



Waganakising Odawak
Little Traverse Bay Bands of Odawa Indians
Frank Ettawageshik, Tribal Chairman
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**Executive Veto of the Land Use, Building Regulation, and Zoning Statute
Passed by Tribal Council on October 8, 2006**

I am in support of intent of this legislation and would support a revised version; however I do not support this legislation in its present form. My concerns are over two issues.

One, since this repeals our building code WOS 2001-13 and anticipates that a new building code will be adopted by regulation, a gap will be created during which we will have no building code. We are in the midst of building our new casino and it would be unworkable to not have a code in place that has the force of law during this construction. One solution to this issue would be to have the repeal of the building code not be effective until such time as the building code regulations are approved by Tribal Council.

Two, I believe that having Tribal Council members serve as the Zoning Board is an unconstitutional blending of Legislative and Executive powers.

Due to the concerns laid out above I am issuing a veto for this legislation as passed by the Tribal Council. I understand that among the Council's choices upon receipt of this veto are to attempt to override the Executive's veto, or to prepare and adopt a revised version of the legislation that addresses the Executive's concerns. If the latter course of action is taken I would welcome a revised version and expect to be fully supportive of it.

Prepared and signed November 2, 2006

Frank Ettawageshik, Tribal Chairman

WAGANAKISING ODAWAK STATUTE 2006-019

LAND USE, BUILDING REGULATION, AND ZONING STATUTE

SECTION I SHORT TITLE

This Statute may be cited as the "Land Use Statute."

SECTION II PURPOSE

The purpose of this Statute is to provide for the regulation of land use; set standards for the construction of buildings, structures, appurtenances, additions and decorations which may accompany them; and other developmental characteristics which may have an effect upon the public health, safety, and general welfare.

SECTION III REPEAL OF PREVIOUS LEGISLATION

This Statute repeals and replaces the Zoning Statute, WOS 2001-13; Building Code, WOS 2002-02; Site Plan Review, WOS 2005-05, and other applicable amendments.

A. Non-Conforming Uses. The use of any dwelling, building, structure, land or premises which was in existence and permitted under Tribal law at the time of enactment of this Statute may be continued at the discretion of the owner thereof, even though such use does not conform to the provisions of this Statute.

SECTION IV HANDICAP ACCESSIBLE NEW CONSTRUCTION

All new buildings, structures, appurtenances, and additions built by the Tribe shall be designed and constructed in a manner that is handicap accessible.

SECTION V AUTHORIZATION OF TRADITIONAL ACTIVITIES ON TRIBALLY OWNED PROPERTIES

Article I, § B (1) of the Constitution "directs the Legislative, Executive and Judicial branches of government to...promote the preservation and revitalization of Anishinaabemowin and Anishinaabe culture." The ability of the citizens of the Waganakising Odawak Nation to utilize Tribally owned lands for ceremonies and other cultural or traditional activities is essential for the survival and revitalization of Anishinaabe culture. Citizens of the Waganakising Odawak Nation have a right to conduct ceremonies and other cultural or traditional activities ("Activities") on Tribally owned lands.

SECTION VI EXECUTIVE BRANCH MANDATES

- A. The Executive Branch shall develop a Master Land Use Plan, subject to Tribal Council approval.
- B. The Executive Branch shall be responsible for reviewing and approving Site Plans.
- C. Executive Branch shall be responsible for the development and implementation of regulations, subject to Tribal Council approval, for zoning and land use on lands over which the Tribe has jurisdiction.
- D. The Executive Branch shall be responsible for the development and implementation of regulations, subject to Tribal Council approval, governing the design and building of structures constructed on lands over which the Tribe has jurisdiction.
- E. The Executive Branch shall be responsible for planning transportation on the Reservation, including roads and their engineering prior to construction, transit, and other modes of transportation.
- F. The Executive Branch shall be responsible for conceptual programming of land uses, structures, and road systems prior to their development or implementation.

SECTION VII REGULATIONS; ADMINISTRATIVE PROCEDURES;
DEPARTMENTAL PROCEDURES

- A. Regulations:
 - 1. Zoning: The Executive Branch shall develop regulations, subject to Tribal Council approval, establishing a comprehensive zoning scheme for lands under the jurisdiction of the Tribe.
 - 2. Utilization of Tribally Owned Lands by Tribal Citizens: The Executive Branch shall develop regulations, subject to Tribal Council approval, enabling Tribal Citizens to utilize Tribally owned lands for cultural and/or traditional activities.
 - 3. Creation and Implementation of Master Land Use Plan: The Executive Branch shall develop regulations, subject to Tribal Council approval, creating and implementing a Master Land Use Plan.
 - 4. Building Codes: The Executive Branch shall develop regulations, subject to Tribal Council approval, establishing or adopting building codes for buildings or structures constructed or erected on lands under the jurisdiction of the Tribe.
 - 5. Construction of Infrastructure: Executive Branch shall develop regulations, subject to Tribal Council approval, for the construction and design of infrastructure such as roads and bridges.

- B. Administrative Procedures:

1. Building; Construction; Occupancy Permits: The Executive Branch shall develop administrative procedures, subject to Tribal Council approval, governing the:
 - a. Applications for building, construction or occupancy permits;
 - b. Review of an application for a building, construction or occupancy permits; and
 - c. The grant or denial of a building, construction or occupancy permits.
 2. Variances: The Executive Branch shall develop administrative procedures, subject to Tribal Council approval, governing the:
 - a. Application for a variance;
 - b. Review of an application for a variance; and
 - c. The grant or denial of a variance.
 3. Appeals: The Executive Branch shall develop administrative procedures, subject to Tribal Council approval, governing the process for filing an appeal of a decision to grant or deny a building permit or variance.
 4. Issuing Citations: The Executive Branch shall develop administrative procedures, subject to Tribal Council approval, governing the issuance of citations for violations of zoning regulations, building codes, or any other part of the Land Use Statute or any regulations or administrative procedures promulgated pursuant to this statute.
 5. Site Plan Review: The Executive Branch shall develop administrative procedures, subject to Tribal Council approval, governing the review and approval of site plans.
- C. Departmental Procedures:
1. Recording Uses, Non-conforming Uses, and Variances: The Executive Branch shall develop departmental procedures for recording and indexing uses, non-conforming uses, and variances.

SECTION VIII ZONING BOARD

- A. Zoning Board Established. A Zoning Board ("Board"), a Tribal Council Ad Hoc Committee, is hereby created. The Board shall consist of three (3) members of the Tribal Council.
- B. Zoning Board Mandates:
1. Hear and decide appeals on the grant or denial of a variance.
 2. Hear and decide appeals on the grant or denial of a building permit.
 3. Aid the Planning Department in interpretation of this Statute and any regulations that may be adopted pursuant to it.
- C. Regulations. The Executive Branch shall develop regulations, subject to Tribal Council approval, to implement the mandates established in § IX(B) of this Statute.
- D. Meetings. The Board shall meet as needed to carry out the functions mandated by this Statute.

SECTION IX APPEALS

A. Any person who claims to be aggrieved by a decision of the Planning Department relating to the grant or denial of a building permit or variance may appeal such decision to the Zoning Board.

1. An appeal of a decision of the Planning Department within fourteen (14) days of the challenged decision, the person must file a written appeal to the Zoning Board including at a minimum:

- a. A copy of the Planning Department's decision being challenged;
- b. A clear and concise statement of the reason(s) the appellant believes the decision should be overturned by the Zoning Board; and
- c. The relief requested from the Zoning Board.

B. The Zoning Board shall hear the appeal within 15 calendar days of filing, either during a regular meeting or special meeting called for that purpose, and issue its written ruling within ten (10) days of such hearing. The person appealing cannot proceed with any non-permitted construction while the appeal is pending.

C. The person who appealed to the Zoning Board may appeal the decision of the Zoning Board to the Tribal Court by filing a written appeal with the Court within ten (10) days of the Zoning Board's ruling. The Court shall only overturn the decision of the Zoning Board if it finds such decision to be clearly arbitrary, capricious, or otherwise not in accordance with this Statute or other applicable law.

SECTION X SAVINGS CLAUSE

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

SECTION XI EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on October 08, 2006 at which a quorum was present, by a vote of 4 in favor, 1 opposed, 0 abstentions, 4 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Regina Gasco Bentley	X			
Fred Harrington, Jr.		X		
Dexter McNamara				X
Mary Roberts	X			
Rita Shananaquet	X			
Alice Yellowbank				X
Shirley Oldman				X
Melvin L. Kiogima	X			
Beatrice A. Law				X

Date: 10/13/06 Beatrice A. Law
 Beatrice A. Law, Legislative Leader

Date: 10/13/06 Melvin L. Kiogima
 Melvin L. Kiogima, Secretary

Received by the Executive Office on 10-19-06 by Ellink Payton

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005, the Executive Office certifies in this action of the Tribal Council.

Date: 11-2-2006 Frank Ettavageshik
 Frank Ettavageshik, Tribal Chairman

VETO

