartered corporations or other subordinate Tribal entities, or where appropriate, to the Executive Branch.

**E. Reserved**

The Tribal Council shall not exercise any powers not listed in this Constitution unless an amendment of the Constitution has been approved pursuant to Article XVII.

**F. Compensation**

All members of the Tribal Council shall receive reasonable compensation governed by statute. No increase or decrease in compensation shall take effect until after the next general election.

**G. Term of Office**

The term of office shall be four (4) years except as provided in Article XII for the first election under this Constitution. The term shall extend from their oath of office until a successor is sworn in.

**H. Qualifications**

1. Members of the Tribal Council shall be Little Traverse Bands of Odawa Indians members at least eighteen (18) years of age.
2. No person shall be sworn in as a Tribal Council member if he or she is employed by the Little Traverse Bay Bands of Odawa Indians Tribal government, as described in Article XV (A)(2).
3. No person shall serve as a Tribal Council member within seven (7) years of completion of a sentence or probation upon being convicted of a felony, unless such conviction has been vacated or overturned.

**I. Budget**

The Tribal Council shall enact an annual budget for the upcoming fiscal year. The

budget shall identify all funding sources, appropriations of operating funds and Tribal enterprises. The Budget shall be a Tribal document, dispersed to Tribal members at the annual meeting of the Tribal Membership, or made available by mail as requested by Tribal members.

## **J. Meetings**

Meetings of the Tribal Council are as follows:

1. **Presiding Over Meetings.** The Legislative Leader, or person designated under this Constitution to preside in his/her absence, shall preside over all meetings of the Tribal Council.
2. **Quorum.** Five (5) Tribal Council members shall constitute a quorum. A quorum shall be necessary to transact official business of the Tribal Council.
3. **No Voting by Proxy.** All votes must be cast only by those actually present at the meeting during which the vote was taken.
4. **Regular Meetings.** The Tribal Council shall hold regular meetings at least once a month at the Tribal government offices. Official minutes shall be taken and recorded, and shall be approved within sixty (60) days of the meeting.
5. **Special Meetings.** Special meetings may be called from time to time by the Legislative Leader, by a majority of the Tribal Council, or by a request from the Executive. Notice of such special meetings shall be given to all members of the Tribal Council at least five (5) days in advance of such meetings, and shall state the purpose or purposes of the meeting. Special meetings shall be restricted to the purpose or purposes for which they are called.
6. **Emergency Meetings.** When immediate official action of the Tribal Council is necessary to preserve or promote essential interests of the Little Traverse Bay Bands of Odawa Indians, the Legislative Leader or a three fourths (3/4) majority of the Tribal Council may call an emergency meeting. Advance written or verbal notice of such meeting shall be given to each Council member to the greatest extent feasible.



Emergency meetings shall be restricted to the urgent subject matter necessitating the meeting. Emergency meetings may be conducted by phone conference call or with the aid of such other communication technology as may be available and in common use. A statement shall be put in the minutes of the next scheduled meeting indicating the date and time that the emergency meeting was held. The Tribal Council shall keep records of emergency meetings at the Tribal administrative offices which shall include the reason for the meeting and the action taken, which records shall be available to the Tribal membership to the same extent as regular meeting minutes, and the same rules regarding closed sessions and closed sessions minutes apply.

**7.** Phone Polls. Use of phone polls shall be governed by the rules and procedures of the Tribal Council.

**8.** Open Meetings. The Tribal Council shall adopt an Open Meetings Statute to ensure that all meetings of the Tribal Council called pursuant to this Article, except phone conference calls and closed sessions allowed under subsections J(6) and J(9) of this Article, are open to Tribal members and Tribal members shall have a reasonable opportunity to be heard, under such rules as the Council may prescribe in the Statute.

**9.** Closed Sessions.

**a.** The Tribal Council may meet in closed session only for reasons clearly expressed in the Open Meetings Statute. Closed sessions shall be limited to personnel, litigation, confidential business or legal matters, or other matters that raise significant privacy or confidentiality concerns.

**b.** The Tribal Council shall develop a disclosure of closed session minutes policy.

## **ARTICLE VIII. EXECUTIVE**

### **A. Composition of the Executive Branch**

The Executive power of the Little Traverse Bay Bands of Odawa Indians shall be vested in the Tribal Chairperson and the Vice-Chairperson.

### **B. Location of Offices**

The Executive offices for the Tribal Chairperson and Vice-chairperson shall be maintained in the Tribal governmental offices.

### **C. Powers and Duties of the Chairperson**

The Chairperson shall have the following powers and duties:

1. To represent the Little Traverse Bay Bands of Odawa Indians in an ambassadorial capacity;
2. To execute and administer the laws and resolutions of the Little Traverse Bay Bands of Odawa Indians;
3. To receive, prepare and submit nominations to the Tribal Council for consideration for the appointed positions set out in this Constitution or future Tribal statute;
4. To make recommendations to the Tribal Council on matters of interest or benefit to the Little Traverse Bay Bands of Odawa Indians;
5. To oversee all Tribal Executive departments, boards, commissions and committees created by the Tribal Council;
6. Shall submit monthly written reports of his/her oversight responsibilities of Tribal operations to the Tribal Council; and

7. Submit a proposed budget for the next fiscal year to the Tribal Council.

**D. Powers and Duties of the Vice-Chairperson**

The Vice-Chairperson shall:

1. Perform the duties of the Chairperson in his/her absence, and assume the duties and the powers of the Chairperson if the position of the Chairperson becomes vacant;
2. Assume responsibility for those administrative functions delegated to her/him by the Chairperson; and
3. Perform such other duties as delegated by the Chairperson.

**E. Qualifications**

1. The Chairperson and Vice-Chairperson shall be Tribal members at least eighteen (18) years of age. No person shall serve as Chairperson or Vice-Chairperson within seven (7) years of completion of a sentence or probation upon being convicted of a felony, unless such conviction has been vacated or overturned.
2. The Chairperson and Vice-Chairperson will reside within the Reservation of the Little Traverse Bay Bands of Odawa Indians no later than ninety (90) days after the general election for the term of their office.

**F. No Reserved Powers**

The Chairperson and Vice-Chairperson shall not exercise any powers not listed in this Constitution unless an amendment granting them additional powers has been approved pursuant to Article XVII.

**G. Compensation**

The Chairperson and Vice-Chairperson shall receive reasonable compensation as governed by statute. No increase or decrease in compensation shall take effect until after the next general election.

**H. Terms of Office**

The Chairperson and Vice-Chairperson shall serve four (4) year terms. The terms shall extend from their oath of office until a successor is sworn in.

## **ARTICLE IX. JUDICIAL**

### **A. Judicial Power Vested**

The judicial power of the Little Traverse Bay Bands of Odawa Indians shall be vested in a Tribal Court system. The Tribal Court system shall be composed of a court of general jurisdiction (referred to as the “Tribal Court”), an appellate court (referred to as the “Tribal Appellate Court”) and such lower courts as the Tribal Council may establish upon written recommendation from the Tribal Judiciary.

### **B. Composition of the Tribal Court System**

1. Tribal Court. The Tribal Court shall consist of one (1) judge who shall be the Chief Judge, and one (1) or more associate judges who shall meet as often as circumstances require. The Chief Judge shall serve as head of the Tribal Judiciary.
2. Tribal Appellate Court. The Tribal Appellate Court shall consist of one (1) Chief Justice and two (2) Associate Justices who shall meet as often as circumstances require. At least one (1) of the three (3) justices shall be an attorney licensed to practice before the courts of a state in the United States and at least one (1) of the justices shall be an enrolled Tribal member who is over fifty five (55) years of age.
3. Other lower courts. Composition of the Tribal Court system may also include such lower courts as are in the future established under Section (A) of this Article.

### **C. Jurisdiction**

1. Inherent Sovereignty. The judicial power of the Tribal Court shall extend to all civil and criminal cases arising under this Tribal Constitution, statutes, regulations or judicial decisions of the Little Traverse Bay Bands of Odawa Indians. This jurisdiction is based on the Tribe’s inherent sovereignty, traditional custom, and Federal law.

2. Power of Judicial Review. The Tribal Court shall have the power to interpret the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians.
3. Court of First Instance. Any such case or controversy arising within the jurisdiction of the Tribal Courts of the Little Traverse Bay Bands of Odawa Indians shall be filed in the Tribal Court before it is filed in any other court.
4. Sovereign Immunity Not Waived. This jurisdiction shall not be construed to be a waiver of the sovereign immunity of the Little Traverse Bay Bands of Odawa Indians.
5. Appellate Review. The Tribal Appellate Court shall have jurisdiction over any case on appeal from the Tribal Court. Appeals decisions shall be decided by the full Appellate Court.
6. Right to Appellate Review. Any party to a Tribal Court action may file an appeal from a final judgment, order or decision of the Tribal Court to the Tribal Appellate Court, based on alleged error of law, procedural violation of this Constitution, laws or regulations enacted by the Tribal Council, or Court Rules, or clear factual error. Appellate procedures shall be set out in the Tribal Court Rules.
7. Finality of Appellate Review. Rulings of the Tribal Appellate Court are final and binding and cannot be appealed to the Tribal Council, Tribal Membership or any other jurisdiction.

#### **D. Judicial Appointments**

1. Appointment to the Tribal Court. The Judges of the Tribal Court and such lower courts as established under Section (A) of this Article shall be appointed by an affirmative vote of six (6) of the nine (9) members of the Tribal Council. Initial appointments shall take place within one hundred twenty (120) days of the swearing in of the first Tribal Council elected under this Constitution.

2. Appointment to the Tribal Appellate Court. Each justice of the Tribal Appellate Court shall be appointed by an affirmative vote of six (6) of the nine (9) members of the Tribal Council.

**E. Eligibility for Appointment and Service**

1. Tribal Court. A person may be eligible to serve as a Tribal Court Chief Judge or Associate Judge only if he/she:
  - a. Has attained the age of thirty (30) years;
  - b. Is at least one fourth (1/4) North American Indian;
  - c. Is not a Tribal Council member, or the Chairperson or Vice-Chairperson; and
  - d. No person shall serve as Chief Judge or Associate Judge within ten (10) years of completion of a sentence or probation upon being convicted of a felony, unless such conviction has been vacated or overturned.
2. Tribal Appellate Court. A person may be eligible to serve as the Chief Justice of the Tribal Appellate Court or as an Associate Justice only if he/she:
  - a. Has attained the age of thirty (30) years;
  - b. Is at least one fourth (1/4) North American Indian, other than the Justice who is required to be an attorney, where being Indian is preferred but not mandatory;
  - c. Is not a Tribal Council member or the Chairperson or Vice-Chairperson; and
  - d. No person shall serve as an Appellate Court Justice within ten (10) years of completion of a sentence or probation upon being convicted of a felony, unless

such conviction has been vacated or overturned.

## **F. Terms of Office**

1. Tribal Court Term of Office. Judges of the Tribal Court shall serve for terms of four (4) years and these terms will last until their replacement is sworn in. There shall be no limitation on the number of terms a judge may serve. The initial appointment of the Chief Judge shall be a four (4) year term, and the Associate Judge(s) shall be a two (2) year term, in order to implement staggered terms of service. All terms for judges thereafter, including additional associate judges, shall be four (4) years.
2. Tribal Appellate Court Term of Office. Justices of the Tribal Appellate Court shall serve for terms of six (6) years. There shall be no limitation on the number of terms a justice may serve. In order to implement staggered terms of service, the initial appointment of one (1) justice shall be for a two (2) year term. The initial appointment of one (1) justice shall be for a four (4) year term. The initial appointment of one (1) justice shall be for a six (6) year term. All subsequent appointments shall be for six (6) year terms.
3. Chief Justice. The justices of the Tribal Appellate Court shall appoint from among themselves one of the justices to serve as Chief Justice for a two (2) year term. There shall be no limit on the number of terms a Chief Justice may serve.

## **G. Compensation**

The Tribal Council shall have the power and responsibility to establish reasonable levels of compensation as governed by statute for the Judges and Justices.

## **H. Judicial Independence**

1. Independent Branch of Government. The Judicial Branch shall be independent from the Legislative and Executive branches of the Tribal government and no person exercising the powers of any of the other two (2) branches of government shall exercise



powers properly belonging to the Judicial Branch of Tribal government.

2. Funding Mandate. The Judicial Branch shall prepare and present an annual budget directly to the Tribal Council for funding. The proposed budget may include funding for representation of indigent defendants. Funding for the Judiciary shall be based on its need and status as a branch of government.

3. Court Administration. The Tribal Judiciary shall employ an administrator of the courts and other assistants as may be necessary to aid in the administration of the courts of the Little Traverse Bay Bands of Odawa Indians. The administrator shall perform administrative duties assigned by the Judiciary.

## **I. Practice and Procedure**

The Tribal Judiciary shall establish the practice and procedure in all courts of the Little Traverse Bay Bands of Odawa Indians, including qualifications to practice before the courts of the Tribe, provided that such procedural rules are consistent with this Constitution and the substantive laws of the Tribe.

## **J. Conflict of Interest**

1. Recusal mandated. Any Judge or Justice with a direct personal or financial interest in any matter before the Judiciary shall recuse. Failure to recuse constitutes cause for removal in accordance with Article XIII (B).

2. Tribal Court. If the Chief Judge recuses, one of the associate judges shall hear the case. If an associate judge recuses, the Chief Judge or another associate judge shall hear the case. If all Tribal Court judges recuse, the judges of the Tribal Court shall appoint a judge from another Tribal court to serve as temporary associate Tribal Court judge to hear the particular case. In the alternative the Tribal Court may request the Tribal Council to make a special appointment of a judge to hear the particular case. Such special appointees need not meet the requirements specified in section (E) of this Article but must be qualified and capable to preside over the particular case.

**3.** Tribal Appellate Court. If an Appellate Court justice recuses, the Tribal Appellate Court shall appoint a judge from another Tribal appellate court to serve on the Tribal Appellate Court for the particular case. In the alternative the Tribal Appellate Court may request the Tribal Council to make a special appointment of a judge to serve on the Tribal Appellate Court for the particular case. Such special appointees need not meet the requirements specified in section (E) of this Article but must be qualified and capable to participate in the review and decision in the particular case.

## **ARTICLE X. TRIBAL PROSECUTOR**

### **A. Power and Authority of Tribal Prosecutor**

In any and all child welfare cases, criminal proceedings or other violations of Tribal law, the Tribal Prosecutor shall have the power and authority, on behalf of the Tribal membership as a whole, to sign, file and present any and all complaints, subpoenas, affidavits, motions, process and papers of any kind and to appear before all courts, commissions or tribunals in any such proceeding within the Tribe's jurisdiction.

### **B. Appointment of Prosecutor**

1. The Tribal Prosecutor shall be appointed by an affirmative vote of six (6) of the nine (9) members of the Tribal Council.
2. Assistant prosecutors may be appointed by an affirmative vote of six (6) of the nine (9) members of the Tribal Council.

### **C. Eligibility for Appointment and Service**

1. A person may be eligible to serve as a Tribal Prosecutor only if the person:
  - a. is not a Tribal Council member or the Chairperson or Vice-Chairperson;
  - b. is not a judge or justice of the Tribal Court or the Tribal Appellate Court; and
  - c. is an attorney licensed to practice in the Tribal Court and courts of a state in the United States.
2. It is preferred, but not mandatory, that the prosecutor be at least one fourth (1/4) North American Indian.

### **D. Term of Office**

The Tribal Prosecutor shall serve for terms of three (3) years without limitation on reappointment. Assistant prosecutors, if any, shall serve for terms of two (2) years without limitation on reappointment.

**E. Compensation**

The Tribal Council shall have the power and responsibility to establish reasonable levels of compensation for the Prosecutor(s).

**F. Independent Function**

1. The Tribal Council shall enact such laws as it deems necessary to protect the office from inappropriate influence, and to ensure that the discretionary decision-making authority of the office remains unimpaired.

2. The Prosecutor shall have the authority to hire administrative staff as needed to fulfill the duties of this office subject to budget approval of the Tribal Council.

**G. Funding Mandate.**

The Prosecutor shall prepare and present an annual budget directly to the Tribal Council for funding. Funding for the Prosecutor shall be based on the need to fulfill the duties of this office.

**H. Removal**

The Tribal Prosecutor and assistant prosecutors may be removed in accordance with Article XIII (C).

## **ARTICLE XI. ELECTION BOARD**

### **A. Election Board**

The Election Board is hereby created by this Constitution as an independent entity. The Election Board shall conduct all general and special elections. The Election Board shall adopt rules and regulations governing elections, including the number of signatures required for candidacy petitions. These rules may be amended as needed. The Election Board shall have the authority to employ their own staff to fulfill their duties under this Constitution.

### **B. Appointments and Term**

Five (5) people will be appointed to the Election Board by the Tribal Council. To be eligible for appointment a person must be a Tribal member who is at least eighteen (18) years of age. After the first Election, all Election Board members must be registered voters. Election Board members shall serve for four (4) year terms. The first appointments under this Constitution shall be two members for two (2) years and three (3) members for four (4) years to provide for staggered terms. The first Election Board shall be appointed by the Tribal Council serving under the interim Constitution.

### **C. Compensation**

The Tribal Council shall have the power to establish the compensation for the Election Board. No increase or decrease in compensation shall take effect until after the next general election.

### **D. Funding Mandate**

The Election Board shall prepare and present an annual budget directly to the Tribal Council for funding. Funding for the Election Board shall be based on the need to fulfill its duties.

## **ARTICLE XII. ELECTIONS**

### **A. General Elections**

The members of the Tribal Council, Chairperson and Vice-Chairperson shall be elected at large by popular vote. A Tribal member shall only be a candidate for one position in a particular election, and a person shall hold no more than one elected position at a time. After the adoption of this Constitution, a general election shall provide for staggered terms as follows: The Chairperson and the Vice-Chairperson and the five (5) Council candidates with the highest number of votes shall be elected for four (4) year terms and the four (4) Council candidates with the next highest number of votes shall be elected for two (2) year terms. Thereafter, the general elections will be held in June of odd numbered years and all subsequent terms shall be four (4) years.

### **B. Primary Elections**

1. A Chairperson and Vice-chairperson team shall file a joint candidacy petition for election. If more than two (2) candidate teams successfully petition to run for Chairperson and Vice-Chairperson, a primary election shall be conducted to reduce the number of candidate teams in the general election to two (2).

2. In any election in which more than two (2) candidates per open seat on the Tribal Council successfully submit candidacy petitions for office, a primary election shall be conducted to reduce the number of candidates to two (2) per open seat.

### **C. Special Elections**

Special Elections shall be called by the Election Board when required under this Constitution or appropriate laws of the Little Traverse Bay Bands of Odawa Indians.

### **D. Registration and Ballots**

1. The Election Board shall require members of legal voting age to register to be entitled to vote. The list of the names and addresses of all registered voters shall be a

public document.

2. All members of the Little Traverse Bay Bands of Odawa Indians registered to vote at least ninety (90) days prior to an election may vote in general and special elections.

3. Voting in Tribal elections shall be by secret ballot mailed to all registered voters. Ballots must be mailed at least thirty (30) days prior to an election by first class mail or equivalent method to the last known address of each registered voter.

#### **E. Certification of Election Results**

The Election Board shall post non-certified election results within three (3) business days in the Tribal offices, and in the next issue of the Tribal newsletter. The election shall be certified and the results posted by the Election Board ten (10) business days after the election if there are no unresolved challenges pending.

#### **F. Challenges to Election Results**

Any registered voter of the Little Traverse Bay Bands of Odawa Indians may challenge for cause the results of any election by filing a written challenge with the Tribal Court within ten (10) days after the election. The Tribal Court shall act on a challenge to any election within twenty (20) days of receiving the challenge in Tribal Court.

#### **G. Oath of Office**

The Tribal Court shall administer the oath for the offices of Chairperson, Vice-chairperson and Tribal Council at the next regularly scheduled Tribal Council meeting at least thirty (30) days following the certification of election results.

#### **H. Election Application**

The Election Board will be responsible for developing the applications and candidacy petitions for the following positions: Chairperson, Vice-Chairperson and Tribal Council. The

application must be completed by each candidate and submitted with their candidacy petition, and shall be mailed to all registered voters. The application may include such personal information as age, education, experience and residency.

## **I. Nepotism**

Immediate family members shall not serve on the Tribal Council or as Chairperson or as Vice-Chairperson at the same time. In the event that two or more immediate family members are elected, they may designate in writing which one will serve. If no such designation is made, only the family member with the highest number of votes shall serve. In case of a tie, and no designation being made, a run-off election shall be conducted.



## **ARTICLE XIII. RECALL, REMOVAL, AND VACANCIES**

### **A. Recall**

1. The Chairperson, Vice-Chairperson or Tribal Council Members may be subject to recall at any time under the following procedure:

a. A recall petition signed by a number of registered voters equaling twenty percent (20%) of the registered voters who voted in the last general election is presented to the Election Board. All petitions must be on forms that are approved by the Election Board.

b. Within ten (10) business days of receipt of the petition, the Election Board shall either certify the validity of the petition and signatures or return it to the member who submitted it with a written explanation of the defect.

c. A recall election shall be scheduled by the Election Board within ninety (90) days upon verification of the petition and its signatures.

d. The elected official shall be recalled upon a majority vote if at least thirty percent (30%) of the registered voters vote in the recall election.

e. To provide for continuity of governance no more than four (4) Tribal Council members shall be subject to a recall election at any one time.

2. Each elected official may be subject to no more than one (1) recall election per calendar year.

### **B. Removal of a Tribal Court Judge**

1. A Tribal Judge or Justice may only be removed by the Tribal Judiciary itself. The Tribal Judiciary may remove any Judge or Justice by an affirmative vote of a majority of a panel consisting of all other members of the Judiciary, consisting of both the Appellate and Tribal Court Judges, only for one or more of the following reasons:

- a.** Unethical conduct, as defined by the Little Traverse Bay Bands of Odawa Indians Code of Conduct adopted by the Tribal Council or by the Tribal Court;
  - b.** Physical or mental disability which prevents the performance of judicial duties;
  - c.** Persistent failure to perform duties in a timely manner;
  - d.** Gross misconduct that is clearly prejudicial to the administration of justice;
  - e.** Ineligibility, under Article IX, to serve as a member of the Tribal Judiciary; or
  - f.** Conviction of a felony while serving as Judge or Justice by any court of competent jurisdiction.
- 2.** Procedures for Removal. The Tribal Judiciary shall develop rules and procedures for removal of judges. These procedures shall at a minimum include the following:
- a.** If a Judge or Justice believes that grounds exist for removal of another Judge or Justice, they shall state the charges in writing, and distribute copies of the written charges to all members of the Tribal Judiciary, including the accused. As soon as practicable, but no more than sixty (60) days after receipt of the written charges, the Judiciary shall hold a hearing with all members present at which the accused shall have the opportunity to call and cross examine witnesses. The member shall have the right to subpoena witnesses and be represented by an attorney.
  - b.** If a Little Traverse Bay Bands of Odawa Indians member believes that grounds exist for removal of a Judge or Justice, they shall state the charges in writing to the Court Administrator who shall distribute copies to each member of the Tribal Judiciary. After reviewing the written charges, the Tribal Judiciary

shall by majority vote decide whether sufficient grounds exist to hold a removal hearing as described in this Article. This hearing shall be held as soon as practicable, but shall not be held more than sixty (60) days following the receipt of written charges.

### **C. Removal of Prosecutor**

A prosecutor or assistant prosecutor may only be removed by a vote of six (6) of the nine (9) members of the Tribal Council, only for one or more of the following reasons:

- a.** Unethical conduct, as defined by the Little Traverse Bay Bands of Odawa Indians' Code of Conduct adopted by the Tribal Council or by the Tribal Court;
- b.** Physical or mental disability which prevents the performance of prosecutorial duties;
- c.** Persistent failure to perform duties in a timely manner;
- d.** Gross misconduct that is clearly prejudicial to the administration of justice;
- e.** Ineligibility under Article X, to serve as a Tribal Prosecutor, including the revocation of his/her license to practice law;
- f.** Conviction of a felony while serving as Prosecutor by any court of competent jurisdiction.

### **D. Removal of Members of the Election Board**

Upon presentation of a petition signed by at least one hundred (100) members alleging neglect of duties or intentional wrongdoing, and a hearing where the accused is afforded proper due process, the Judiciary may remove Election Board members for good cause.

### **E. Other Elected or Appointed Officials**

Any future elected or appointed officials not listed in this Constitution shall be subject to removal for neglect of duties or intentional wrongdoing in accordance with a Tribal Statute passed for that purpose.

**F. Vacancies in the Tribal Council**

When a vacancy occurs in the Tribal Council, the Tribal Council shall appoint a Tribal member who meets all of the qualifications in Article VII (H) to fill the balance of the unexpired term.

**G. Vacancies in the Executive**

1. If the Chairperson’s seat is vacant, the Vice-chairperson shall assume the position of Chairperson. When there is a vacancy in the Vice-chairperson position, the Chairperson will appoint a new Vice-chairperson subject to ratification by a majority vote of the full Tribal Council.

2. In the event of a simultaneous vacancy in both the Chairperson and Vice-chairperson seats, the Legislative Leader shall serve as Chairperson until a special election can be conducted to fill the remaining terms. While acting as Chairperson, the Legislative Leader will not be considered a Tribal Council member. After a Chairperson is elected and sworn in, the Legislative Leader will resume his/her position as a Tribal Council member for the remainder of his/her term.

**H. Vacancies in the Judiciary**

Any vacancy in the Tribal Judiciary shall be filled by appointment by the Tribal Council for the balance of the unexpired term.

**I. Vacancies in the Election Board**

Any vacancy in the Election Board shall be filled by appointment by the Tribal Council for the balance of the unexpired term.

**J. Terms for Replacements**

Persons elected or appointed to fill a vacancy shall serve out the term of the person whom they are replacing unless otherwise specified in this Article.

**K. Vacancies for Other Elected or Appointed Positions**

Vacancies for future elected or appointed officials not enumerated in this Constitution shall be filled in accordance with applicable Tribal statutes.

## **ARTICLE XIV. INITIATIVE AND REFERENDUM**

### **A. Initiative**

**1.** Initiative is the power of the Tribal members to propose laws and to enact or reject them in an election. The members of the Little Traverse Bay Bands of Odawa Indians shall have the power to adopt, by initiative, any statute, and the power to repeal or amend any statute in accordance with the provisions of this Article; provided that statutes addressing appropriations for Tribal institutions or statutes establishing the Tribal budget shall be exempt from the initiative process.

**2.** The procedure for initiative shall be as follows:

**a.** The proponents of an initiative shall submit it to the Election Board for examination as to technical sufficiency and to insure clarity before it is circulated. The Election Board shall deliver its written comments to the proponents within thirty (30) days.

**b.** Initiative petitions must be signed by a number of registered voters equaling twenty percent (20%) of the registered voters who voted in the last general election. After the signatures have been verified by the Election Board, the Election Board shall schedule an election in accordance with subsection (A)(2)(c) of this Article.

**c.** If a general election is scheduled to be held less than twelve (12) months from the date the Election Board has verified the petition, the initiative will be scheduled for a vote at that general election. If the next general election is scheduled for a time more than twelve (12) months after verification, a special election shall be scheduled.

**d.** An initiative proposal shall be enacted by the vote of a majority of those actually voting; provided that at least twenty percent (20%) of the registered voters of the Little Traverse Bay Bands of Odawa Indians who are registered on the day of submission of the petition cast ballots in said special election. If less

than twenty percent (20%) of the registered voters of the Tribe cast ballots in said election, the initiative shall be deemed to be defeated.

e. If an initiative is defeated in an election, the same matter cannot again be the subject of an initiative election for two (2) years.

## **B. Referendum**

1. The Tribal Council may decide by an affirmative vote of six (6) Council members to submit any proposed or any enacted statute to a vote of registered Tribal voters at a referendum election.

2. The procedure for a referendum election shall be as follows:

a. Referendum elections shall be held no sooner than forty five (45) days and no later than ninety (90) days from the date the proposed or existing statute is referred to the Election Board. The date of the referendum election shall be set by the Election Board.

b. A referendum proposal shall be enacted by the vote of a majority of those actually voting; provided that at least twenty percent (20%) of the registered voters of the Little Traverse Bay Bands of Odawa Indians who were registered on the day it was referred by the Tribal Council to the Election Board cast ballots in said special election. If less than twenty percent (20%) of the registered voters of the Tribe cast ballots in said election, the referendum shall be deemed to be defeated.

## **C. Initiative or Referendum Effective Date**

Any statute enacted by initiative or referendum pursuant to the provisions of this Article shall take effect ten (10) days after certification of the election, unless otherwise provided in the initiative or referendum proposal adopted. No law adopted by the membership of the Little Traverse Bay Bands of Odawa Indians under the initiative or referendum provisions shall be amended or repealed except by a vote of the electors, unless otherwise provided in the initiative

or referendum proposal or found to be unconstitutional by the Tribal Judiciary.



## **ARTICLE XV. CONFLICT OF INTEREST**

### **A. Personal Financial Interest**

1. In carrying out the duties of Tribal office, no Tribal Official, elected or appointed, shall make or participate in making decisions which involve a personal financial interest other than an interest held in common by all Tribal members.
2. Tribal members serving on Tribal Council, or the Tribal Chairperson or Vice-chairperson:
  - a. may not be employed under the Tribal Governmental Administration; and
  - b. may not be a paid consultant for the Little Traverse Bay Bands of Odawa Indians or the consultant for another party in that party's business dealings with the Tribe, while serving as a Tribal Council member, or as Chairperson or Vice-Chairperson, or within one (1) year of serving.
3. Tribal Council members, the Tribal Chairperson and Vice-chairperson may work in other Tribal enterprises but shall not have a vote on any issue relating to that enterprise. However, they may not hold more than one full time paid position even if they decline pay for one of the positions.
4. Within six (6) months from the date of the swearing in of the first Tribal Council elected under this Constitution, the Tribal Council shall adopt a Tribal Council Code of Conduct, which may be amended by future Tribal Councils.

### **B. Financial Disclosure**

The Tribal Council shall enact a statute requiring financial disclosure statements of candidates, and elected or appointed governmental officials.

**ARTICLE XVI. TRIBAL RECORDS**

All official Tribal records are the exclusive property of the Little Traverse Bay Bands of Odawa Indians and shall be transferred by the Tribal Council, Executive, Judiciary, Election Board, Prosecutor and members of any subordinate entities leaving office to their successors in office.

## **ARTICLE XVII. AMENDMENTS**

**A.** This Constitution may be amended by a two-thirds (2/3) majority vote of the qualified voters of the Little Traverse Bay Bands of Odawa Indians voting in an election called for by action of the Tribal Council or Tribal Membership. A petition for a constitutional amendment shall be signed by no less than twenty percent (20%) of the registered voters of the Little Traverse Bay Bands of Odawa Indians as certified by the Election Board. At least thirty percent (30%) of those entitled to vote must cast a ballot in the election or the amendment shall fail; such amendments shall become effective upon certification of the election results by the Election Board.

**B.** Provided, if Federal law so requires at the time an amendment is proposed, then the Tribe will be subject to and the process will proceed in accordance with applicable Federal law and regulation, including 25 CFR part 82, or such successor regulations as may be in effect.

## **ARTICLE XVIII. SOVEREIGN IMMUNITY**

### **A. Tribal Immunity From Suit**

The Little Traverse Bay Bands of Odawa Indians, including all subordinate entities, shall be immune from suit except to the extent that the Tribal Council clearly and expressly waives its sovereign immunity, and officials and employees of the Tribe acting within the scope of their duties or authority shall be immune from suit.

### **B. Suit Against Officials and Employees**

Officials and employees of the Little Traverse Bay Bands of Odawa Indians who act beyond the scope of their duties and authority shall be subject to suit in Tribal Court for purposes of enforcing rights and duties established by this Constitution or other applicable laws.

**ARTICLE XIX. RIGHTS OF THE TRIBE AND ITS MEMBERS**

Nothing in this Constitution shall be construed as restricting any Treaty Rights or any other rights of the Little Traverse Bay Bands of Odawa Indians and its members.

**ARTICLE XX.      ADOPTION**

This Constitution, when adopted by a majority vote of the qualified voters of the Little Traverse Bay Bands of Odawa Indians voting at a special election called for such purposes by the Secretary of the Interior or his authorized representative, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for approval, and shall be effective from the date of such Secretarial approval. The interim Constitution shall remain in effect until the swearing in of the elected officials under this Constitution.

## **ARTICLE XXI. PRIOR ACTIONS**

1. All actions of the Little Traverse Bay Bands of Odawa Indians taken before the effective date of this Constitution shall remain in full force and effect to the extent that they are consistent with this Constitution.

2. No enrolled member who enrolled in good faith and met the membership requirements in place at the time of their enrollment under previous governing documents or statutes shall be subject to involuntary disenrollment unless they become enrolled in another Federally recognized tribe.