LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
WAGANAKISING ODAWAK TRIBAL CODE

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TITLE I. CONSTITUTION, COURTS

Chapter 1. Constitution and By-laws

[*The interim Constitution which was in place at the time of passage of the Little Traverse Bay Bands of Odawa Indians and Little River Band of Ottawa Indians, Public Law 103-324 on September 21, 1994, is reprinted in this Chapter. On February 1, 2005, the Tribe adopted its new Constitution in an election held under the Indian Reorganization Act. Article XX of the new Constitution states:*

> *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. <u>The interim Constitution shall remain in effect until the swearing in of the elected officials under this Constitution.</u>*

Upon swearing in of the elected of the elected officials under the new Constitution, which will likely occur about late summer, 2005, the interim Constitution reprinted below will be deleted and replaced by the new Constitution. In the meantime, the new Constitution is available online at www.ltbbodawa-nsn.gov.]

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1.101 We, the members of the Bands known as the Little Traverse Bay Bands of Odawa Indians, Inc. in order to provide for the perpetuation of our way of life and the welfare and prosperity of our people, to preserve the right of self government, and to protect our property and resources, do ordain and establish this Constitution and By-laws.

(Source: Preamble of Constitution and By-laws, adopted March 11, 1989)

1.102 NAME

The name of this organization shall be the Little Traverse Bay Bands of Odawa Indians, Inc. Its members trace their ancestry to the Little Traverse Bay Bands of Odawa Indians.

(Source: Article I of Constitution and By-laws)

1.103 TERRITORY AND JURISDICTION

A. The territory of the Bands shall encompass all lands, which are now or hereafter owned by the Bands or held in trust for the Bands by the United States.

B. The jurisdiction of the Bands shall extend to all of the lands of the Bands to the extent not inconsistent with federal Indian law and, further, for the purpose of exercising and regulating the rights to fish, hunt, trap, and other usual rights of occupancy, such jurisdiction shall extend to all lands and waters described in the Treaty of March 28, 1836 (7 Stat. 491), and to all lands and waters described in any such other treaties which provide for such rights to the extent such jurisdiction is not inconsistent

with federal law.

(Source: Article II of Constitution and Bylaws)

1.104 MEMBERSHIP

A. The following persons shall be entitled to membership in the Little Traverse Bay Bands of Odawa Indians, Inc. provided that such persons possess Indian blood and are not currently enrolled with any other tribe or Bands of North American Indians.

(1) To be a member of the Little Traverse Bay Bands of Odawa Indians a person must be at least 1/4 American Indian blood quantum with at least 1/8 being of Little Traverse Odawa descent. The primary documents upon which we will rely in proving blood quantum and descent will be the Durant Roll of 1908 and Durant's field notes which he compiled while making this roll, if a member can prove descent or additional blood quantum from other records the Enrollment Officer can accept such proof.

(2) All persons who may hereafter be adopted into the Bands in accordance with any ordinance enacted for that purpose by the Bands Board of Directors.

B. The Bands Board of Directors shall have the power to enact ordinances consistent with this article to govern future membership, loss of membership and adoption.

(Source: Article III of Constitution and Bylaws as amended by Resolution 12079102 on December 7, 1991)

1.105 GOVERNING BODY

A. The governing body of the Little Traverse Bay Bands of Odawa Indians, Inc. shall consist of a Board of Directors.

B. A President shall be elected at large by the voters of the Bands and shall serve as a member of the Board of Directors. In addition, the voters shall elect from within their qualified membership six (6) more at large persons to serve on the Board of Directors. Following each election the Bands Board of Directors shall select from within its membership a Vice President, a Treasurer, and a Secretary, no two of which may be held by the same persons.

C. The members of the Board of Directors shall be qualified voters of the Bands and be eighteen (18) years of age or over.

D. For the purpose of the first election held after adoption of this Constitution, the President and other members of the Board of Directors comprising fifty percent of those elected who have received the highest number of votes shall serve for a term of four years, or until their successors are duly installed in

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office. All other members shall serve a term of two years, or until their successors are duly installed in office. Thereafter, the term of office of the President Board of Directors and members shall be four years, or until their successors are duly installed in office.

(Source: Article IV of Constitution and Bylaws)

1.106 NOMINATIONS AND ELECTIONS

A. At four year intervals beginning four years from the year of adoption of this Constitution, the Board of Directors shall cause a census and voter registration of the Bands membership to be made.

B. The first election of the President and the Board of Directors shall be held within ninety (90) days after the approval of this Constitution under the arrangements and supervision of the present Board of Directors.

C. The officers and members of the Board of Directors of the organization known as the Little Traverse Bay Bands of Odawa Indians, Inc. holding office at the time of the filing of the Articles of Incorporation shall continue in office and carry out the functions of the officers and Board of Directors until the President and Board of Directors are elected and duly installed in office pursuant to these By-laws.

D. Any person eighteen (18) years of age or over who is a member of the Bands shall be eligible to vote in Bands elections.

E. Voters shall register not less than three months prior to any election.

F. The Board of Directors shall enact appropriate ordinances to implement nominations and the holding of elections.

(Source: Article V of Constitution and Bylaws)

1.107 VACANCIES AND REMOVAL FROM OFFICE

A. If any Bands official shall die, resign, or be removed from office, the Board of Directors shall declare the position vacant.

B. The Board of Directors shall, by a majority vote, fill vacancies by appointment of a voting member to the Bands to fill the unexpired term of this departed official.

C. Removal of the Bands President or any member of the Board of Directors may be initiated by means of filing charges against such person with the Board of Directors in the form of a petition signed by at least fifty (50) eligible voters which alleges specific facts which, if shown to be true, would establish that the official has engaged in conduct which constitutes a violation of this Constitution and By-laws or any duly enacted ordinance or resolution of the Bands Board of Directors.

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D. All officials so charged shall be accorded the protection of the following procedure:

(1) The accused shall be served with a written notice of the charges against him or her within fifteen (15) days after receipt of the petition by the Board of Directors. Such notice shall state the date, time, and place of the hearing shall be held not less than fifteen (15) days from the date that notice is served.

(2) The accused shall have the right to be heard before a hearing board created by the Board of Directors for the specific purpose of hearing the charges and evidence against the accused. The hearing board shall decide whether the accused shall be removed from office within sixty (60) days after receipt of the petition, the decision of the hearing board shall be final.

E. Any member of the Board of Directors who willfully fails to attend three (3) consecutive regular meetings of the Board of Directors may be removed from office by a majority vote of the Board of Directors only after such accused member has been given the opportunity to appear before the Board of Directors in his/her own defense. Persons so accused shall be given notice and afforded those protections as set forth in Section 4 of this article.

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(Source: Article VI of Constitution and Bylaws)

1.108 POWERS

A. The Board of Directors shall exercise the following powers; subject to all express restrictions upon such powers contained in this Constitution and By-laws.

(1) To employ legal counsel;

(2) To negotiate and consult with federal, state, and local governments on behalf of the Bands;

(3) To advise the Secretary of the Interior with regard to all appropriation estimates of federal projects for the benefit of the Bands;

(4) To expend funds for public purposes of the Bands and to regulate the conduct of trade and the acquisition, use and disposition of property;

(5) To regulate the inheritance or testamentary disposition of real and personal property, other than property held in trust, of the members of the Bands;

(6) To provide for the commitment of incompetents and for the appointment and regulation of guardians for minors and incompetents;

(7) To promulgate and enforce ordinances governing the conduct of persons within the jurisdiction of the Bands, to establish a reservation court and define its duties and powers;

(8) To exclude and remove from the Bands lands any person not legally entitled to be there;

(9) To adopt resolutions, ordinances and a code, providing for the licensing, regulation, and control of non-Bands persons coming upon or being within the territory or jurisdiction of the Bands as defined in ARTICLE II of this Constitution for the purpose of recreational boating, hunting, fishing, trapping, gathering fruits of the earth or other usual rights of occupancy;

(10) To adopt resolutions, ordinances and a code, providing for regulation and control of Bands members who hunt, fish, trap, gather fruits of the earth or exercise other usual rights of occupancy upon or within the territory or jurisdiction of the Bands as defined in ARTICLE II of this Constitution;

(11) To manage, lease, sell, acquire or otherwise deal with tribal lands, interest in lands and water or other assets of the Bands;

(12) To prevent the sale or disposition of any Bands lands, or other Bands assets;

(13) To manage any and all economic affairs and enterprises of the Bands and to engage in any business not contrary to federal law that will further the economic development of the Bands or its members, and to use the Bands funds or other resources of the Bands for such purposes;

(14) To establish and delegate to subordinate boards, organizations, cooperative associations, Bands officers, committees, delegates, or other Bands groups, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power or to cancel any delegation.

(Source: Article VII of Constitution and Bylaws)

1.109 BILL OF RIGHTS

All members of the Little Traverse Bay Bands of Odawa Indians, Inc. shall be accorded equal protection of the law under this Constitution. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. The protection guaranteed to persons by Title II of Civil Rights Act of 1968 (82 Stat. 77) against actions of an Indian entity in the exercise of its

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powers of self-government shall apply to the members of the Bands.

(Source: Article VIII of Constitution and Bylaws)

1.110 RIGHT OF REFERENDUM

Any enacted or proposed ordinance or resolution of the Bands Board of Directors shall be submitted to a popular referendum upon an affirmation vote of a majority of the Board of Directors or when so requested by a petition presented to the Council containing the signatures of at least fifty (50) eligible voters of the Bands. Such referendum must be held within sixty (60) days after receipt by the Board of Directors of a valid petition. A vote of a majority of eligible voters voting in such referendum shall be conclusive and binding upon the Board of Directors provided, however, that at least thirty (30%) percent of those entitled to vote, shall vote, in such referendum conducted pursuant to tribal ordinance.

(Source: Article IX of Constitution and Bylaws)

1.111 AMENDMENTS

This Constitution and By-laws may be amended by a majority vote of the eligible voters of the Bands moving at an election called for that purpose provided that at least thirty (30%) percent of those entitled to vote shall vote in such election.

(Source: Article X of Constitution and Bylaws)

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1.112 MEETINGS OF THE BOARD OF DIRECTORS

A. The Board of Directors shall meet each month at such place, time, and date as is designated by the Board of Directors at the meeting immediately preceding. The place, time and date of the meeting shall be at the discretion of the Board of Directors.

B. Special meetings may be called from time to time by the President or by a majority of the Board of Directors. Written notice of such special meetings shall be given to all members of the Board of Directors at least five days in advance of such meeting. At special meetings the Board of Directors shall have the same power to transact business as at regular meetings.

C. Both regular and special meetings of the Bands council shall be open to the membership of the Bands.

D. All regular meetings shall be publicized at least ten (10) days in advance by some appropriate and effective means such as newspaper advertisements or radio announcements. Special meetings require such publicity as is reasonable under the circumstances, provided that all members of the Board of Directors receive notice as provided in Section 2 of this Article.

E. No business at any regular or special meeting shall be transacted unless a quorum is present, a

quorum being a majority of the Board of Directors.

F. No member of the Board of Directors shall cast a vote on any matter in which the Board of Directors determines by a majority vote that said member may have a conflict of interest.

G. The duties of all appointed boards, committees or employees of the Bands shall be clearly defined by resolutions of the Board of Directors at the time of their creation or appointment. Such boards, committees or employees shall report from time to time, as required, to the Board of Directors and their activities and decisions shall be subject to review by the Board of Directors.

H. It shall be the duty of the Board of Directors to make monthly reports to the Bands membership of the proceedings of the Board of Directors.

I. All ordinances, resolutions, and minutes of meetings of the Board of Directors shall be kept on file in the Bands office and shall, upon reasonable request, be open for inspection by the Bands membership at such office during the regular office hours.
(Source: Article I of By-laws)

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1.113 DUTIES OF OFFICERS

A. The chairperson shall preside over all meetings of the Bands Council, perform all duties consistent with the office as chief executive officer of the bands, and exercise any other lawful authority delegated the chairperson by the Bands Council. The chairperson shall vote on all matters that come before the Bands Council.

B. The vice-chairperson of the Bands Council shall assist the chairperson when called upon to do so, and in the absence or incapacity of the chairperson shall preside at all meetings of the Bands Council. When so presiding, the vice-chairperson shall have all of the rights, privileges, duties and responsibilities of the chairperson.

C. The treasurer shall, under the direction of the Bands Council, conduct all of the fiscal affairs of the bands. The treasurer or a person designated by the Council shall accept, receive, receipt for, preserve and safeguard all funds in custody of the Bands Council, whether same be tribal funds or special funds for which the Council is acting as trustee. The treasurer shall be bonded in an amount to be determined and furnished by the Bands Council and shall deposit all funds in financial institutions as directed by the Council. The treasurer shall make and preserve a faithful record of such funds, and shall cause to be reviewed internally at least once every six months the books of Bands funds, and shall in writing report the results of this review to the Bands Council. The treasurer shall, when called upon by the Bands Council, give a status report on the fiscal condition of the Bands at any regular meeting. Once each fiscal year the treasurer shall cause the Bands funds to be subject to an independent audit. The treasurer shall, in addition, be party to each and every transaction of the Bands involving real estate and shall not pay out or otherwise disburse any Bands funds, except when properly authorized to do so by resolution or ordinance duly adopted by the Bands Council, which ordinance or resolution may be of a continuing nature, and countersigned by the chairperson.

D. The secretary or such person as the secretary may designate shall conduct all Bands correspondence, including notification of meetings. The secretary shall keep an accurate record of all matters transacted at meetings of the Bands Council and shall se that all ordinances and resolutions adopted by the Council are reproduced in proper format and shall further see that a book containing copies of all resolutions and ordinances is maintained and is accessible to all Bands members. Further, it shall be the duty of the secretary or such person as the secretary may designate to submit promptly to the appropriate office of the Bureau of Indian Affairs copies of all minutes of meetings of the Bands Council and copies of all resolutions and ordinances adopted by the Council.

(Source: Article II of By-laws)

1.114 TRIBAL RECORDS

A. All books, records and financial accounts of the Little Traverse Bay Bands of Odawa Indians, Inc. including the tribal roll, shall be open to inspection by the Bands membership upon reasonable request to the Board of Directors.

B. All books, records and financial accounts kept by officers, Board of Directors members, or employees of the Bands in connection with their tribal duties or employment are the property of the Bands and shall be maintained in the Bands office. Upon leaving office or employment, it shall be the duty of each of the aforementioned officers, council members or employees to turn over such books, records and financial accounts to the appropriate successor.

(Source: Article III of By-laws)

Under Construction

Chapter 2. Interim Tribal Court Composition, Duties and Powers

1.201 PURPOSE

Pursuant to Article VII (g) the Constitution and Bylaws of the Little Traverse Bay Bands of Odawa Indians (WOTC 1.008(A)(7)), the Tribal Council, in the exercise of its full sovereign authority, hereby establishes the Tribal Court, and its duties and functions.

(Source: WOS 1995020, December 17, 1995, Section I)

1.202 JUDICIAL POWER AND JURISDICTION

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 (the “Tribal Court”), and appellate court (the “Tribal Appellate Court”), and such lower courts as the Tribal Council may from time to time establish. Rulings of the Tribal Appellate Court are final and binding. Rulings of the Tribal Appellate Court cannot be appealed to the Tribal Council or any other jurisdiction unless specifically allowed by Federal law.

B. Jurisdiction

The judicial power shall extend to all cases arising under the Tribal Constitution, statutes, ordinances, regulations, or judicial decisions, and all cases for which the Tribal Court is the appropriate forum based on the Tribe's inherent sovereignty, traditional custom or Federal law.

(Source: WOS 1995020, December 17, 1995, Section II)

1.203 COMPOSITION OF THE TRIBAL COURT SYSTEM

A. Tribal Court

The Tribal Court shall be a court of general jurisdiction and shall consist of one (1) judge and one (1) or more associate judges. All civil and criminal matters shall be initially brought before the Tribal Court. Decisions of the Tribal Court may be appealed to the Appellate Court in accordance with the Rules of Practice and Procedure developed under section VII [WOTC 1.207] of this statute.

B. Tribal Appellate Court

The Tribal Appellate Court shall consist of three (3) judges. At least one (1) of the three (3) judges shall be a member of the Tribe, and at least one (1) of the three (3) judges shall be an attorney licensed to practice before the courts of a state in the United States.

(Source: WOS 1995020, December 17, 1995, Section III)

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1.204 APPOINTMENTS, TERM AND COMPENSATION

A. Appointment to the Court of General Jurisdiction

The Judges of the Tribal Court and such lower courts as the Tribal Council may establish shall be appointed by an affirmative vote of five (5) of the seven (7) members of the Tribal Council.

B. Appointment to the Appellate Court

Each judge of the Tribal Appellate Court shall be appointed by an affirmative vote of five (5) of seven (7) members of the Tribal Council.

C. Tribal Court Term of Office

Members of the Tribal Court shall serve for terms of four (4) years, or until the Tribe adopts a new Constitution and makes judicial appointments under the new Constitution. There shall be no limitation on reappointment. Provided, to stagger terms, when the Tribal Council makes initial appointments, the Tribal judge shall be appointed to a four (4) year term, and the associate judge shall be appointed to a three (3) year term. All appointments thereafter, including additional associate judges, if any, shall be for four (4) year terms.

D. Tribal Appellate Court Term of Office

Members of the Tribal Appellate Court shall serve for terms of six (6) years, or until the Tribe adopts a new Constitution and makes judicial appointments under the new Constitution. There shall be no limitation on reappointment. Provided, to stagger terms, when the Tribal Council makes initial

appointments, one person shall be appointed to a four (4) year term, one person shall be appointed to a five (5) year term, and one person shall be appointed to a six (6) year term. All appointments thereafter shall be for six (6) year terms.

(Source: WOS 1995020, December 17, 1995, Section IV)

E. Interim Appointments by Tribal Court

When situations arise where, due to conflicts of interest or vacancies, there is not a Tribal Court judge or full Appellate Court to hear a particular case, the Tribal Court, in accordance with its rules of practice and procedure developed pursuant to Section VII [WOTC 1.207] of this Statute, shall appoint interim judges or justices to hear such particular case. The Tribal Court is only authorized to make interim appointments for individual cases. The term of interim appointments terminates upon disposition of the case.
(Source: WOS 1999002, February 21, 1999, Section II)

1.205 ELIGIBILITY

A. Tribal Court
A person may be eligible to serve as a Tribal Court judge or associate judge only if he/she:

1. Has attained the age of twenty five (25), and

2. Is a member of the Little Traverse Bay Bands of Odawa Indians or is at least one quarter (1/4) American Indian; and

3. Is not a Tribal Council member or running to become a Tribal Council member; and

4. Has never been convicted of any felony by a court of competent jurisdiction unless the Tribal Council determines the person to be sufficiently rehabilitated.

Comment: Appellate judge the same as is. Tribal court judges and associate judges must be LTBB member or 1/4 Indian. Removal hearing as soon as practicable but in any case no longer than sixty days from receipt of written complaint.

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B. Tribal Appellate Court
A person may be eligible to serve as a Tribal Appellate Court judge only if he/she:

1. Has attained the age of twenty five (25), and

2. Is not a Tribal Council member or running to become a Tribal Council member; and

3. Has never been convicted of any felony by a court of competent jurisdiction unless the Tribal Council determines the person to be sufficiently rehabilitated.

(Source: WOS 1995020, December 17, 1995, Section V)

1.206 JUDICIAL INDEPENDENCE

The Tribal Judiciary shall be independent from the legislative and executive functions of the

Tribal government and no person exercising the powers of the legislative or executive functions of government shall exercise powers properly belonging to the judicial branch of government.

(Source: WOS 1995020, December 17, 1995, Section VI)

1.207 PRACTICE AND PROCEDURE

The Tribal Judiciary shall by general rules establish the practice and procedure in all courts of the Tribe.

(Source: WOS 1995020, December 17, 1995, Section VII)

1.208 REMOVAL OF A TRIBAL JUDGE

A. Removal by Tribal Judiciary

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

1. Unethical conduct, as defined by the Little Traverse Bay Bands of Odawa Indians Code of Judicial Conduct if adopted by the Tribal Council, or in the absence of such code, by the American Bar Association Code of Judicial Conduct;

2. Physical or mental disability which prevent the performance of judicial duties;

3. Persistent failure to perform duties;

4. Gross misconduct that is clearly prejudicial to the administration of justice; or

5. Ineligibility, under Section V [WOTC 1.205] of this ordinance, to serve as a member of the Tribal Judiciary.

B. Procedures for Removal

The Tribal Judiciary shall develop rules and procedures for removal of judges. These procedures shall at a minimum include the following:

1. If a member of the Tribal Judiciary believes that grounds exist for removal of another judge, he/she 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 in no event 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.

2. If a member of the Tribe believes that grounds exist for removal a judge, he/she shall state the charges in writing, and submit the written charges to the Court Clerk who shall

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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 section B 1, which hearing shall be held as soon as practicable, but in no event more than sixty (60) days after receipt of the written charges.

(Source: WOS 1995020, December 17, 1995, VIII)

1.209 VACANCIES

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

(Source: WOS 1995020, December 17, 1995, Section IX)

1.210 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section 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 phrase, provision, paragraph, subsection or section 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.

(Source: WOS 1995020, December 17, 1995, Section X)

TITLE II. MEMBERSHIP, TRIBAL ENROLLMENT

Chapter 1. Enrollment

2.101 STATEMENT OF PURPOSE

The purpose of this Statute is to establish Tribal enrollment procedures, policies and guidelines.

(Source: WOS 2002-06, August 18, 2002, Section I)

2.102 ORDINANCE TITLE

This Statute shall be designated as the Enrollment Statute of The Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2002-06, August 18, 2002, Section II)

2.103 AUTHORITY

The Tribal Council of the Little Traverse Bay Bands of Odawa Indians has the authority for the

enactment of this Statute in accordance with the Tribal Constitution.

(Source: WOS 2002-06, August 18, 2002, Section III)

2.104 REPEAL OF PREVIOUS LEGISLATION

This Statute repeals and replaces the Tribal Enrollment Statute of December 19, 1999, being Waganakising Odawak Statute 1999014, as amended on November 18, 2001 by Waganakising Odawak Statute 2001-014.

(Source: WOS 2002-06, August 18, 2002, Section IV)

2.105 ELIGIBILITY FOR MEMBERSHIP

A. Definitions. For purposes of this section "Reservation" means the areas referenced in PL 103-324, 25 U.S.C. 1300k-2(b)(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." "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.

B. Membership Criteria. The membership of the Little Traverse Bay Bands shall consist of all persons who are one-fourth (1/4) or more Indian blood quantum, at least one half (½) of which (1/8 of their total blood quantum) is traceable (direct lineal descent) to a person or persons identified in one or more of sections V (B) (1-3) [WOTC 2.105 (B)(1-3)] and who are not currently enrolled in any other Federally recognized Indian Tribe or Band:

(1) All persons listed on the Durant Roll under the following chiefs or areas of residency:

Nawwemaishcotay - Cross Village

Shawwawdayse - Charlevoix

Shawwawnegwnaybe - Bay Shore

Louis Micksawbay - Charlevoix

Awmegwawbay - Petoskey

Nawogemaw - Good Hart/Middle Village

Simon Keywawdezhick - Harbor Springs

Joseph Waybwaydum - Burt Lake

Daniel Nesawwawquot - Harbor Springs

Payzhickwaywedung - Beaver Island Band

Nawoquaygawbowe - Manistique

Kawgegaypenayse - North Shore

(2) All persons whose names appear on the Durant Roll who resided within the reservation at the time the Durant Roll was compiled.

(3) All persons listed on the 1836 to 1870 Annuity payrolls of Ottawa & Chippewa Indians of Michigan or Indians referenced in the 1850 through 1920 Federal Population Enumeration (Census Records) who resided within the Reservation or areas of residency listed in Section V (B)(1) [WOTC 2.105 (B)(1)] at the time the payrolls were written.

C. The blood quantum of persons whose names appear on the Durant Roll will be determined by the notations contained on the roll and accompanying field notes. Provided, solely for purposes of their own Tribal enrollment, the blood quantum of Tribal members who enrolled in reliance on the statutory provision in place from May 23, 1999 [WOS 1999005, Section V (B)(4); WOS 1999014 Section V (B)(3)], and the blood quantum of persons who submit their enrollment applications by December 31, 2001, shall not be effected by this amendment.

(Source: WOS 2002-06, August 18, 2002, Section V)

2.106 COMPUTATION OF NORTH AMERICAN INDIAN BLOOD

The total degree of Indian blood of all United States Federally recognized and historical Indian tribes, bands, or groups, and Indian tribes, bands or groups recognized by the government of Canada shall be included when calculating blood degree.

(Source: WOS 2002-06, August 18, 2002, Section VI)

2.107 ENROLLMENT APPLICATION REQUIREMENTS

To apply for membership, a person must:

A. File a written application for membership with the Little Traverse Bay Bands Enrollment Office.

B. Provide evidence of blood quantum and ancestry to determine eligibility pursuant to Section V [WOTC 2.105] of this Statute. Such evidence may include, but need not be limited:

1. Original birth certificate or original certified copy (no photocopies or hospital certificates are accepted).

2. Death certificates

3. Notarized Affidavits

4. BIA records

5. Baptismal records and other church documents

6. Marriage License(s)

7. Divorce Decree(s)

8. Certification of degree of Indian blood (Canada)

C. Willful relinquishment from other tribe

1. A person applying for membership who is enrolled in a tribe recognized by the government of the United States or Canada may provide the Enrollment Office with a notarized letter of willful relinquishment in the United States or Canadian tribe on a form approved by the LTBB Enrollment Office or Enrollment Office from the tribe from which the applicant is seeking disenrollment. The Enrollment Office will forward such letter to the appropriate tribe and/or governmental agency in the United States or Canada. For purposes of LTBB enrollment, a person who submits such relinquishment letter will no longer be considered enrolled in the tribe in question.

2. A person who is already enrolled in LTBB, but is still enrolled in a tribe recognized by the government of the United States or Canada must submit a letter of willful relinquishment from the United States or Canadian tribe on a form approved by the LTBB Enrollment Office, or Enrollment Office from the tribe from which the applicant is seeking disenrollment, to remain enrolled with LTBB. The Enrollment Office will forward such letter to the appropriate tribe and/or governmental agency in the United States or Canada. If the member does not complete the willful relinquishment form the disenrollment procedures will apply.

(Source: WOS 2002-06, August 18, 2002, Section VII)

2.108 ENROLLMENT PROCEDURE

Enrollment of individuals shall be conducted in the following manner:

A. An application and supporting evidence are submitted to the Tribal Enrollment Office.

B. If the file has supporting evidence and meets the enrollment criteria the file is then assigned a designated application number.

C. If there is a specified time for enrollment then all applications must be submitted and approved by the Tribal Council on or before that date.

D. The Tribal Office will have 180 days to act in either accepting or rejecting the application, or request more information in extraordinary situations.

E. Upon receipt of the application, the Enrollment Office will investigate and make a recommendation of the individual's eligibility pursuant to Section V [WOTC 2.105] of this Statute. All applications based in whole or in part on notarized affidavits will be referred to the Enrollment Commission and the Enrollment Commission shall make its recommendation to the Tribal Council as Certifier. The Enrollment staff shall refer all other applications to the Enrollment Commission when the Enrollment staff is not confident that conclusive proof of eligibility has been compiled.

(Source: WOS 2002-06, August 18, 2002, Section VIII)

2.109 CREATION AND ROLE OF THE ENROLLMENT COMMISSION

A. A five (5) person Enrollment Commission shall be appointed by the Tribal Council. This Commission shall consist of enrolled Tribal members. The Enrollment Officer or one (1) member of Enrollment office staff will be present at meetings of the Enrollment Commission. The Chairperson, Vice-chairperson, and Secretary of the Enrollment Commission shall be selected by the members of the Commission.

B. The Enrollment Commission shall:

1. Advise the Enrollment Officer and other pertinent staff as to how the enrollment process may be made as fair and equitable as possible.

2. Review all applications that are based in whole or in part on affidavits. They shall also review all applications referred to it by the Enrollment Officer because of difficulties in confirming eligibility. The Enrollment Commission will then make a recommendation to the Tribal Council based upon its review of all the information submitted by the applicant and compiled by the Enrollment Staff of the Enrollment Office. If an elder member of the Commission has signed an affidavit on behalf of an applicant, the elder shall refrain from voting on the recommendation. The elder shall, however, be permitted to provide the Enrollment Commission with testimony as to the applicant's eligibility.

3. Be able to enlist the aid of other Tribal elders to help substantiate an applicant's eligibility.

4. Review all applications referred to help substantiate whether an applicant is eligible or not eligible in accordance with membership requirements.

5. Review, at least once a month, on a random basis two (2) or three (3) applications that have been denied. The purpose of the review is to ensure that the Enrollment Staff is properly implementing the criteria for membership. If an error is found in an application during the monthly review all applications reviewed since the last review date shall be reconsidered by the

Enrollment Staff of the Tribal Enrollment Office.

C. The Enrollment Commission shall meet at least once a month or as often as necessary. The Chairperson shall call all meetings when the Enrollment Staff informs the Chairperson that there is a need for the meeting in accordance with notice requirements set out in LTBB statute, regulations and policies.

D. If an applicant appears to be eligible for membership, the Enrollment Officer shall make a report to the Tribal Council which includes: parents' names, blood quantum, date of birth and roll number. The Tribal Council shall have the responsibility of reviewing this confidential report at the meeting where it is presented. This report shall be immediately returned to the Enrollment Officer following review. After reviewing this confidential report, the Tribal Council shall either certify the individual as a member, deny certification, or refer an application to the Enrollment Commission.

E. Upon certification the Enrollment staff notifies the individual with a membership card and acceptance letter.

F. A copy of all correspondence, and the membership card shall be maintained in the applicant's file by the enrollment staff.

G. Upon completion of the certification process, the individuals named shall be placed on the Tribal roll.

H. The Tribal Council shall set compensation for the Enrollment Commission. Commission members may be removed for the reasons and following the procedures set out in the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 1997005), or such successor statute as the Tribal Council may enact.

(Source: WOS 2002-06, August 18, 2002, Section IX)

2.110 ENROLLMENT COMMISSION TERMS

A. **Term.** The term of office for the five (5) Enrollment Commissioners shall be four years. Provided, to stagger terms, when the Tribal Council makes initial appointments, two people shall be appointed to two (2) year terms, and three people shall be appointed to three (3) year terms. All appointments thereafter shall be for four-year terms.

D. **Oath.** Enrollment commissioners are to be sworn in under an oath of office prepared and administered by the Tribal Court within thirty (30) days of their appointment.

E. **Application of Commissions, Committees Boards Statute.** The Commissions, Committees and Boards Statute (WOS 2002-05), as may be amended, applies to the Enrollment Commission to the extent consistent with the Statute.

F. **Duties.** The Chairperson of the Enrollment Commission shall chair all Enrollment Commission

meetings and keep record of all terms. The Secretary shall take minutes and provide the Tribal Council with quarterly reports. The Vice-Chairperson shall serve as Chairperson in the Chairperson's absence.

G. Resignation. An Enrollment Commissioner may resign provided that the resignation is in writing.

(Source: WOS 2002-06, August 18, 2002, Section X)

2.111 PROCEDURE IN DECLINATION OF APPLICATIONS FOR MEMBERSHIP

A. Incomplete application and documentation. For all applications submitted after December 31, 2001, if an applicant's eligibility cannot be documented to the 1908 Durant roll, the applicant will be notified by the enrollment staff explaining areas of deficiency along with returned application and documents submitted by the applicant. The applicant may re-apply for membership provided that the application and documentation are complete showing eligibility under the Constitution and Section V [WOTC 2.105] of this Statute.

B. Declination. If an applicant appears to be ineligible, the Enrollment Staff shall make a report to the Tribal Council after being reviewed by the Enrollment Commission indicating the appearance of ineligibility. The Tribal Council shall have the responsibility of reviewing the report and file if they so desire. The Tribal Council has the authority to reject a recommendation. If the Tribal Council accepts the recommendation of the Tribal Enrollment Officer, the individual will be notified by certified mail.

(Source: WOS 2002-06, August 18, 2002, Section XI)

2.112 DISENROLLMENT

A. Any enrolled member of the tribe who applies for and becomes an enrolled member of any federally recognized Indian Tribe, Band or group subsequent to their enrollment in the Little Traverse Bay Bands of Odawa Indians, shall thereby forfeit membership in the Little Traverse Bay Bands of Odawa Indians. Upon notice of such enrollment in another federally recognized Tribe, Band or group, the Tribal Enrollment Office shall:

1. Contact the member and state the provision of this Section.

2. Provide the individual with the right to respond within 30 days.

3. After 30 days if there is no response, and the subsequent enrollment is verified by documentation the Enrollment Staff shall submit a certificate of disenrollment to the Tribal Council along with a report.

4. If the Tribal Council determines that the disenrollment report is proper, the certification of disenrollment shall be entered.

5. Upon entering of the certification of disenrollment, the Enrollment staff shall inform the

individual of the action.

B. **Erroneous Enrollment.** Enrolled members of the Tribe who are found by the Tribe to have been enrolled based upon deficient, erroneous or fraudulent evidence shall be subject to disenrollment by the Tribe.

C. **Enrolled members.** An enrolled member of the Tribe may also be disenrolled upon a finding that a prior determination of eligibility was made based upon a mistake of fact following the procedures set out in this Section.

2.113 RELINQUISHMENT OF MEMBERSHIP

A. "Relinquishment" is defined as voluntarily and officially giving up the right of Tribal membership. It is an action that can be taken only by an individual member and not by the Tribe. An individual may relinquish membership by:

1. Submitting a written and signed notarized statement requesting that his or her name be removed from the membership roll.

2. Once an individual has relinquished membership, that individual is banned from re-applying for a period of five (5) years.

3. Membership of a minor or incompetent may be relinquished by the parents or legal guardian. The minor may re-apply, within the five (5) year period, or upon reaching the age of eighteen, and the incompetent's relinquishment may be corrected by proving competency.

4. The membership of a child who becomes a ward of a state or tribal court shall remain in effect. In the event that parental rights are terminated to a child whose membership has been relinquished, the tribal or state court may petition the Tribe for reinstatement of the child's membership.

(Source: WOS 2002-06, August 18, 2002, Section XIII)

2.114 APPEAL OF ENROLLMENT DECLINATION OR DISENROLLMENT

A. Any person who has been rejected for enrollment or disenrolled has a right to file an appeal with the Tribal Court. The burden of proof at the appeal process is on the applicant.

B. All appeals shall be in writing. An applicant shall have sixty (60) calendar days from the date of the declination or disenrollment notice to file an appeal in writing with the Tribal Court.

C. The sole purpose of the Appeals Process will be to determine if there has been a clear error in declination or disenrollment of the applicant based on the evidence and documentation provided by the applicant to the Enrollment Department. The Tribal Court shall only overrule the declination or disenrollment if the evidence cannot reasonably be construed to support the action of the Tribal Council.

The Tribal Court will not consider additional or supplemental documentation or evidence. Applicants who gather additional documentation or evidence after declination may reapply for membership, or supplement their initial application, using such additional information.

(Source: WOS 2002-06, August 18, 2002, Section XIV)

2.115 AFFIDAVITS

A. A minimum of three (3) notarized affidavits from tribal elders, who are not related to the applicant, are an acceptable offer of proof of either ancestry or blood quantum (of either the applicant or a claimed ancestor) along with other information that may be taken into consideration. Each applicant who is informed of the right to submit an affidavit shall also be informed that affidavits will be considered along with all other information, and that the reviewing body is free to assign whatever authority it feels is appropriate to any affidavits submitted.

B. Only notarized affidavits submitted by a Little traverse Bay Band tribal elder are valid offers of proof. An elder is defined to be a tribal member who is fifty-five (55) years old or older, living on or off the reservation. The affidavit should allege facts that establish the basis of the knowledge that the elder claims to have of the applicant's eligibility. All applicants notified of the right to submit an affidavit shall be informed of these requirements.

(Source: WOS 2002-06, August 18, 2002, Section XV)

2.116 REPORT REQUIREMENT

A. It is the responsibility of all adult tribal members and non-member guardians of minor or incompetent tribal members, on behalf of themselves and any minor or incompetent tribal members under their care, to report all status changes to the Tribal Enrollment Department including change of address, deaths in the family, and change of name. Such reports shall be submitted within ninety (90) days of the occurrence.

1. Such reports shall be addressed to the Tribal Enrollment Office and contain the following information:

a. Legal name of member;
b. Membership number;
c. Current address;
d. Telephone number;
e. Social Security number;
f. Date of birth; and
g. Signature and date for verification.

B. Once a year the Enrollment Officer shall submit a report to the Tribal Council, which shall contain:

1. The total number of members;
2. Births and deaths during the reporting period;
3. A complete updated roll;
4. The date filed;
5. A list of undeliverable addresses.

C. If requested by a law enforcement agency of LTBB, the LTBB Tribal Court, a law enforcement agency or court of another federally recognized tribe, or a federal court or law enforcement agency, including, without limitation, the FBI, United States Attorney, or law enforcement officers of the BIA, the Enrollment Office shall provide certification of LTBB membership, including name, enrollment number, date of birth, and address, or certification that the person in question is not enrolled with LTBB.

(Source: WOS 2002-06, August 18, 2002, Section XVI)

2.117 CONFIDENTIALITY: RECORDS SUBJECT TO CONFIDENTIALITY PROVISIONS

As used in this Statute, "records" or "enrollment files" means any item, collection, or grouping of information about or collected from individuals, including, but not limited to, birth certificates, genealogy reports, or other documents that contain the individual's name, or identifying particulars assigned to the individual, such as photographs, which information is collected for the purpose of determining the eligibility for enrollment in the Tribe of an individual or members of an individual's family. The names and addresses of adult Tribal members are not confidential for the purpose of publishing a directory.

(Source: WOS 2002-06, August 18, 2002, Section XVII)

2.118 ASSURING INTEGRITY OF RECORDS

A. The following shall apply to all manual enrollment files:

1. Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons.

2. During working hours, the area in which the records are maintained or regularly used shall be occupied by authorized personnel or the access to the records shall be restricted by their storage in locked cabinets in a locked room.

3. During non-working hours, access to the records shall be restricted by their storage in locked cabinets in a locked room.

B. Records maintained on computer will have limited access to only those staff or personnel with written authority of the Tribal Council or Tribal Administrator as designated by Tribal Council. When maintained in computerized form, enrollment files and records shall be maintained subject to adequate safeguards.

(Source: WOS 2002-06, August 18, 2002, Section XVIII)

2.119 ACCESS TO TRIBAL RECORDS AND STANDARDS OF CARE

A. The following persons are authorized pursuant to subsection (**C**) of this section to review and handle enrollment files upon being sworn to taking an oath of confidentiality.

1. Enrollment Officer

2. Authorized Enrollment Staff

3. Members of the Advisory Enrollment Commission

4. Members of the Tribal Judiciary

5. Members of the Tribal Council

B. All of the above individuals listed, whose duties require handling of records are subject to this Statute and at all times shall take care to protect the integrity, security, and confidentiality of all enrollment files and documentation.

C. No records contained in enrollment files may be disclosed by any means of communication to any person, or another agency, except pursuant to a written request by, or with the prior written consent of the individual to who the record pertains, except:

1. For purposes of the Bureau of the Census for planning or carrying out a census or survey or related activity pursuant to the provision of Title 13 of the United States Code.

2. To a recipient who has provided the enrollment officer, or other person responsible for the record system in which the documents contained in the enrollment files are maintained, with advance adequate written assurance that the records will be used solely as a statistical research or reporting record, and the records are to be transferred in a form that is not individually identifiable.

3. To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to last known address of such individual.

4. Pursuant to the order of the Tribal Court upon showing of good cause.

5. A list of enrolled member's names and addresses may be included in a Directory prepared by the Enrollment Officer in accordance with Section XXII [WOTC 2.122] of this Statute. The Directory of members' names and addresses may be provided to any Tribal member or employee of the Tribe requesting of copy of such Directory.

6. Information submitted to the State of Michigan to implement the terms of the Tax Agreement authorized by Tribal Council Resolution 12150201, and executed by the Tribal Chairman, Michigan Governor and State Treasurer on December 20, 2002, or any successor agreement.

7. Information submitted to the State of Michigan or any other state to implement the terms of any agreement authorized by the Tribal Council between the Little Traverse Bay Bands of Odawa Indians and a state regarding a state's acceptance of Tribal identification cards.

8. Information supplied by the Enrollment Department to the Economic Development Department for the purpose of implementing a swipe card system to aid in the implementation of any tax agreement authorized by the Tribal Council between the Little Traverse Bay Bands of Odawa Indians and any other governmental entity, or for such other purposes as may be authorized by motion of the Tribal Council.

9. Release of copies of tribal id cards, social security cards or numbers, and birth certificates to the Director of LTBB Human Services of LTBB children who have been placed outside of the home of their parent or guardian by any court. A written certification by the Human Services Director is acceptable evidence of such out-of-home placement. Human Services may provide such information to foster parents or agencies as needed to protect the interests of the child.

10. Release of information to the LTBB Human Services, LTBB Legal Department, LTBB Prosecutor, or any other attorney representing LTBB of any information needed to verify the LTBB enrollment or eligibility status of children who have foster care, guardianship or any potential out-of-home placement proceedings pending before any state or tribal court.

(Source: WOS 2002-06, August 18, 2002, Section XIX; Subsection 6 added by WOS 2003-02, January 19, 2003; Subsection 7 added by WOS 2004-04, August 22, 2004; Subsections 8, 9 and 10 added by WOS 2004-09, December 19, 2004)

2.120 RECORD OF DISCLOSURES

A. Maintenance of an Accounting record. Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by Section XXII (C) [WOTC 2.122(C)], an accounting shall be made. The accounting shall record who requested the disclosure, the date, nature and purpose for each disclosure, and of the person or persons of whom the disclosure was about.

B. Access to accountings. Accounting shall be recorded; the date and time of all disclosures of a record shall be made when records are accessed.

(Source: WOS 2002-06, August 18, 2002, Section XX)

2.121 REQUEST FOR ACCESS TO RECORDS

Tribal members may obtain photocopies of documents in their own enrollment file. A Tribal member can only access information in other members' files with written authorization of the member. A Tribal member cannot access files of deceased members who are not direct ancestors, and files of direct ancestors can only be accessed with authorization by an order of the Tribal Court. The Enrollment Officer shall set and collect reasonable fees for collecting and/or copying records.

(Source: WOS 2002-06, August 18, 2002, Section XXI)

2.122 PREPARATION OF TRIBAL MEMBERS DIRECTORY

A. The Enrollment Officer is authorized to prepare a directory of Tribal members per Tribal Council request. The directory may include the name and address of each adult member of the Tribe unless they decline inclusion under subsection (B) below.

B. The Enrollment Officer shall send written notice regarding the preparation of the Tribal Member Directory to the last known address of each adult member of the Tribe eighteen (18) years or older. Such notice shall inform each adult Tribal member that a Directory containing Tribal members' names and addresses will be published not less than sixty (60) days after the date of such notice, which will include the member unless the member notifies the Enrollment Officer that he/she does not wish to have his/her name and/or address included in such Directory.

C. A copy of the Tribal Member Directory shall be provided to Tribal members upon request. The Enrollment Department may charge a nominal fee to cover its cost.

D. The Tribal Directory may not be quoted from, published, reproduced, or displayed, in whole or in part, without the written permission of the holder of the original copy. This copy may not be sold or given to other persons.

(Source: WOS 2002-06, August 18, 2002, Section XXII)

2.123 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2002-06, August 18, 2002, Section XXIII)

2.124 EFFECTIVE DATE

This Statute takes effect immediately upon its enactment [August 18, 2002]. Enactment of this Statute shall have no effect on the membership status of any tribal members enrolled by the Tribe under previous legislation.

(Source: WOS 2002-06, August 18, 2002, Section XXIV)

TITLE III. ELECTIONS

Chapter 1. Tribal Elections and Election Board

3.101 PURPOSE

A. The Election Board is charged with the handling of all General, Referendum, and Special elections properly called for under applicable Tribal law.

B. The Election Board is charged with maximizing the efficiency of the Election Board while respecting the Tribal Traditions, Values, and Culture of the Little Traverse Bay Bands of Odawa Indians.

C. This Statute repeals and replaces Waganakising Odawak Statute 2001-03, as amended by Waganakising Odawak Statute 2002-03.

(Source: WOS 2004-06, September 26, 2004, Section I)

3.102 AUTHORITY

The Election Board is created to carry out express mandates within the Constitution as an independent entity and shall be adequately funded to fulfill its purposes.

(Source: WOS 2004-06, September 26, 2004, Section II)

3.103 ELECTION ORDINANCE

A. This statute establishes the proceedings and regulations to govern elections under the Interim Constitution of the Little Traverse Bay Bands of Odawa Indians under the provisions of Public Law 103-324, or any successor Constitution adopted by the Tribe.

(Source: WOS 2004-06, September 26, 2004, Section III)

3.104 DEFINITIONS

A. The titles “Board of Directors” and “Tribal Council” are used interchangeably and denote the same governing body.

B. The titles “Board Member” and “Council Member” denote the same official.

C. **“**Business Days” shall mean any day of the week that the Tribal Administrative Offices are open.
D. Certified Signatures - Signatures that can be verified with the signatures on file with Enrollment,

or Voter Registration forms on file with the Election Board also includes power of attorney and/or guardianship signatures. The Election Board may take personal verification of signatures from individuals.

E. Constitution - The Constitution and By-Laws passed unanimously by the Board of Directors of the Little Traverse Bay Bands of Odawa Indians, Inc. on March 3, 1989 in Charlevoix, Michigan and modified on December 7, 1991 by resolution 12079102 that was in effect on September 21, 1994, the date of enactment of Public Law 103-324, which is the Interim Governing Document of the Little Traverse Bay Bands of Odawa Indians by operation of PL 103-324, 25 U.S.C. § 1300k-6, or any successor Constitution adopted by the Tribe.

F. Dates of Events - General Tribal Elections will be held on the last Monday in June every two (2) years. Other events are determined by special elections called by Tribal Council or Referendum. When the event, such as posting of election results, falls on a Saturday, Sunday or holiday, the event will take place on the next business day. When such changes are necessary the entire sequence of events shall be adjusted to maintain the required number of days between each event. Refer to Section IV(C).

G. “Days” means a period of time consisting of 24 hours including the solar day and night.

H. Election Notice - The official notice that an election will be held on a specific date established by the Election Board.

I. General Election - The election of Tribal Council members every two (2) years and the Tribal Chairperson every four (4) years.

J. Majority - 50% plus one of the votes cast in an election. Provided, that elections for Council and Chair are determined by the highest vote recipients for each position which may or may not constitute a majority.

K. “PL 103-324" shall mean “The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act” as signed into law on September 21, 1994.

L. Poll Official - An Election Board Member or any other appointee to the Election Board serving at the polls on Election Day.

M. Polling Place - Location designated by the Election Board where balloting will take place.

N. The titles “President” and “Tribal Chairperson” denote the same Tribal official.

O. Qualified Voter - All members of the Tribe eighteen (18) years of age or older, who have been enrolled no less than ninety (90) days before the day of election.

P. Referendum Election - An election held pursuant to Article IX of the Constitution.

Q. Registered Voter - Qualified Voters of the Tribe who have a Voter Registration Form on file with the Election Board ninety (90) days before the day of election.

R. Rejected Ballot - Ballot in which the intention of the voter cannot be determined.

S. Spoiled ballot - A ballot that has markings other than what was originally on the ballot, provided the intention of the voter is not clear.

T. Submission To Election Board - All materials presented to the Election Board, with the exception of nomination petitions and petitions, which are protesting the results of an election shall be transmitted to the Election Board from the Tribal Council.

U. The "Tribe" shall mean the Little Traverse Bay Bands of Odawa Indians.

V. Valid Ballot - A ballot in which the intention of the voter is very clear.

W. Voter Registration Form - Form approved by the Election Board containing both the signature of the voter and a signature of a public notary/ or a legible copy of the following forms of identification: a valid Tribal Identification Card, Drivers License, state issued Identification Card, or Passport, provided such identification bears the signature of the Tribal member.

(Source: WOS 2004-06, September 26, 2004, Section IV)

3.105 COMPOSITION, APPOINTMENTS, OATH OF OFFICE, VACANCIES, AND REMOVAL OF ELECTION BOARD

A. COMPOSITION

1. The Election Board shall be appointed by Tribal Council and shall consist of five (5) enrolled Tribal members, eighteen (18) years of age or older who meet the voting eligibility requirements.

2. Election Board Officers—The Election Board shall organize itself with a Chairperson, Vice-Chairperson and a Secretary/Treasurer.

3. Election Board members cannot be candidates for any Tribal elected position while serving on the Election Board.

B. APPOINTMENTS & TERMS

1. The initial appointment of the Election Board will be for staggered terms consisting of one (1) four year term, two (2) three year terms, one (1) two year term, and one (1) one year term. The terms thereafter shall be for three (3) years.

2. There shall be no limit on reappointment.

3. The Election Board may make appointment recommendations to the Tribal Council.

4. Members will serve until their successors are appointed and sworn in.

C. OATH OF OFFICE

Election Board Members are to be sworn in under an oath of office prepared and administered by the Tribal Court within thirty (30) days of their appointment.

D. VACANCIES

1. In the event a vacancy occurs on the Election Board by virtue of death, resignation or removal, the Tribal Council shall appoint a Tribal member who meets the eligibility requirements for the remainder of the unexpired term.

2. The Election Board may make recommendations to Tribal Council to fill vacancies.

E. REMOVAL

The procedures for removal of an individual from the Election Board for the reasons listed below are set forth in the Removal of Commissioners and Nepotism Statute (WOS 1997005), or such successor statute as the Tribal Council may enact. Election Board members may only be removed for one or more of the following reasons.

1. Any act of theft, embezzlement, or fraud committed, conspired or knowingly allowed to be committed by an Election Board member.

2. Divulging the contents of confidential material or violating the secrecy of the balloting process.

3. Regular non-attendance at Election Board meetings or missing three consecutive meetings without notifying the Election Board in advance.

4. Any act or omission, which violates or is inconsistent with accepted Election Board principles or responsibilities.

5. The conviction of a felony, or comparable criminal charge, in a Tribal, State, or Federal Court during the term of service, provided this conviction was not the result of treaty protected activity.

(Source: WOS 2004-06, September 26, 2004, Section V)

3.106 TYPES OF ELECTIONS

A. GENERAL ELECTION

The General Election shall be held the last Monday in June every two (2) years for the purpose of electing the Tribal Council members whose terms are expired and the Tribal Chairman every four (4) years. Provided, in the event of extraordinary circumstances beyond the Election Board's control rendering the holding of the election impossible, such as a tornado, act or war, or unplanned shut down of the Post Office, the Election Board may postpone Election Day until such event subsides.

B. REFERENDUM ELECTION (Refer to Article IX–Right of Referendum in Constitution)

1. Any enacted or proposed ordinance or resolution of the Bands Board of Directors shall be submitted to a popular referendum upon an affirmation vote of a majority of the Board of Directors or when so requested by a petition presented to the Council containing the signatures of at least fifty (50) eligible voters of the Bands. Such referendum must be held within sixty (60) days after receipt by the Board of Directors of a valid petition. A vote of a majority of eligible voters voting in such referendum shall be conclusive and binding upon the Board of Directors provided, however, that at least thirty (30%) percent of those entitled to vote, shall vote, in such referendum conducted pursuant to Tribal ordinance.

2. PETITION PROCEDURE AND SIGNATURE VERIFICATION

a. Shall be submitted on the official form approved by the Election Board.

b. All information requested on the form must be filled in completely and legibly. Incomplete or illegible information is grounds for disqualification.

d. Petitions submitted to the Election Board must be date and time stamped. A receipt reflecting the number of pages accepted must be issued to the petitioner.

e. The Election Board shall not add to or in any way alter anything contained in the Petition. Only petitions that are complete as submitted shall be deemed valid.

f. In cooperation with the Enrollment Department, the Election Board shall review and validate all signatures on the petition. A valid signature is that of an enrolled member whose signature can be determined to be the same as that appearing on official enrollment or voter registration documents.

g. At the conclusion of the signature validation process, the Election Board shall prepare a report indicating whether or not the petition contains a sufficient number of valid signatures. This report, along with the original petition, shall be submitted to the Council at its next official meeting where a quorum is present, and shall contain the signatures of three Election Board members.

h. Upon receipt of the Election Board report, the Council shall, if the petition is

found to be insufficient, return the petition and a copy of the Election Board report to the petitioner. If the petition is found to be sufficient, the Council shall proceed according to the provisions of the Constitution and/or Tribal Code.

C. PRIMARY ELECTION

1. In the event that more than (2) candidates per office file sufficient petitions and are therefore certified as candidates for elective office in any scheduled election, a Primary Election shall be conducted to reduce the number of candidates in the General Election to two (2) candidates per office.

2. In the event that a Primary Election is required under this Section, the Primary Election shall be conducted no less than forty five (45) days prior to the General Election. Ballots for the Primary Election shall be mailed no later than seventy-five (75) days prior to the General Election.

3. If a Primary Election is required under this Section, the schedule for distribution of Notice of Election and candidate filing dates shall be scheduled to coincide with the scheduled date of the Primary Election.

4. If two (2) or less candidates file sufficient petitions for an elected office, then a Primary Election shall not be required and the standard election calendar shall apply.

(Source: WOS 2004-06, September 26, 2004, Section VI)

3.107 REGISTRATION & VOTING

A. CANDIDATE QUALIFICATIONS

Enrolled Tribal member eighteen (18) years of age or older and registered to vote by the date of election.

B. REGISTRATION

1. This section sets out procedures to ensure that a vote cast in the name of the voter is in fact cast by that voter.

2. Each Tribal member who desires to vote in an Election, must have a Voter Registration Form on file with the Election Board ninety (90) days before the day of election.

3. The Voter Registration Form shall be in a format approved by the Election Board.

4. The Voter Registration Form must be signed by the Tribal member and verified either by (1) the seal and signature of a notary public or (2) attaching a legible copy of one of the following forms of identification: a valid Tribal Identification Card, Drivers License, state issued

Identification Card, or Passport, provided such identification bears the signature of the Tribal member.

5. It is the responsibility of each Tribal member who wishes to vote in an election to ensure that he or she has submitted a Voter Registration Form to the Election Board.

6. Any voter who changes his or her name shall submit a new Voter Registration Form to the Election Board.

7. Based on the Voter Registration Forms submitted to the Election Board, the Election Board shall keep a roster of Voters known as the Poll Book with Voters listed in alphabetical order or nearly so as possible. The Election Board shall update the Poll Book as Voter Registration Forms are submitted.

C. VOTING

1. Voting shall be done by secret ballot mailed to all Tribal members registered to vote under subsection (B) above.

2. All ballots shall be sent with a self-addressed stamped return envelope.

3. All ballots mailed to the Election Board must be received at the designated Michigan Post Office no later than 4:00 p.m. on Election Day or hand delivered to the Polling Place by 6:00 p.m. Ballots may be hand delivered to the Polling Place on Election Day only.

4. No voter shall cast more than one ballot in any election.

5. No write-in candidates will be allowed.

6. Replacements ballots will be available upon request by mail, or at the polling place on the day of election. Only one ballot per voter will be counted in the final results.

(Source: WOS 2004-06, September 26, 2004, Section VII)

3.108 COUNTING, POSTING & RETENTION OF BALLOTS

A. BALLOT COUNTING

All ballots will be opened, counted and recorded by the Election Board in an open meeting.

B. POSTING OF RESULTS (PRELIMINARY)

1. The preliminary results will be posted as follows:

a. Within twenty four (24) hours after the closing of the polls in ONE VISIBLE &

ACCESSIBLE PLACE designated by the Election Board. (Refer to Section IV(F) Dates of Events)

b. Within three (3) business days on the Little Traverse Bay Bands of Odawa Indians website.

C. CERTIFICATION OF ELECTION RESULTS

The election shall be certified by the Election Board within ten (10) business days after the closing of the polls, providing there are no unresolved challenges pending.

D. ELECTION RESULT CHALLENGES

1. Ten (10) business days after the preliminary election results are posted, all election results shall be declared final, unless the results are protested. Any qualified Tribal voter who cast a ballot in the election in question may protest the results of an election by filing a written protest with the Election Board within ten (10) calendar days after the preliminary results are posted. The Election Board must act in an expedient manner on any protest received, in all cases reaching a decision within thirty (30) days of the date of the filing of a protest.

2. A Tribal member who filed a protest under this section may file a challenge in Tribal Court of the decision of the Election Board within five (5) business days from the date the Board issues such decision. If no challenge is filed in Tribal Court, the election results shall be deemed final five (5) business days after the Election Board renders its decision. If a challenge is filed in Tribal Court, the election shall be deemed final upon the rendering of a decision of the Tribal Court. The Tribal Court shall hold a hearing and issue its decision within forty-five (45) days from the date the challenge is filed.

E. RETENTION OF BALLOTS

1. The Election Board shall retain all ballots in sealed containers, including ballots that were determined not to be valid for any reason until the election is deemed final.

2. Upon finalization of election results, ballots will be retained in secure containers for one year.

(Source: WOS 2004-06, September 26, 2004, Section VIII)

3.109 NOMINATIONS, ELECTIONS & TIME FRAMES

A. NOMINATION PROCEDURES

1. Nominations for candidates are placed on petitions designated by the Election Board.

2. Candidates must be enrolled Tribal Members, eighteen (18) years of age or older and

registered to vote in the election.

3. The nomination petitions shall contain the signature and Tribal enrollment numbers of twenty-five (25) registered voters.

4. A registered Tribal voter may sign more than one nominating petition.

5. Petitions will be prepared and mailed by the Election Board to all members registered to vote at least one hundred thirty four (134) calendar days prior to the election.

6. Nomination petitions must be submitted to the Election Board no less than one hundred four (104) calendar days prior to the election.

7. Candidates shall submit a written statement on a form prepared by the Election Board and any other documentation requested along with their nomination petition.

8. The Election Board shall review and validate all petitions received within the time frame of one hundred four (104) calendar days and prepare a final list of candidates no later than ninety (90) calendar days prior to the election.

9. Candidates wishing to withdraw their names will do so in writing no less than forty-five (45) calendar days prior to the election.

10. The Election Board shall prepare the election ballots and mail them to all eligible voters no less than thirty (30) calendar days prior to the election.

11. Names on the ballots will appear in the order in which their nominating petition is received.

12. Names shall appear on the ballot as they are printed on the nomination petition.

13. No Election Board member may sign any petitions except in the petition validation process.

14. Two Election Board members shall sign, time and date all petitions after validation process.

B. ELECTION DAY PROCEDURES

1. Polls open at 9:00 a.m. at a place designated by the Election Board and announced to the membership through the election notices.

2. The Election Board Chairperson or Election Board Vice-Chairperson and one other member of the Election Board and a Tribal Police Officer will go to the Post Office to retrieve

the ballots.

3. Ballots are brought back to the polling place, removed from the envelopes and placed in the ballot box.

4. The envelopes are counted and the membership numbers are recorded by the Election Board.

5. Ballots are opened and tabulated. Results of the tabulations are recorded by the Election Board. The Election Board may use electronic means to tabulate ballots.

6. At 4:00 p.m., the Election Board Chairperson or Election Board Vice-Chairperson and another member of the Election Board and a Tribal Police Officer leave to make the final pick-up from the Post Office.

7. These ballots are then processed as described above.

8. Polls close at 6:00 p.m. and the counting and recording continue until all the ballots are recorded and tabulated.

9. The preliminary results are posted as follows:

a. In ONE VISIBLE AND ACCESSIBLE place designated by the Election Board within twenty four (24) hours after the closing of the polls.

b. Within three (3) business days on the Little Traverse Bay Bands of Odawa Indians website.

C. TIES

A. GENERAL ELECTION

1. In the event that at the completion of the canvas of the General Election results the tally reveals that any candidate has received the same number of votes as received by another candidate in that contest, the Election Board will conduct a recount of the ballots cast in that contest. Should a tie exist at the completion of the recount, the Election Board will conduct a special run-off election limited to the tied candidates unless the breaking of such tie will not affect the outcome of the election. Such a run-off election shall be immediately noticed to be held not more than forty-five (45) days from the date of the General Election.

2. The same procedure will be followed for a tie in a referendum election.

B. ANNOUNCEMENT OF RESULTS---RUN-OFF ELECTION

1. An uncertified statement shall be issued and posted to announce the election results

within three (3) days following completion of the canvas of the election.

D. RECOUNTS

1. Any contest involving a recount for the votes cast shall be done at the expense of those requesting such a recount for a non-refundable fee to be determined by the Election Board. Upon receipt of the contest and the fee, the Election Board shall proceed with the recount for the particular office, or particular measure. All recounts shall be completed prior to the posting of the official certification of election results. The decision of the Election Board is final.

2. The exception to the fee being paid will be for recounts done as a result of tie votes for a particular position or measure.

E. POLL SITTERS

Poll sitters are person who by contractual agreement observes the activities of the election process at the polling place on Election Day. They shall not interfere in any way with the proceedings.

F. POLL WATCHERS

Each candidate for a position on Tribal Council is entitled to have one person observe on their behalf, the counting of ballots at the polling place on Election Day. The name of that person shall be submitted on a form approved by the Election Board to the Election Board prior to Election Day. They shall not interfere in any way with the proceedings.

G. CAMPAIGNING

1. Campaigning for Tribal offices is prohibited in Tribal Governmental Operations buildings during normal business hours.

2. A written campaign financial statement must be submitted by each candidate to the Election Board within thirty (30) calendar days after the final official certification of the election.

H. OATH OF OFFICE

At the first regularly scheduled Tribal Council meeting after the certification of the election results, the Tribal Court will conduct the swearing in ceremony for the newly elected members. Incoming Council members' terms shall commence, and outgoing Council members' terms shall expire, upon such swearing in.

(Source: WOS 2004-06, September 26, 2004, Section IX)

3.110 CONFLICT OF INTEREST– PENAL PROVISIONS

A. CONFLICT OF INTEREST

An Election Board member shall recuse him or herself from any election or certification involving an immediate family member. A member of an immediate family for purposes of this statute is any person living in the candidate's household, or a parent, brother, sister, spouse, son or daughter of the candidate.

B. BRIBERY OF ELECTORS

It is unlawful to knowingly give or cause to be given or promise to be given, any money to any person as reimbursement for money or other thing of value expended by such person in whole or in part for bribery at any Tribal election: provided, however, that it shall not be unlawful for any candidate personally or by agent to provide transportation to the polls of any voter.

C. COERCION OF ELECTOR

It is unlawful to make use of force, or to request another person to use or threaten force, in order to influence any person's vote in any election, or to prevent any person from voting in any election.

D. INTIMIDATION OF TRIBAL MEMBER EMPLOYEES BY EMPLOYER

1. It is unlawful for any employer to threaten a Tribal member employee with dismissal from employment, reduction of pay, loss of seniority, transfer, or less favorable working conditions, for the purpose of influencing such employee to vote or refrain from voting, or to vote for any particular person in any Tribal Election.

2. As used in this section the term "employer" means any entities or natural persons, and their agents, employing Tribal members, including contractual relationships, over which the Tribe may properly exercise criminal jurisdiction.

E. INTERFERENCE WITH OR CORRUPTION OF ELECTION OFFICER

It is unlawful for any persons to offer or give a bribe to any member of the Election Board, or to influence or attempt to influence any of said officers in the performance of their official duties by means of force, or threats or promise of any nature.

F. VIOLATION OF DUTY BY ELECTION BOARD

It is unlawful for any member of the Election Board to knowingly and willfully fail or neglect any duty under any part of this statute in the manner prescribed by this statute, or to accept any money or other thing of value from any candidate or from anyone acting or purporting to act on behalf of any candidate. Members of the Election Board shall not endorse any candidate while performing duties under this statute.

G. TAMPERING WITH ELECTION BALLOTS

It is unlawful for persons to tamper with election ballots, tallies, voting materials, or any compilation summaries, or totals of voting results by destroying, defacing, writing on, changing marks or totals on any such ballots or voting materials or results.

H. FEDERAL EMPLOYEES

It is unlawful for any federal employee over whom the Tribe may properly exercise criminal jurisdiction to interfere with any Tribal Election campaign by using federal resources to actively and overtly encourage and support any candidate, by allowing a candidate access to confidential federal information such as names and addresses of voters, or by providing any candidate any service or thing of value.

I. PENALTIES

A person convicted of an offense under this section may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

(Source: WOS 2004-06, September 26, 2004, Section X)

3.111 AMENDMENTS

A. The Election Board may make recommendations to the Tribal Council regarding future amendments to this Statute.

B. No amendments to this Statute can take effect while an election is in progress.

(Source: WOS 2004-06, September 26, 2004, Section XI)

3.112 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source: WOS 2004-06, September 26, 2004, Section XII)

3.113 EFFECTIVE DATE

This Statute shall take effect immediately upon enactment [September 26, 2004].

(Source: WOS 2004-06, September 26, 2004, Section XIII)

3.114 PENDING NEW CONSTITUTION

Since the extraordinary event of a new Secretarial Election for a Tribal Constitution under the Little Traverse Bay Bands of Odawa Indians and Little River Band of Ottawa Indians Act, Public Law 103-324 §8, 25 U.S.C. § 1300k-6, and the Indian Reorganization Act, 25 U.S.C. § 476 is scheduled to take place on February 1, 2005 in such close proximity to the regularly scheduled Tribal Council election, this statute will take measures to avoid voter disenfranchisement and voter confusion caused by the overlap in the two election schedules.

Unless action to move forward on the Secretarial Election for a Tribal Constitution ceases, the Tribal Council election and all deadlines specified for it in this statute will be temporarily suspended. The suspension shall last until the results of the election on the new constitution are finalized or until the date of March 31, 2005, whichever occurs first. Under these circumstances, the current method of voter registration for Tribal Council elections shall be suspended and all Tribal Citizens who shall reach age of 18 by the day of the election shall be considered registered to vote for the 2005 Tribal Council election. Registration for future elections shall be conducted in accordance with Waganakising Odawak Statute 2004-06.

If the new constitution is adopted then all future elections shall be conducted in accordance with its terms. The Tribal Council members in place at the time of adoption of the new constitution shall remain in place until the election and swearing in of the new Tribal Council, Chair and Vice Chair as required by the new constitution.

In the event LTBB citizens fail to adopt such new constitution, the Election Board shall conduct an election under the interim constitution and this statute. Should the new constitution fail to be adopted by Tribal citizens then the Election Board shall conduct the regularly scheduled 2005 Tribal Council election without allowing for a primary in order to complete the regularly scheduled Tribal Council election by June 2005.

Effective Date: This Amendment takes effect immediately upon enactment [November 7, 2004].

(Source: WOS 2004-07, November 7, 2004)

TITLE IV. NATURAL RESOURCE PROTECTION

Chapter 1. Fishing Rules and Regulations for The Treaty Ceded Waters of Lakes Superior, Huron and Michigan

4.101 PURPOSE

On August 17, 1997, the Little Traverse Bay Bands of Odawa Indians' ("LTBB") Tribal Council enacted Waganakising Odawak Statute 1997016 titled "Little Traverse Bay Bands of Odawa Indians Commercial and Subsistence Fishing Rules and Regulations for The Treaty Ceded Waters of Lakes Superior, Huron and Michigan" which replaced Waganakising Odawak Statutes 1995-004 and 1994-001. Subsequent to the enactment of Waganakising Odawak Statute 1997016, LTBB became a party in

the Federal Court Case of *United States, et al. v. Michigan*, United States District Court for the Western District of Michigan, Case no: 2:73 CV 26. As party to that case, LTBB participated in negotiations, which culminated in the entry by the Court of a Consent Decree on August 7, 2000, which is binding on LTBB. The Consent Decree states that "[t]he Tribes shall adopt the CORA Charter, Tribal Plan, and Tribal Code for management and regulation of their fisheries. . ."

(Source: WOS 2003-09, December 7, 2003, Section I)

4.102 DEFINITIONS

A. "Consent Decree" means the Consent Decree entered by the United States District Court for the Western District of Michigan by Judge Richard Enslen on August 7, 2000 in the case of *United States et al. v. Michigan*, Case No 2:73 CV 26.

B. "Tribal Code" means the *Chippewa Ottawa Resource Authority Commercial, Subsistence, and Recreational Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron, and Michigan*, including any future changes adopted in accordance with the Tribal Plan and the Consent Decree which the Consent Decree mandates the party Tribes adopt.

C. "Tribal Plan" means the *Management Plan for the 1836 Treaty Great Lakes Waters* adopted by the Tribes and attached to the Consent Decree as Appendix B, including any future changes adopted in accordance with the Tribal Plan and the Consent Decree.

(Source: WOS 2003-09, December 7, 2003, Section II)

4.103 REPEAL AND REPLACEMENT OF PRIOR LEGISLATION

A. Waganakising Odawak Statute 1997016 is repealed and replaced by the Tribal Code defined in Section II of this Statute.

(Source: WOS 2003-09, December 7, 2003, Section III)

4.104 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of the Tribal Code as defined in and adopted under 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 phrase, part, provision, paragraph, subsection or section 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.

(Source: WOS 2003-09, December 7, 2003, Section IV)

4.105 EFFECTIVE DATE

This Statute takes effect immediately upon enactment. [December 7, 2003]

(Source: WOS 2003-09, December 7, 2003, Section V)

NOTE: The *Chippewa Ottawa Resource Authority Commercial, Subsistence, and Recreational Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron, and Michigan* adopted by the Little Traverse Bay Bands under this Title IV, Chapter 1 (WOS 2003-09) is printed below. The document is subject to periodic revision by the Chippewa Ottawa Resource Authority. Tribal member commercial and subsistence fishers and Court personnel can obtain updates through the LTBB Natural Resources Department.

CHIPPEWA OTTAWA RESOURCE AUTHORITY COMMERCIAL, SUBSISTENCE, AND RECREATIONAL FISHING REGULATIONS FOR THE 1836 TREATY CEDED WATERS OF LAKES SUPERIOR, HURON, AND MICHIGAN

PART ONE: GENERAL MATTERS

SECTION I. PURPOSE.

These Regulations are adopted to govern the commercial, subsistence, and recreational fishing activities of members of the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Little Traverse Bay Bands of Odawa Indians, and the Sault Ste. Marie Tribe of Chippewa Indians in exercising the Great Lakes fishing rights reserved by the Tribes in the Treaty of March 28, 1836. These Regulations are intended to ensure conservation of the fishery resource for future generations of the Tribes and to ensure safe fishing practices.

SECTION II. SCOPE AND APPLICATION.

These Regulations apply to the commercial, subsistence, and recreational fishing activities of all enrolled members of the Tribes in the 1836 Treaty waters and are in compliance with and implement the Consent Decree and the Management Plan.

SECTION III. DEFINITIONS.

The following terms have the meanings indicated:

(a) "1836 Treaty waters" means all waters of Lake Huron, Lake Michigan, Lake Superior, and connecting waters, which are within the area ceded in Article First of the Treaty of March 28, 1836, 7 Stat. 491.

(b) "Break wall" means a man-made barrier that breaks the force of waves, as before a harbor.

(c) "BSD" means Biological Services Division, which is the biological staff of CORA.

(d) "Commercial fishing" means a fishing activity engaged in for the purpose of sale of fish or parts of fish.

(e) “Consent Decree” means the Consent Decree entered in United States v. Michigan, W.D. Mich. Case No. 2:73 CV 26 on August 8, 2000, including any future modifications made by the Court.

(f) "CORA" means the Chippewa Ottawa Resource Authority, an organization formed by the Tribes which has been delegated certain management and regulatory authority, including the authority to promulgate these Regulations.

(g) “Director” means the Director of the BSD.

(h) “Enforcement Officer” means:

(1) any conservation officer or game warden of a Tribe; or

(2) any conservation officer of the Michigan Department of Natural Resources; or

(3) any enforcement agent of the Bureau of Indian Affairs or the United States Fish and Wildlife Service authorized to enforce the provisions of Title 25, Code of Federal Regulations, Part 249; or

(4) any person authorized by a Tribe’s ordinance to enforce these Regulations, including enforcement officers of the Great Lakes Indian Fish and Wildlife Commission if authorized by ordinance of a Tribe; or

(5) any other person authorized by CORA to enforce these Regulations.

(i) “Fishing” or “fishing activity” means fishing for, catching, or taking any species of fish, or attempting to fish for, catch, or take any species of fish from 1836 Treaty waters, including all related activities, which occur in or on the water or ice, until such time as the vessel or vehicle is moored, tied up, or grounded.

(j) "Gill net" means a wall of webbing held vertically in the water by weights and floats, and designed to capture fish by means of entanglement.

(k) "GLRC" means the Great Lakes Resources Committee, the committee of CORA charged with promulgating these Regulations and making other management decisions concerning Tribal fishing in the 1836 Treaty waters.

(l) "Grid" means a geographical unit based on ten (10) minutes of latitude by ten (10) minutes of longitude and commonly used by Tribal, State, provincial, and federal governments for reporting fishery statistics. For the purpose of these Regulations, the area of a grid shall include only those portions of a grid that are within the boundaries of the State of Michigan and the 1836 Treaty

waters.

(m) "Impoundment net" means a net designed to capture fish by deflection and to retain them in a live condition until removed (e.g., trap, pound, fyke, or hoop nets, etc.).

(n) "Large mesh gill net" means a gill net having a diagonal stretch mesh measurement of four and one-half (4.5) inches or greater.

(o) “Management Plan” means the *Management Plan for the 1836 Treaty Great Lakes Waters* adopted by the Tribes and attached to the Consent Decree as Appendix B, including any future changes adopted in accordance with the Management Plan and the Consent Decree.

(p) “Maps” means the attached maps of 1836 Treaty waters, which depict various types of zones, management units, refuges, and other areas defined in these Regulations.

(q) "Mile" means statute mile.

(r) "Pier" means a permanent man-made structure built for use by the public extending from land out over the water.

(s) “Recreational fishing” means fishing activity conducted in accordance with Section XVII of these Regulations.

(t) “Regulations” or “these Regulations” means the provisions of this document, including any subsequent modifications or amendments and, for jurisdiction and enforcement purposes, any Tribal regulations adopted in accordance with Section XXIV and any order of the Director issued under Section XXV.

(u) "Round weight" means the total weight in pounds of fish prior to any form of processing, dressing, or eviscerating, and includes the weight of the head, entrails, and skin.

(v) “Seine” means a net used to enclose fish when its ends are pulled together and are drawn to shore or to a vessel.

(w) "Small mesh gill net" means a gill net having a diagonal stretch mesh measurement of two and one-half (2.5) through three (3.0) inches.

(x) "Subsistence fishing" means a Treaty fishing activity solely to provide fish for personal or family consumption and not for sale or exchange, but does not include recreational fishing.

(y) "Trap net" means an impoundment net consisting of a lead, heart, tunnel, and pot or crib, the webbing of which is held on the lake bottom by leads and upright in the water by floats and held in place by anchors.

(z) "Tribes" (or individually, “Tribe”) means the five (5) Tribes who are members of

CORA: the Bay Mills Indian Community ("Bay Mills"), Grand Traverse Band of Ottawa and Chippewa Indians ("Grand Traverse"), Little River Band of Ottawa Indians ("Little River"), Little Traverse Bay Bands of Odawa Indians ("Little Traverse"), and Sault Ste. Marie Tribe of Chippewa Indians ("Sault Tribe").

(aa) "Unattended nets" means nets, which have been tagged by an enforcement officer as such for at least four (4) days, except when fishing through the ice, which the fisher refuses to tend upon reasonable notice from an enforcement officer, or nets which contain entirely decayed fish.

PART TWO: ZONES

SECTION IV. COMMERCIAL FISHING ZONES.

Subject to the provisions of these Regulations, including its closures and restrictions, the following waters are open to Tribal commercial fishing by members of one or more of the Tribes:

(a) The tribal zones described in Section V.

(b) The intertribal zones described in Section VI.

(c) The trap net zones described in Section VII.

SECTION V. TRIBAL ZONES.

(a) General Provisions. Tribal zones are established as provided in this Section. Except as may otherwise be provided in the Consent Decree or the Management Plan, and subject to these Regulations, each Tribe, within all or any portion of its tribal zone, may prohibit commercial fishing or subsistence fishing by fishers from other Tribes, or allow commercial or subsistence fishing by members of other Tribes by issuance of permits to such fishers. Permits may impose restrictions on commercial fishing in the Tribe's tribal zone by fishers from other Tribes that are in addition to or more restrictive than those contained in these Regulations. The following fishing activities are prohibited in tribal zones:

(1) Fishing in the tribal zone of a Tribe when such activity has been prohibited by that Tribe.

(2) Fishing in the tribal zone of a Tribe without a permit from that Tribe when such permit is required.

(3) Fishing in the tribal zone of a Tribe in violation of any permit condition or regulation imposed by that Tribe.

(b) Little Traverse Tribal Zone.

(1) Description: Lake Michigan grids 517 through 519, the southeast quarter (SE¼) of grid 314, and the south half (S½) of grid 415.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Commercial fishing in grid 518 shall be:

(A) Open to trap net fishing year round;

(B) Closed to large mesh gill net fishing except as follows:

a. From October 1 through April 30 west of a line running from Townline Road on the south to the Stuttsmanville Road tower on the north; and

b. From May 1 through September 30 west of a line from Nine Mile Point on the south to Seven Mile Point on the north.

(ii) Large mesh gill net operations in the south half (S½) and northeast quarter (NE¼) of grid 517 and that portion of grid 518 in which large mesh gill net commercial fishing is permitted shall not exceed 12,000 feet of large mesh gill net in the water at any time.

(iii) Fishing for yellow perch in the portion of grid 518 described in Section XIV(a)(4) is permitted subject to the provisions of Section XIV.

(c) Grand Traverse Tribal Zone.

(1) Description: Lake Michigan grids 615, 616, 712 through 716, 812 through 816, 911 through 916, 1011, and the south half (S½) of grid 614.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Trap net operations. This zone is open to trap net operations year round except for grids 915 and 916.

(ii) Large mesh gill net operations:

(A) Grids 615, 616, 715, 716, the south half (S½) of grid 614, and the northern portion of grids 815 and 816 extending one (1) mile south from their northern boundary shall be open year round to large mesh gill net fishing.

(B) Grids 712 and 713 shall be open to large mesh gill net fishing from the day after Labor Day through June 15.

(C) Grid 714 shall be open to large mesh gill net fishing from the day after Labor Day through April 30.

(D) In grids 712, 713, and 714, large mesh gill nets shall be set at depths of thirty (30) feet or deeper from January 1 through April 30 and from the day after Labor Day through September 30, except when fishing for salmon pursuant to Section XII(b).

(E) In addition to the provisions of sub. (D), above, in grids 712 and 713, large mesh gill nets shall be set at depths of fifty (50) feet or less from May 1 through June 15.

(iii) Small mesh gill net operations:

(A) This zone shall be open to small mesh gill net fishing for chubs year round, except that grids 915, 916, and the portion of grids 815 and 816 south of a line one (1) mile south of their northern boundary are closed to all small mesh gill net fishing.

(B) Grids 615, 712, 713, 714, 715 [except for that portion described in Section XIII(a)(1)(i)], 716, and the south half (S½) of grids 614 and 616 shall be open year round to small mesh gill net fishing for yellow perch and walleye.

(d) Little River Tribal Zone.

(1) Description: Lake Michigan grids 1107 through 1111, 1207 through 1211, 1306 through 1310, and 1406 through 1410.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Trap Net Operations. This zone and that portion of the Lake Michigan Southern Development Zone [see Section VI(c)] which is within whitefish management unit WFM-07 shall be open to up to two (2) Tribal trap net operations, not exceeding twelve (12) nets each. Trap net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(ii) Small Mesh Gill Net Operations. This zone and that portion of the Lake Michigan Southern Development Zone [see Section VI(c)] which is within whitefish management unit WFM-07 shall be open to fishing up to two (2) Tribal small mesh gill net operations, not exceeding 24,000 feet of net each. Small mesh gill net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(iii) Commercial fishing with large mesh gill nets is prohibited in this zone.

(e) Bay Mills Small Boat Zone.

(1) Description: Those portions of Lake Huron grids 505 and 506 which lie south of a line from Hammond Bay Harbor buoy to the northeast corner of grid 506.

(2) Regulations. Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Commercial fishing shall be restricted to October 1 through December 31, and subject to a spawning closure as described in Section IX(g).

(ii) Effort shall be limited to no more than ten (10) small boats (twenty six [26] feet or less) fishing a maximum of 6,000 feet of large mesh gill net per boat. This limitation includes any boat used for assessment purposes. Fishing by any Tribal fisher not authorized to fish by Bay Mills is prohibited.

(iii) Except as may be authorized for assessment fishing, nets must be set in water seventy-five (75) feet deep or less.

(iv) All live lake trout shall be released.

(v) Commercial fishing by Sault Tribe fishers is prohibited in this zone.

(f) Sault Tribe Tribal Zone.

(1) Description: Those portions of Lake Huron within one (1) mile from shore and delineated by the following landmarks:

(i) St. Martin's Bay zone - from Rabbit Back Point north and east to Brulee Point.

(ii) Cordwood Point zone - from Cordwood Point south to a point one half (0.5) mile north of the Hammond Bay harbor light.

(2) Regulations. Subject to the provisions of these Regulations, the following regulations apply in this zone:

(i) The waters described in sub. (1), above, shall be the Sault Tribe Tribal Zone only during the salmon seasons set forth in Section XII(c)(2). At all other times, these waters shall be part of the Northern Lake Huron Inter-Tribal Fishing Zone. See Section VI(d).

(ii) Other restrictions applicable to this zone are set forth in Section XII(c).

(iii) Commercial fishing for salmon by Bay Mills fishers is prohibited in the portion of this zone described in sub. (1)(ii), above.

SECTION VI. INTERTRIBAL ZONES.

(a) Northern Lake Michigan Inter-Tribal Fishing Zone.

(1) Description: Lake Michigan grids 115 through 118, 211 through 220, 310 through 320, 409 through 419, 509 through 516, 613, and the north half (N½) of 614, except for the southeast quarter (SE¼) of grid 314 and the south half (S½) of grid 415.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) This zone shall be open to fishers from all Tribes.

(ii) Fishers from Bay Mills, Little River, and Sault Tribe shall be limited to four hundred (400) pounds round weight of lake trout per vessel per day caught within the following grids: Lake Michigan grids 315, 316, 317, 318, 319, 320, 417, 418, 419, and the north half (N½) of grids 313, 314, and 415.

(iii) Each Tribal trap net operation shall be limited to twelve (12) trap nets in the water at any one time within the following grids: 313, 314, 315, 316, 317, 318, 319, 320, 413, 414, 415, 416, 417, 418, and 419.

(b) Lake Michigan Northern Development Zone.

(1) Description: Lake Michigan grids 610 through 612, 709 through 711, 808 through 811, 908 through 910, and 1008 through 1010.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Grids 711, 811, 910, and 1010 shall be open to Grand Traverse trap net operations targeting whitefish; provided, that the aggregate net effort shall not exceed twelve (12) nets in the water at any one time.

(ii) Except as provided in sub. (i), above, tribal commercial fishing in this zone shall be limited to a permit fishery targeting bloater chubs.

(iii) Tribal commercial fishing for all other species is prohibited.

(c) Lake Michigan Southern Development Zone.

(1) Description: All 1836 Treaty waters of Lake Michigan south of the northern boundary of the 1500 tier of grids.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Trap Net Operations. The portion of this zone that is within whitefish management unit WFM-08 shall be open to one (1) Tribal trap net operation, not to exceed twelve (12) nets. Trap net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(ii) Small Mesh Gill Net Operations: The portion of this zone that is within whitefish management unit WFM-08 shall be open to one (1) Tribal operation not exceeding 24,000 feet of net. Small mesh gill net fishing by any Tribal fisher not authorized to fish by Little River in such waters is prohibited.

(iii) Commercial fishing with large mesh gill nets is prohibited in this zone.

(iv) This zone shall be managed and regulated in the same manner as the Little River Tribal Zone in accordance with Section V(a).

(d) Northern Lake Huron Inter-Tribal Fishing Zone.

(1) Description: Lake Huron grids 202, 207 through 209, 301 through 309, 401through 410, 504, and those portions of grids 505 and 506 which lie north of a line from Hammond Bay Harbor buoy to the northeast corner of grid 506, except for those portions of grids 303 and 304 closed to all commercial fishing as described in Section VIII(e).

(2) Regulations: Subject to the provisions of these Regulations, the following regulations shall apply in this zone:

(i) Except as provided in sub. (iii), below, this zone shall be open to fishers from all Tribes.

(ii) The area described in Section VIII(f) shall be closed to commercial fishing beginning the Friday before Memorial Day through Labor Day.

(iii) The following restrictions apply to large mesh gill net operations in that portion of Lake Huron grids 505 and 506 that lies north of the line described in sub. (1), above:

(A) Effort shall be restricted to a maximum of 8,500 feet of net per vessel; and

(B) Fishing shall be limited to depths of seventy-five (75) feet or deeper from the Friday before Memorial Day through Labor Day.

(e) Lake Superior Inter-Tribal Fishing Zone.

(1) Description: All Lake Superior water east of the western edge of grids 934, 1034, 1134, 1234, 1334, 1434, 1534, and 1634.

(2) This zone shall be open to fishers from all Tribes subject to the provisions of these Regulations.

SECTION VII. TRAP NET ZONES.

(a) Bay de Noc Trap Net Zone.

(1) Description: Lake Michigan grids 306, 308, 309, 406 through 408, and 506 through 508.

(2) Regulations: Subject to the provisions of these Regulations, the following regulations apply in this zone:

(i) All Tribal commercial and subsistence fishing is prohibited west of a line extending from the mouth of the Escanaba River in Delta County due east to the center of the shipping channel, thence due south to the Michigan-Wisconsin border.

(ii) Except as provided in sub. (v), below, Tribal commercial fishing by any method other than trap nets is prohibited.

(iii) Each trap net operation may set no more than fifteen (15) trap nets at any one time.

(iv) Little Traverse may locate one (1) trap net operation within this zone, and the remainder of the trap net operations shall be Sault Tribe fishers. Commercial fishing with trap nets by fishers from any other Tribe, or by fishers from Little Traverse or Sault Tribe who have not been authorized to fish in this zone by their Tribe, is prohibited.

(v) Notwithstanding the above, fishing for yellow perch in the portion of grid 508 described in Section XIV(a)(2) is open to all Tribes in accordance with Section XIV.

(b) Southern Lake Huron Trap Net Zone.

(1) Description: Lake Huron grids 507 through 512, 606 through 611, 709, and those portions of grids 612, 613, 710, 711, and 810 which are north of a line from the mouth of the Thunder Bay River in a straight line northeast through the northeast corner of grid 711 to the international border.

(2) Regulations: Subject to the other provisions of these Regulations, the following regulations apply in this zone:

(i) Except as provided in sub. (v), below, Tribal commercial fishing by any method other than trap nets shall be prohibited.

(ii) Trap net fishing in this zone shall be open only to Bay Mills and Sault Tribe trap

net fishers by permit. Trap net fishing by fishers from Grand Traverse, Little River, and Little Traverse is prohibited. The permits shall be allocated equally between Bay Mills and Sault Tribe. If a Tribe has insufficient fishers interested in the permits allocated to it, the excess permits shall be made available for issuance by the other Tribe.

(iii) A total of four (4) trap net operations shall be authorized for this zone. Trap net fishing by fishers from Bay Mills and Sault Tribe who have not been authorized by their Tribe to fish in this zone is prohibited.

(iv) Each trap net operation may set no more than twelve (12) trap nets at any one time within the zone.

(v) Fishing for chubs with small mesh gill nets or small mesh trap nets shall be authorized only by permit issued by CORA. Such permits shall be available to fishers from any Tribe.

(vi) Bay Mills and Sault Tribe may authorize the Tribal fishers permitted to fish with trap nets in this zone to obtain permits from the State to fish with trap nets in those waters within the State of Michigan south of the southern boundary of this zone and north of a line from the tip of North Point on Thunder Bay in a straight line northeast parallel to the southern boundary of this zone to the international border. The aggregate net effort allowed by all such permits shall not exceed sixteen (16) nets.

(c) Western Lake Superior Trap Net Zone.

(1) Description: All 1836 Treaty waters west of the western edge of grids 934, 1034, 1134, 1234, 1334, 1434, 1534, and 1634.

(2) Tribal commercial fishing by any method other than trap nets is prohibited.

SECTION VIII. CLOSED OR LIMITED FISHING ZONES.

Except as otherwise provided in this section, Tribal commercial fishing is prohibited in the following areas:

(a) The St. Mary's River, east of a line extending from Point Aux Pins, Ontario, to Brush Point, Michigan, downstream to the Detour - Drummond Island ferry docks, including all of Potagannissing Bay from Hay Point (Drummond Island) west to Cherry Island and north to the international boundary.

(b) Lake Michigan grid 519 in Little Traverse Bay.

(c) Lake Michigan grids 915 and 916 in Grand Traverse Bay.

(d) Those portions of Lake Michigan grid 306 that lie within 1836 Treaty waters and north of a line from the mouth of the Ford River to Peninsula Point.

(e) Those portions of Lake Huron grids 303 and 304 described as follows: The Les Cheneaux channels, or entrances thereto, or waters adjacent thereto within a line drawn as follows: beginning at the southernmost point of land on the westerly side of McKay Bay; then southerly in a straight line to the northernmost point of Boot Island; then along the eastern shore of Boot Island to its southernmost point; then along the south shoreline of Boot Island to its westernmost point; then westerly in a straight line to the southernmost point of Government Island; then along the shoreline of Government Island to the point at which the distance between said island and LaSalle Island is the least, then westerly in a straight line to LaSalle Island; then along the eastern and southern shoreline of LaSalle Island to the point at which the distance between said island and Little LaSalle Island is the least; then westerly in a straight line to Little LaSalle Island; then westerly along the southern shoreline of Little LaSalle Island to its westernmost point; then westerly in a straight line to the eastern shore of Marquette Island; then along the southwestern shore of Marquette Island to Coats Point; then northwesterly to the southernmost part of Brulee Point, except that trap net fishing targeting whitefish shall be permitted in that portion of Lake Huron grid 303 within the area encompassed by a line from Coats Point on Marquette Island along the western shore of said island to Cube Point; then due west to the shore of Brulee Point; then southeasterly along said shore to the southern tip of Brulee Point; then southeasterly to Coats Point on Marquette Island.

(f) For the period from the Friday before Memorial Day through Labor Day only, those portions of Lake Huron grids 304 and 305 north of a line beginning at the southerly point of land on the easterly side of Dudley Bay (Cadogan Point); then running southwesterly in a straight line to the southeasterly end of Beaver Tail Point; then running westerly in a straight line to the southeasterly end of Whitefish Point in Mackinac County.

(g) Any area within one hundred (100) yards of any break wall or pier; provided, that this prohibition shall not apply to salmon fishing authorized by these Regulations.

(h) Any area within three-tenths (0.3) mile radius of the mouth of the following streams; provided, that this prohibition shall not apply to salmon fishing authorized by these Regulations:

(1) Lake Superior.

(i) Marquette County: Chocolay River and Sand River;

(ii) Alger County: Laughing Whitefish River, Autrain River, Anna River, Mosquito River, Seven Mile Creek, and Hurricane River;

(iii) Luce County: Blind Sucker River, Big Two Hearted River, and Little Two Hearted River; and

(iv) Chippewa County: Tahquamenon River and Pendills Creek.

(2) Lake Huron.

(i) Mackinac County: Nunns Creek, Pine River, and Carp River;

(ii) Cheboygan County: Cheboygan River;

(iii) Presque Isle County: Ocqueoc River, Swan River, and Grand Lake Outlet;

(iv) Alpena County: Thunder Bay River.

(3) Lake Michigan.

(i) Delta County: Escanaba River, Days River, Tacoosh River, Rapid River, Whitefish River, Ogontz River, Sturgeon River, Big Fishdam River, and Little Fishdam River;

(ii) Schoolcraft County: Thompson Creek, Manistique River, and Milakokia River;

(iii) Mackinac County: Crow River, Millecoquins River, Black River, Paquin Creek, Cut River, and Brevort River;

(iv) Emmet County: Carp Lake River and Bear River;

(v) Charlevoix County: Pine River;

(vi) Antrim County: Elk River;

(vii) Grand Traverse County: Boardman River;

(viii) Leelanau County: Leland River;

(ix) Benzie County: Platte River and Betsie River;

(x) Manistee County: Arcadia Lake Outlet, Portage Lake Outlet, and Manistee River;

(xi) Mason County: Pere Marquette River;

(xii) Oceana County: Pentwater Lake Outlet, Silver Creek, and Stoney Creek;

(xiii) Muskegon County: White River and Muskegon River; and

(xiv) Ottawa County: Grand River.

(i) The following provisions for harbor closures shall apply:

(1) The area within one-half (0.5) mile of the break walls at the Hammond Bay Harbor of Refuge; provided, that in that portion of this closure that lies within the Bay Mills Small Boat Zone described in Section V(e)(1), the closure shall be reduced to three-tenths (0.3) mile during any period in which fishing in that zone is restricted to depths of seventy-five (75) feet or less.

(2) The area within two (2) miles of the break walls at Rogers City.

PART THREE: GEAR

SECTION IX. GEAR RESTRICTIONS.

(a) The following are the only types of gear, which shall be permitted for commercial fishing activity:

(1) Large mesh gill nets;

(2) Small mesh gill nets;

(3) Impoundment nets;

(4) Seines; and

(5) Hooks.

(b) Trap nets shall have a four and one-half (4.5) inch (stretch) minimum pot mesh size, except:

(1) Trap nets of four and one-quarter (4.25) inches pot mesh size or greater may be used if they were used within 1836 Treaty waters prior to May 31, 2000.

(2) Small mesh trap nets having a two and one-half (2.5) to three (3.0) inch (stretch) pot mesh size may be used for fishing for yellow perch, chubs, or other appropriate species as authorized by GLRC.

(c) All nets shall be clearly marked at each end with a buoy on the surface, showing the license number of the owner. Commencing in 2002, nets shall be marked as follows:

(1) All gill nets set in depths greater than fifteen (15) feet shall have a staff buoy at each end with at least four (4) feet exposed above the surface of the water with a red or orange flag no less than twelve (12) inches by twelve (12) inches bearing the license number of the fisher and affixed to the top of the staff. Ice poles, painted red or orange on the top and bearing the license number of the fisher, may be used between November 1 and May 31 in Lake Superior waters,

and between November 1 and April 30 in all other 1836 Treaty waters.

(2) Any gill net or portion of a gill net set in water less than fifteen (15) feet deep shall have: a red or orange float not less than one (1) gallon in size, or a red or orange PVC float that is at least six (6) inches by fourteen (14) inches in size, on each end that is in water less than fifteen (15) feet deep. The floats at the ends of the net shall bear the license number of the fisher. In addition, each such net shall also have either:

(i) An additional float of the size described above spaced every three hundred (300) feet or less along the length of the net that is in water less than fifteen (15) feet; or

(ii) Standard commercially available fluorescent orange floats at least one and one-half (1.5) inches by four (4) inches in size along the cork line not less than every twelve (12) feet in water less than fifteen (15) feet.

(3) All trap nets must be marked with a staff buoy on the pot with at least four (4) feet exposed above the surface of the water with a red or orange flag no less than twelve (12) inches by twelve (12) inches bearing the license number of the fisher and affixed to the top of the staff. Ice poles, painted red or orange on the top and bearing the license number of the fisher, may be used between November 1 and May 31 in Lake Superior waters, and between November 1 and April 30 in all other 1836 Treaty waters. From May 1 to November 7, the king anchor and inside end of the lead shall also be marked with a red or orange float not less than one (1) gallon in size.

(d) No Tribal commercial fisher shall use large mesh gill nets with mesh greater than five and one-half (5.5) inches stretch measurement at any time in any 1836 Treaty waters except as follows:

(1) When fishing for salmon under these Regulations; or

(2) When fishing in Lake Superior Lake Trout Management Unit MI-8 using large mesh gill nets that were used in that area prior to May 31, 2000.

(e) The use of any gear, mesh size, or method of capturing fish for commercial purposes not authorized by subs. (a) through (d), above, is prohibited.

(f) Tribal commercial fishing gear shall not be set in a manner, which completely blocks or entirely prevents the free passage of fish into and out of streams that flow into 1836 Treaty waters.

(g) All commercial fishing with impoundment nets and large mesh gill nets shall be prohibited during the period from 12:00 noon November 6 through 12:00 noon November 29 to protect spawning lake trout and whitefish. Trap nets may remain in the water during this period, but trap net tunnels must be tied closed. During this period, fishing for or retention of whitefish or lake trout caught in any gear is prohibited.

(h) Commercial fishing with small mesh gill nets in six (6) fathoms of water or less shall

be prohibited from 12:00 noon October 15 through 12:00 noon November 15.

(i) The use of small mesh gill nets in Lakes Huron and Michigan in waters between fifteen (15) fathoms and forty (40) fathoms is prohibited at all times.

(j) The trap net operations received by Little Traverse as described in section X.A.2.b. of the Consent Decree may also be used for fishing large mesh gill nets for salmon only and for fishing small mesh gill nets for all permitted species. Large mesh gill net fishing by these operations for any species other than salmon is prohibited.

(k) Possession of a firearm while engaged in fishing activity under these Regulations is prohibited.

(l) Unattended nets may be seized by an enforcement officer and forfeited; provided, that if the nets have been reported to the appropriate Tribe as vandalized or lost prior to seizure, the fisher shall be provided a reasonable opportunity to retrieve the nets.

(m) Floating buoy line on the surface of the water shall not exceed 5' (five feet) in length.

SECTION X. STATE-FUNDED TRAP NET CONVERSION OPERATIONS.

(a) Upon acceptance of a state-funded conversion trap net operation under section X.C. of the Consent Decree, use or possession on the water of large mesh gill nets by a converted Tribal fisher is prohibited, except as provided in sub. (c), below.

(b) Use or possession on the water of small mesh gill nets is prohibited on state-funded conversion trap net vessels, except for the taking of chubs and menominee.

(c) A Tribal fisher who converts to trap nets under section X.C. of the Consent Decree shall not thereafter resume the use of large mesh gill nets except as follows:

(1) Subject to Tribal approval, after two (2) years of use of the trap net operation, the fisher may exchange license and gear with another Tribal licensee who represents at least sixty percent (60%) of the average large mesh gill net effort of the converted fisher during the years 1997 through 1999.

(2) Subject to Tribal approval, a converted fisher may acquire a large mesh gill net operation and license if the fisher has sold his trap net operation and retired from the fishery for a period of two (2) years.

(d) A Tribal fisher who participates in the gill net conversion program under section X.C. of the Consent Decree may sell his or her trap net operation and transfer the fisher's captain's license as provided under current Tribal regulations. Anyone acquiring such a conversion trap net operation shall be subject to the same restrictions as the original conversion program participant.

(e) Any Sault Tribe fisher who converts to trap nets under the program described in Section X.C. of the Consent Decree and who moves his or her fishing operation to one of the trap net zones described in Section VII(a) or Section VII(b) is prohibited from fishing in the following area for a period of two years after his or her conversion: Lake Michigan grids 313, 314, 315, 316, 317, 318, 319, 320, 413, 414, 415, 416, 417, 418, and 419. Thereafter, the fisher may fish in this area only if GLRC authorizes the fisher to do so.

PART FOUR: SPECIES

SECTION XI. LAKE TROUT.

(a) Lake Trout Refuges.

(1) The following areas shall be lake trout refuges:

(i) In Lake Huron, grids 307 through 309, the north half (N½) of grid 407, and grids 408 through 410.

(ii) In Lake Michigan, two (2) locations:

(A) Grids 413, 414, 513, 514, 515, 516, and 613; the south half (S½) of grids 313, 314, and 415; the north half (N½) of grid 614; and the northwest quarter (NW¼) of grid 517.

(B) Grids 1606, 1607, 1706, 1707, 1806, 1807, 1906, and 1907.

(2) Commercial and subsistence fishing with gill nets is prohibited in any refuge.

(3) Commercial fishing with trap nets is permitted in any refuge, but retention of lake trout is prohibited.

(4) Retention of lake trout caught by commercial, subsistence, or recreational fishers in any lake trout refuge is prohibited.

(b) Retention of Lake Trout by Tribal Fishers.

(1) In trap net zones identified in Section VII retention of lake trout caught in trap nets is prohibited. All lake trout caught by such fishers shall be returned to the water whether dead or alive.

(2) All Tribal trap net fishers who have converted their operations to trap net operations at the expense of the State of Michigan, either as part of the gill net conversion program described in section X.C. of the Consent Decree or through any supplemental conversion program

instituted while the Consent Decree is in effect, are prohibited from retaining lake trout. All lake trout caught by such fishers shall be returned to the water whether dead or alive.

(3) A lake trout bag limit not to exceed one hundred (100) pounds round weight per vessel per day shall apply to all other Tribal trap net fishers. No lake trout under seventeen (17) inches long shall be retained.

(4) All live lake trout less than seventeen (17) inches long caught by Tribal gill net fishers shall be released. No more than fifteen (15) pounds round weight per vessel per day of undersized lake trout shall be retained by Tribal gill net fishers. Undersized lake trout shall not be offered for sale.

SECTION XII. SALMON.

Subject to the other provisions of these Regulations, salmon fishing is authorized as provided in this section.

(a) Little Traverse Salmon Fishery. A limited entry permit salmon fishery in Lake Michigan for Little Traverse fishers is authorized subject to the following restrictions:

(1) Salmon fishing by Little Traverse fishers shall be permitted within one (1) mile from shore from Seven Mile Point in grid 518 north to McGulpin Point in grid 320, from 12:00 a.m. August 1 through 6:00 p.m. October 15.

(2) Nets may be fished at the surface in this fishery from 12:00 a.m. September 10 through 6:00 p.m. October 15. At all other times during the salmon season in this salmon fishery, nets shall be set at least eight (8) feet below the surface.

(b) Grand Traverse Salmon Fishery. A salmon fishery in Lake Michigan for Grand Traverse fishers is authorized subject to the limitations of this subsection:

(1) Salmon fishing shall be permitted from 12:00 a.m. September 15 through 6:00 p.m. October 30 in grid 615, the south half (S½) of grid 614, and in that portion of grid 714 which is north of an east-west line commencing three-tenths (0.3) mile north of mouth of the Leland River.

(2) Salmon fishing shall be permitted from 12:00 a.m. the day after Labor Day through 6:00 p.m. October 30 in those portions of grids 715 and 815 within the boundaries of a line from the tip of Omena Point to buoy *N"2"* off Omena Point, then to buoy *C"1"* off Stony (Suttons) Point, and then due west to the intersection with the Leelanau Peninsula.

(c) Lake Huron Salmon Fishery. A salmon fishery in Lake Huron shall be authorized subject to Section V(f) and the limitations of this subsection:

(1) Fishing for salmon by the Tribal commercial fishers is limited to the Sault Tribe Tribal Zone described in Section V(f)(1).

(2) Salmon fishing shall be permitted from 12:00 a.m. August 1 through 6:00 p.m. October 15 in the St. Martin's Bay zone, and from 12:00 a.m. September 10 through 6:00 p.m. October 15 in the Cordwood Point zone.

(3) Nets may be fished at the surface at any time during the specified salmon seasons in the areas described in subs. (1) and (2), above.

(d) Except as provided in subs. (1), (2), and (3), above, commercial fishing for salmon is prohibited, except for the incidental harvest allowed in sub. (e), below.

(e) Retention of more than two hundred (200) pounds round weight per vessel per day of salmon caught as incidental catch in gill nets in waters and seasons not open to salmon fishing is prohibited.

(f) Retention of salmon caught in trap nets is prohibited. All salmon caught in trap nets must be returned to the water whether dead or alive.

(g) Net Marking. Salmon nets shall be marked in accordance with the following:

(1) Each gang of salmon nets shall be marked at each end with a staff buoy which extends a minimum of five (5) feet above the surface and which:

(i) is at least fifty percent (50%) reflective orange in color;

(ii) has affixed to the top one orange flag twelve (12) inches by twelve (12) inches in size; and

(iii) has affixed the license number of the fisher.

(2) Each gang of nets shall have attached along the top edge of the net orange PVC floats which are at least six (6) inches by fourteen (14) inches in size and which are evenly spaced along the length of the gang at intervals of not more than three hundred (300) feet of net.

(h) Salmon nets shall be set in a manner that permits reasonable ingress and egress by shoreline residents.

SECTION XIII. WALLEYE.

(a) Walleye Fishing Areas. Tribal commercial fishing for walleye is permitted in the following locations, subject to the restrictions in this section and the other provisions of these Regulations:

(1) Lake Michigan grids 116, 117, 118, 218, 219, 615, 712, 713, 714, 715, 716, and the south half (S½) of grids 614 and 616, subject to the following restrictions:

(i) The area in grid 715 north and west of a line from the tip of Northport Point in a direct line to *R"2" Bell* buoy off Northport Point, then due west to the shore, is closed to walleye fishing except from March 16 through April 23. Fishing for walleye during this period shall be limited to depths of twenty (20) feet or less using impoundment nets. All yellow perch shall be returned to the water dead or alive.

(ii) Small mesh gill nets shall be limited to two and three-quarters (2.75) to three (3.0) inch stretch measure in the north half (N½) of grid 715 outside of the area described in sub. (I), above.

(iii) Small mesh gill nets shall not be set in waters greater than ninety (90) feet deep in grids 712, 713, and 714.

(iv) Small mesh gill nets shall not be set in waters less than twenty (20) feet deep or greater than ninety (90) feet deep in grids 615 and 716, the south half (S½) of grids 614 and 616, and the portion of grid 715 outside the area described in sub. (I), above.

(v) Nets set for walleye in grids 712, 713, 714, 715, 716, 615, and the south half (S½) of grids 614 and 616 shall be no more than six (6) feet in height and shall be set with the lead line on the bottom of the lake.

(vi) Grids 615, 712, 713, 714, 715, 716, and the south half (S½) of grids 614 and 616 are within the Grand Traverse Tribal Zone and subject to additional restrictions applicable to that zone.

(2) Lake Huron grids 202, 301 through 306, and 401 through 403, except for those portions of grids 303 through 305 described in Section VIII(e) and seasonally as provided in Section VIII(f).

(3) Lake Superior grid 1646.

(b) Except as provided in sub. (a), above, and subs. (c) and (d), below, Tribal commercial fishing for walleye is prohibited.

(c) Possession of more than fifteen (15) pounds round weight of walleye per vessel per day caught in all 1836 Treaty waters not identified in sub. (a), above, is prohibited.

(d) Possession of more than fifteen (15) pounds round weight of walleye per vessel per day caught in the 1836 Treaty waters identified in sub. (a), above, during a closed season specified in this section is prohibited.

(e) In order to protect walleye spawning stocks, the following shall apply to Tribal commercial fishers in those waters in which walleye commercial fishing is permitted:

(1) Except as provided in sub. (A)(1)(i), above, in Lakes Michigan and Superior, fishing for

walleye is prohibited during the period from 12:00 noon March 15 through 12:00 noon May 1.

(2) In Lake Huron, fishing for walleye is prohibited during the period from 12:00 noon March 15 through 12:00 noon May 15.

(f) Walleye less than fifteen (15) inches long caught in impoundment nets shall be returned to the water dead or alive. Possession of more than fifteen (15) pounds round weight of walleye less than fifteen (15) inches long captured in gill nets is prohibited. No undersized walleye shall be offered for sale.

(g) Retention of walleye caught in the trap net zones identified in Section VII is prohibited. All walleye caught in the trap net zones shall be returned to the water dead or alive.

SECTION XIV. YELLOW PERCH.

(a) Yellow Perch Fishing Areas. Subject to the other provisions of these Regulations and the restrictions contained in this section, the following waters are open to Tribal commercial fishing targeting yellow perch:

(1) Lake Michigan grids 116, 117, 118, 218, 219, 615, 712, 713, 714, 715, 716, and the south half (S½) of grids 614 and 616, subject to the following restrictions:

(i) The area in grid 715 north and west of a line from the tip of Northport Point in a direct line to *R"2" Bell* buoy off Northport Point, then due west to the shore, is closed to commercial fishing for yellow perch.

(ii) Small mesh gill nets shall be limited to two and three-quarters (2.75) to three (3.0) inch stretch measure in the north half (N½) of grid 715 outside of the area described in sub.(I), above.

(iii) Small mesh gill nets shall not be set in waters greater than ninety (90) feet deep in grids 712, 713, and 714.

(iv) Small mesh gill nets shall not be set in waters less than twenty (20) feet deep or greater than ninety (90) feet deep in grids 615 and 716, the south half (S½) of grids 614 and 616, and the portion of grid 715 outside the area described in sub. (I), above.

(v) Nets set for yellow perch in grids 712, 713, 714, 715, 716, 615, and the south half (S½) grids 614 and 616 shall be no more than six (6) feet in height and shall be set with the lead line on the bottom of the lake.

(vi) Grids 615, 712, 713, 714, 715, 716, and the south half (S½) of grids 614 and 616 are within the Grand Traverse Tribal Zone and subject to additional restrictions applicable to that zone.

(2) The northeast quarter (NE¼) of Lake Michigan grid 508, and a narrow strip of water along the eastern part of the northwest quarter (NW¼) of grid 508 near St. Martins Island and described as follows: commencing at the eastern shore of St. Martins Island at forty-five degrees thirty minutes (45_ 30') north latitude; then southward along the shore of St. Martins Island to its southernmost tip; then due south to the intersection of the Michigan-Wisconsin border; then southeastward to the intersection with the eighty-six degrees forty minutes (86_ 40') west longitude; then northward along said longitude to the intersection with forty-five degrees thirty minutes (45_ 30') north latitude; then westward along said latitude to the point of beginning.

(3) Lake Michigan grids 315 to 319 and that portion of grid 320 west of McGulpin Point except:

(i) St. James Harbor west of eighty-five degrees thirty minutes (85_ 30') west longitude; and

(ii) In grid 318, that part east of a line from the westernmost tip of Waugoshance Point to the southeast corner of the grid.

(4) The portions of Lake Michigan grids 418 and 518 described as follows: the area bounded by a line from the church spire at Middle Village southward to a line running from Townline Road on the south to the Stuttsmanville Road tower to the north; then south along that line a distance of three (3) miles; then along a line paralleling the shore and three (3) miles from the shore to a point due west of the church spire at Middle Village; then east to the shore. The portion of this area that is within grid 518 is within the Little Traverse Tribal Zone and is subject to additional restrictions applicable to that zone. The portion of this area in grid 418 shall be open to fishers from other Tribes as determined by Little Traverse in its discretion.

(5) Lake Huron grids 202, 301 through 306, and 401 through 403, except for those portions of grids 303 through 305 closed to tribal commercial fishing under Section VIII(e) and seasonally as provided in Section VIII(f).

(6) Lake Superior grid 1646.

(b) Seasonal Closures. The following seasonal closures shall apply to Tribal commercial fishing for yellow perch:

(1) In order to protect yellow perch spawning stocks, fishing for yellow perch is prohibited during the period from 12:00 noon April 1 through 12:00 noon May 15 in those waters in which fishing for yellow perch is permitted.

(2) In Lake Michigan, the north half (N½) of the southwest quarter (SW¼) of grid 316 shall be closed to yellow perch fishing from and including the Friday before Memorial Day through Labor Day;

(3) In grid 318 in Lake Michigan, the area east of a line from the westernmost tip of Waugoshance Island to the southeast corner of grid 318 shall be closed to yellow perch fishing from and including December 1 through March 31.

(c) Yellow perch fishing in the waters described in sub. (a)(3), above, shall be subject to the following restrictions:

(1) Until 2006, Little Traverse fishers only are allowed to fish for yellow perch in this area in connection with a yellow perch assessment fishery conducted under the direction of the TFC. All other fishing for yellow perch in this area is prohibited.

(2) Yellow perch fishing shall be pursued in water depths between twenty (20) and ninety (90) feet.

(3) Nets set for yellow perch shall be no more than six (6) feet in height and shall be set with the lead line on the bottom of the lake.

(d) Except as provided in sub. (a), above, and subs. (e) and (f), below, commercial fishing for yellow perch is prohibited.

(e) Possession of more than fifteen (15) pounds round weight of yellow perch per vessel per day caught in all 1836 Treaty waters not identified in sub. (a), above, is prohibited.

(f) Possession of more than fifteen (15) pounds round weight of yellow perch per vessel per day caught in the 1836 Treaty waters identified in sub. (a), above, during a closed season specified in this section is prohibited.

(g) Yellow perch less than eight (8) inches long caught in impoundment nets shall be returned to the water dead or alive. Possession of more than fifteen (15) pounds round weight of yellow perch less than eight (8) inches long captured in gill nets is prohibited. No undersized yellow perch shall be offered for sale.

(h) Except as provided in sub. (a)(2), above, retention of yellow perch caught in the trap net zones identified in Section V is prohibited. All yellow perch caught in the trap net zones shall be returned to the water dead or alive.

SECTION XV. OTHER SPECIES.

(a) The commercial harvest of lake trout, salmon, walleye, yellow perch, whitefish, bloater chubs, menominee, lake herring, and any other species is authorized unless specifically prohibited in Section XVI.

(b) Whitefish. Whitefish less than seventeen (17) inches long shall be returned to the water immediately if alive. Possession of more than fifty (50) pounds round weight of undersized whitefish is prohibited. No undersized whitefish shall be offered for sale.

(c) Lake Herring. In order to protect lake herring spawning stocks, the following shall apply to Tribal commercial fishers during the period from 12:00 noon November 15 through 12:00 noon

December 15:

(1) Fishing for lake herring is prohibited.

(2) Possession of more than four hundred (400) pounds round weight of lake herring is prohibited.

SECTION XVI. PROHIBITED SPECIES.

(a) The following fish species shall not be targeted for harvest or offered for sale or exchange when taken as by catch during commercial fishing activities: muskellunge (except in Lake Michigan), splake, brown trout, brook trout, rainbow (steelhead) trout, Atlantic salmon, largemouth and smallmouth bass, and northern pike. Retention of such species when taken as by catch during commercial trap net fishing is prohibited. Retention of more than twenty-five (25) pounds round weight per vessel per day of such species as by catch during commercial gill net fishing is prohibited.

(b) The following fish species shall not be targeted for harvest or offered for sale or exchange when taken as a by catch during commercial fishing, and any catch shall immediately be returned to the water if alive or, if not alive, shall be turned in to the BSD, Tribal biological staff, or the nearest Michigan Department of Natural Resources field office and shall not be retained in possession: lake sturgeon, muskellunge (Lake Michigan only), and any fish species listed as threatened or endangered under the Federal Endangered Species Act.

PART FIVE: NON-COMMERCIAL FISHING

SECTION XVII. RECREATIONAL FISHING.

Tribal members may engage in recreational fishing in the 1836 Treaty waters subject to the bag limits, seasons, size limits, closed areas, and gear and method restrictions applicable to recreational fishers licensed by the State of Michigan. Tribal members engaged in recreational fishing must have a Tribal membership identification card in their possession, but no further license is required.

SECTION XVIII. TRIBAL CHARTER BOAT OPERATIONS.

(a) Any Tribe, which authorizes or conducts a charter boat operation, shall adopt safety inspection standards for its charter operations substantially similar to those that exist under current State law for vessels carrying passengers for hire.

(b) Customers of Tribal charter operations who are not members of one of the Tribes shall be subject to applicable State law including, but not limited to, licensing requirements, rod limits, size and bag limits, daily possession limits, and seasons.

(c) Any Tribal charter boat operation shall report its charter boat harvest, including the number and weight of species caught by recreational fishers, and areas fished, to the State in accordance with provisions applicable to state-licensed charter boat operations.

SECTION XIX. SUBSISTENCE FISHING.

(a) The following are permitted gear for tribal subsistence fishing activity: impoundment gear, hooks, spears, bow and arrow, artificial lights, seines, dip nets, and a single large mesh or small mesh gill net as regulated in this section.

(b) Each gang of gill nets or impoundment nets used in subsistence fishing activity shall be marked at each end with an orange float equivalent to at least a one (1) gallon jug in size bearing the Tribal ID number of the subsistence fisher.

(c) Tribal fishers who engage in subsistence fishing shall obtain a subsistence fishing license issued by their Tribe, and shall abide by all provisions of these Regulations and applicable Tribal regulations governing subsistence fishing. In addition, no Tribal member shall engage in subsistence fishing with gill nets or impoundment nets without a Tribal permit, which shall be limited both in duration and in the area where the fishing may occur. The Tribal member shall abide by the limitations contained in the permit.

(d) Subsistence fishers shall be limited to one hundred (100) pounds round weight aggregate catch of all species in possession.

(e) Subsistence fishers shall not sell or otherwise exchange for value any of the catch.

(f) Subsistence gill netting is limited to one (1) net of three hundred (300) feet or less per vessel per day, except that in the St. Mary's River, as described in Section VIII(a), a single gill net shall not exceed one hundred (100) feet in length. The tying together of single gill nets to form a gang of nets is prohibited.

(g) Subsistence fishing is authorized in all 1836 Treaty waters, except:

(1) Subsistence fishing with gill nets is prohibited in all lake trout refuges, and retention of lake trout taken with any gear in lake trout refuges is prohibited.

(2) Subsistence fishing gear shall not be set in a manner which completely blocks or entirely prevents the free passage of fish into and out of streams that flow into 1836 Treaty waters.

(3) There shall be no subsistence fishing with nets:

(i) Within one hundred (100) yards of any break wall or pier; or

(ii) Within a three-tenths (0.3) mile radius of the mouth of the streams listed in Section VIII(h).

(iii) In any tribal zone where fishing with all types of nets has been closed.

(h) Subsistence fishing with large mesh gill nets and impoundment nets is prohibited during the period from 12:00 noon November 6 through 12:00 noon November 29.

(i) In Little Bay de Noc, Lake Michigan, subsistence fishers shall not use gill nets or possess walleye beginning 12:00 a.m. March 1 through 6:00 p.m. May 15 in the waters of grid 306 north of an east-west line drawn through Saunders Point.

(j) In Big Bay de Noc, Lake Michigan, subsistence fishers shall not use gill nets or possess walleye beginning 12:00 a.m. March 1 through 6:00 p.m. May 15 in the waters of grids 308 and 309 north of a line from St. Vitals Point to the northernmost tip of Garden Bluff.

(k) Lake sturgeon, muskellunge (in Lake Michigan), and any species of fish listed as threatened or endangered under the Federal Endangered Species Act shall not be targeted for harvest, and any catch of such fish shall be returned to the water alive or, if not alive, shall be turned into the BSD or Tribal biological staff and shall not be retained in possession.

(l) All subsistence fishers who engage in any fishing activity under this section shall file catch reports with their Tribe as provided in Section XXII(b).

(m) No subsistence fisher shall set a gill net within fifty (50) feet of another gill net.

(n) In the City of Sault Ste. Marie's Kids Fishing Pond at Rotary Park Island, all fishing activity shall be in accordance with those regulations imposed by the City of Sault Ste. Marie and the State of Michigan.

PART SIX: LICENSES AND INFORMATION

SECTION XX. LICENSE AND REGISTRATION DEFINITIONS AND RESTRICTIONS.

(a) A commercial fishing captain license entitles the holder to operate a fishing boat and to participate fully in all commercial fishing activities, including the capture and sale of all species pursuant to these Regulations. It further entitles the holder to employ helpers in such activities. Fees for such licenses may be set by individual Tribes. The license shall be valid during the calendar year for which it is issued.

(b) A commercial fishing helper license entitles the holder to assist the holder of a commercial fishing captain license in commercial fishing activities. Fees for such licenses may be set by individual Tribes. The license shall be valid during the calendar year for which it is issued.

(c) A subsistence fishing license entitles the holder to engage in fishing activities for subsistence purposes. Fees for such licenses may be set by individual Tribes. The license shall be valid during the calendar year for which it is issued.

(d) A commercial fishing vessel registration is necessary in order for any vessel to be utilized for commercial fishing. Anyone with a valid commercial fishing captain license may operate a properly registered commercial fishing vessel. Fees for such licenses may be set by individual Tribes.

(e) A member of a Tribe who engages in recreational fishing shall not be required to have in his or her possession a fishing license but must have tribal identification in his or her possession at all times.

(f) No holder of a commercial fishing captain license, commercial fishing helper license, or commercial fishing vessel registration shall fish as an employee of or for shares with a person not licensed to exercise treaty fishing rights. This prohibition shall be liberally interpreted to prohibit a licensee from exercising treaty fishing rights for the benefit of non-Indians.

(g) Except as provided in Section VII(b)(2)(vi), no Tribe shall issue a commercial fishing captain license or a commercial fishing vessel registration to a person who also holds a license or permit of any kind issued by the State of Michigan for commercial fishing.

SECTION XXI. LICENSE REGULATIONS.

(a) No member of a Tribe sixteen (16) years of age or older may engage in fishing activity within 1836 Treaty waters without having in his or her possession at all times a commercial fishing captain license countersigned under 25 C.F.R. Part 249, a commercial fishing helper license countersigned under 25 C.F.R. Part 249, or a subsistence license issued in accordance with these regulations, or, if engaged in recreational fishing, a tribal identification.

(b) No member of a Tribe may allow a person who does not possess a valid fishing license as required by subsection (a) of this section to aid or assist him or her while engaged in any fishing activity authorized by this Code; provided, however, that a validly licensed member of a Tribe may employ the consulting technical expertise of a non-member by obtaining a permit therefore from GLRC, which permit may not extend for more than one calendar year and may not be renewed for more than one additional year. Such permit shall list the name and address of the consultant, the type of fishing operation to which consultation will be provided, and the name and size of the vessel on which consultation will be provided. No such permit may be issued under any of the following circumstances:

(1) The consultant has an ownership interest in the vessel which the member seeks to utilize; or

(2) The consultant has an ownership interest in the fishing gear which the member seeks to utilize; or

(3) The consultant's payment for services from the member is based on a percentage of the member's proceeds from fishing activity.

(c) The license, permit or identification required by subsections (a) and (b) of this section shall be shown to any Enforcement Officer who makes a request therefore.

(d) Each boat which is used by a member of the Tribes for fishing activity shall have affixed to it in

a clearly visible manner the number of the commercial fishing vessel registration issued by a Tribe. Each snowmobile or off road vehicle which is used by a member of a Tribe for fishing activity shall have affixed to it in a clearly visible manner a valid Tribal or State of Michigan snowmobile or off road vehicle registration.

(e) Each boat which is used by a member of a Tribe for commercial fishing activity must have on board at all times at least one person with a valid commercial fishing captain license.

No member of a Tribe may allow any person who does not possess a valid fishing license as required by subsection (a) of this section, or who does not possess a permit as required by subsection (b) of this section, to be on board a commercial fishing vessel while it is operating on 1836 Treaty waters; provided, however, that such person's presence may be authorized by the member's Tribe through the issuance of a written permit. Issuance of such authorization shall not be considered a permit to engage or assist in fishing activity. Such permit shall identify by name and address the authorized individual, specify the commercial fishing vessel upon which the individual may be a passenger and the purpose for his presence, and identify the dates for which such authorization is valid.

SECTION XXII. HARVEST REPORTING AND SAMPLING.

(a) Each person to whom a commercial fishing captain license has been issued shall file with his or her Tribe an accurate report of his or her harvest for each calendar month not later than the tenth (10th) day of the following month. The licensee who is in charge of the fishing vessel may file a single report listing the names and license numbers of all licensed fishers who worked on the vessel at any time during the previous month, as well as the information required in sub. (2), below.

(1) Harvest reports shall be filed with the designated office of the Tribe that has issued the license. A Tribe may designate the BSD as the recipient of its catch reports.

(2) The report shall be submitted on forms developed for that purpose by the BSD, and each report shall include, for each day of fishing activity:

(i) the kind of gear used, including mesh size and total length of net lifted or number of impoundment nets lifted;

(ii) the depth and location of fishing activity by grid number;
the total pounds of each species landed;

(iv) whether the fish were sold round or dressed;

(v) the fisher's license number;

(vi) the date of the activity; and

(vii) any other information required.

(3) The holder of a commercial fishing captain license who does not fish during a month

shall file a report of "no fishing."

(4) Catch reports filed by individual Tribal fishers are confidential and protected from disclosure. CORA shall not divulge the name of any reporting fisher or release a catch report except as required by an order from the appropriate Tribal court.

(b) Each person to whom a subsistence fishing license has been issued shall file with his or her Tribe an accurate report of his or her harvest for each calendar month not later than the tenth (10th) day of the following month.

(1) Subsistence harvest reports shall be filed with the designated office of the Tribe that has issued the license. A Tribe may designate the BSD as the recipient of its catch reports.

(2) The subsistence harvest report shall be submitted on forms developed for that purpose by the BSD, and each report shall include, for each day of fishing activity:

(i) the type and amount of gear used;

(ii) the location of fishing activity by grid number;

(iii) the total pounds round weight of each species landed;

(v) the fisher's license number and, if nets were used, the fisher's permit number;

(vi) the date of the activity; and

(vii) any other information required.

(3) The holder of a subsistence fishing license who does not fish during a month shall file a report of "no fishing."

(4) Catch reports filed by individual Tribal fishers are confidential and protected from disclosure. CORA shall not divulge the name of any reporting fisher or release a catch report except as required by an order from the appropriate Tribal court.

(c) Each tribally licensed commercial fisher shall issue a bill of sale to any retail outlet purchasing fish from such fisher. The bill of sale shall be on a form developed by the BSD for that purpose which shall contain the name of the Tribal fisher; the number and pounds, by species, of fish sold; the date of sale; and the signature of the fisher.

(d) Tribally licensed commercial fishers selling fish to any state- or Tribally-licensed fish wholesaler shall furnish the wholesaler with the name of the seller, the seller's address and license number, the date of the sale, and the signature of the fisher on the state or Tribal wholesale fish record of purchase.

(e) Any Tribally licensed fish wholesaler shall furnish written reports of all purchases of fish on a

form developed by the BSD for that purpose, indicating the name of the seller; the date; the seller's license number; the number and pounds of each species sold; and the price paid for each species. Tribally licensed wholesale fish dealers shall require identification from each seller of fish. A Tribally licensed wholesale fish dealer shall purchase fish only from a State or Tribally licensed commercial fisher, or other legal source of fish. A copy of the report shall be mailed by the Tribally licensed fish wholesaler to CORA by the tenth (10th) day of the month following the month in which the transaction occurred.

(f) Any catch shall be subject to reasonable biological sampling by Tribal biologists or the BSD to obtain information required for conservation and management purposes. If such sampling impairs or destroys the market value of the sampled fish, a reasonable value for the loss shall be paid to the fisher.

SECTION XXIII. ASSESSMENT FISHING.

Notwithstanding the other provisions of these Regulations, assessment fishing may be conducted by Tribal commercial fishers under permit from CORA or the State of Michigan. Such assessment fishing by commercial fishers, except that conducted by the United States, shall be limited by the following, except as may be otherwise approved by the state, the federal government, and the Tribes:

(a) Tribal commercial fishers shall not be permitted to conduct assessment fisheries in areas otherwise closed to Tribal commercial fishing under Section VIII.

(b) If an assessment conducted by commercial fishers will harvest a species in an area where commercial fishing for that species is prohibited by these Regulations, or will use gill nets in an area where the commercial use of such gear is otherwise prohibited by these Regulations, the assessment shall be limited to a single operation using no more than 6,000 feet of large mesh gill net, small mesh gill net, or graded mesh gill net, as appropriate.

PART SEVEN: REGULATION AND ENFORCEMENT

SECTION XXIV. TRIBAL REGULATIONS.

(a) Each of the Tribes may promulgate regulations necessary to implement those portions of the Management Plan or Consent Decree which apply to that particular Tribe only, or which affect it in ways that are not reflected in the Tribal Code.

(b) Each of the Tribes may promulgate additional and different regulations governing its members, which are more restrictive than the provisions of the Tribal Code, provided that the regulations comply with the Management Plan and Consent Decree and do not involve matters that require uniformity among the Tribes.

(c) The violation of any Tribal regulation adopted as provided in this section is prohibited.

SECTION XXV. ORDERS OF THE DIRECTOR.

(a) The Director shall issue emergency orders closing, curtailing, or otherwise restricting fishing activity by Tribal fishers when substantial harm to the resource is imminent and the need for immediate action is evident. Such an emergency order, unless rescinded by the Director, shall remain in effect until forty-five (45) days from the date of issuance or until GLRC has acted upon the matter, whichever shall first occur.

(b) The Director shall have the authority to close fishing by members of any Tribe, or to implement other regulations authorized by or consistent with the Consent Decree, Management Plan, and these Regulations necessary to prevent that Tribe or its fishers from violating the provisions of the Consent Decree, Management Plan, these Regulations, or decisions of GLRC or the Director made in accordance with the Management Plan.

(c) The violation of any order of the Director issued in accordance with this section is prohibited.

SECTION XXVI. JURISDICTION AND ENFORCEMENT.

(a) Jurisdiction to enforce these Regulations upon members of each Tribe is vested exclusively in the tribal court of that Tribe.

(b) Except for the provisions of Section XXVII, these Regulations are civil in nature. Violations may be punished by suspension or revocation of the fishing license or permit of the violator, assessment of a monetary penalty, forfeitures as set forth in subs. (c), (d), and (e), below, without the necessity of a separate forfeiture action, and any other penalty provided for by the civil or criminal code of the Tribe for violations within its jurisdiction.

(c) Violations of the regulations listed below shall be major violations and shall be punished by license or permit suspension for not less than thirty (30) days, a fine of not less than $250.00, forfeiture of the catch, and such additional penalties as the tribal court may order:

(1) Commercial fishing for species listed in Section XVI;

(2) Commercial fishing for a fish species during the closed season for that species in the area of the fishing activity;

(3) Commercial fishing in an area closed to that activity as specified in Section VIII;

(4) Fishing with gear prohibited in lake trout refuges, or with gear prohibited during closed seasons, or with gear which is prohibited by subsequent amendment of these Regulations or by an emergency order of the Director; and

(5) Engaging in commercial fishing activity without first having obtained a valid commercial fishing captain license or commercial fishing helper license, as required by these Regulations.

(d) All fish, eggs, or parts of fish taken, possessed, sold, purchased, offered for sale or purchase, or transported, delivered, received, carried, shipped, exported, or imported contrary to these Regulations shall be subject to seizure and shall be forfeited to the appropriate tribal court.

(e) All traps, nets and other equipment, vessels, snowmobiles, vehicles, and other means of transportation used to aid in the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivery, receiving, carrying, shipping, exporting, or importing any fish, eggs, or parts of fish in violation of these Regulations shall be subject to seizure and may be forfeited by the appropriate tribal court.

(f) The Tribes shall accept and prosecute all alleged violations of these Regulations referred to them by enforcement officers.

(g) Any enforcement officer may:

(1) Detain for inspection and inspect any package, crate, box, or other container, including its contents and all accompanying documents or tags, at reasonable times.

(2) Arrest without warrant any person committing in his or her presence or view a violation of Section XXVII.

(3) Execute any process for enforcement of the provisions of these Regulations.

(4) Search any place reasonably related to fishing activity, with or without a warrant, as authorized by state law.

(5) Seize, with or without warrant, any article which may be subject to forfeiture under subs. (c), (d), and (e), above, or which may be required as evidence of a violation of these Regulations, if the violation occurs in his or her presence; provided, however, that any such articles seized shall be delivered within forty-eight (48) hours of the time of seizure into the custody of the tribal court of the Tribe which has licensed or permitted the fisher who has violated these Regulations.

SECTION XXVII. CRIMINAL PROVISIONS.

(a) It shall be a criminal offense for any person to commit any of the following acts:

(1) Assault, resist, oppose, impede, intimidate, bribe, attempt to bribe, or interfere with an enforcement officer engaged in enforcing these Regulations.

(2) Violate any license or permit suspension or revocation ordered by a tribal court under Section XXVI.

(3) Commit any contempt in the presence of the tribal court.

(4) Violate any court order.

(5) Damage or steal nets or equipment belonging to another fisher, or steal from another fisher's nets.

(6) Possess a firearm while engaging in any fishing activity under these Regulations.

(b) Criminal offenses shall be punishable by a fine not to exceed $5,000.00 or imprisonment not to exceed one year, or both. In addition, the forfeiture provisions of Section XXVI(d) and Section XXVI(f) shall apply to those convicted of criminal offenses.

PART EIGHT: ACCESS

SECTION XXVIII. USE OF ACCESS SITES.

(a) Fishers issued licenses or permits under these Regulations, including subsistence fishers, are authorized to use access sites which are subject to permits issued by agencies of the State of Michigan and the United States to the Chippewa-Ottawa Treaty Fishery Management Authority (COTFMA), predecessor to CORA, and sites acquired by COTFMA from private parties, as well as such sites as CORA may receive permits for or acquire. Sites may be used for putting boats into and pulling boats out of the water, for docking facilities, and for parking of vehicles.

(b) The following regulations apply to the use of such access sites, in addition to any restrictions or requirements that may be set forth in the applicable permit:

(1) All vehicles shall be parked in the designated parking areas only.

(2) Equipment, with the exception of boat trailers, shall not be left on site overnight.

(3) Sites shall be maintained in a neat and orderly fashion with all garbage and refuse disposed of properly.

(4) Littering is prohibited.

(5) Cleaning of fish or fish disposal is prohibited.

(6) Maintenance of equipment on site is prohibited.

(7) Damage to trees, signs, and improvements are prohibited.

(8) Overnight camping and overnight housing are prohibited.

(c) Violations of this section are subject to the jurisdiction and enforcement provisions of Section XXVI and, in addition, may result in revocation or denial of permission to use access sites and an order

of restitution for any damage caused.

Chapter 2. LTBB Off-Reservation (Ceded Territory) Hunting, Fishing and Gathering

Preamble

The Little Traverse Bay Bands of Odawa Indians (LTBB) are all parties to the Treaty of Washington of March 28, 1836, 7 Stat. 491. In that Treaty the Tribes reserved the right to hunt, fish and gather on the ceded lands and waters. The individual Tribes adopt this uniform Code to exercise their inherent sovereign right to regulate the reserves treaty rights. The uniform Code enables the Tribe to coordinate their efforts to preserve and conserve the resource while promoting public safety. The purpose of these regulations is to preserve and conserve the natural resource on and in lands and waters ceded by the Ottawa and Chippewa in the Treaty of 1836 for the perpetual use, benefit, and enjoyment of the members of the Tribes. These regulations do not apply to the commercial or subsistence use or regulations of those uses on the Treaty-ceded waters within Indian Country unless a Tribe also adopts this as an on-reservation Code. Provided, the individual Tribes may adopt their own additional regulations to supplement this uniform Code.

(Source: WOS 2002-07, September 8, 2002, Preamble)

4.201 DEFINITIONS

A. *Amphibians and Reptiles* - Bullfrogs, green frogs, salamanders, snapping turtles, and soft-shelled turtles.

B. *Baitfish* - Any legally taken and possessed fish (except sea lamprey, goldfish or any other exotic fish) used for catching other fish.

C. *Big Game* - Whitetail deer, black bear, wild turkey, elk, and moose.

D. *Bow* - A weapon constructed from wood, plastic, metal, or other material with a cord connecting the two ends when bent or strung, and by means of which an arrow is propelled when drawn and released by hand.

E. *Cased or encased* - Storage of a firearm or bow in any device or case made to contain a firearm or bow so that no portion is exposed.

F. *Ceded Territory*—All lands and waters ceded in the 1836 Treaty as described in Article First, that were not reserved in Articles Second and Third of the 1836 Treaty, Article One of the 1855 Treaty, or are not now otherwise within Indian Country, as set forth below:

Beginning at the mouth of the Grand River of Lake Michigan on the north bank thereof, and following up the same to the line called for in the first article of the Treaty of Chicago on the 29th of August, 1821, thence, in a direct line, to the head of Thunder bay River, thence with the line established by the Treaty of Saginaw on the 24th of

September 1819, to the mouth of said river, thence northeast to the boundary line in Lake Huron between the United States and the British Providence of Upper Canada, thence northwestwardly, following the said line, as established by the commissioners acting under the Treaty of Ghent, through the straits, and river St. Mary's, to a point in Lake Superior north of the mouth of Githcy Seebing or Chocolate river, thence south to the mouth of said river and up its channel to the source thereof, thence, in a direct line to the head of Skonawba river of Green Bay, thence down the south bank of river to its mouth, thence, in a direct line, through the ship channel into Green Bay, to the outer part thereof, thence, south to a point in Lake Michigan west of north cape, or entrance of Grand river, and thence east to the place of beginning, at the cape aforesaid, comprehending all the lands and islands, within these limits, not hereinafter reserved.

G. *Commercial Purposes* - The harvesting of a natural resource in which the resource harvested, or any portion thereof, is sold, but shall not include harvesting of a natural resource for personal use.

H. *Crossbow*- a device using a bow that, once drawn, is held solely by means other than the effort of the person firing it.

I. *Disabled Tribal Hunter*- A person who has been diagnosed by a certified medical Doctor to be permanently physically disabled.

J. *Endangered Species* - Any species of wildlife or plant designated as rare or endangered by the Tribal Council, or the United States Department of the Interior pursuant to 50 C.F.R. Part 17.

K. *Enforcement Officer* - Any Tribal Enforcement officer authorized by Tribal law to enforce Tribal conservation regulations, or federal enforcement agents, including Special Agents of the U.S. Fish and Wildlife Service, or other persons deputized by the Tribal Council to enforce these regulations.

L. *Firearm* - A weapon from which dangerous projectiles may be propelled by use of explosives, gas, or air as a means of propulsion.

M. *Fishing Activity*—Fishing for, catching, taking, or attempting to fish for, catch or take, any species of fish from treaty ceded waters, including all related activities which occur in or on the water, or immediately adjacent to the waters edge and in the process of loading or unloading fish, nets, or related gear, in or from a boat or vehicle.

N. *Fur bearer* - Fur bearing animals including coyote, red fox, gray fox, bobcat, beaver, otter, muskrat, mink, weasel, skunk, raccoon, badger and opossum.

O. *Game* - Small game and big game.

P. *Fish* - Brook trout, lake trout, splake, brown trout, rainbow (steelhead) trout, coho salmon, chinook salmon, Atlantic salmon, largemouth bass, small mouth bass, rock bass, walleye, sauger, northern pike, muskellunge, tiger muskellunge, sturgeon, bluegill, sunfish, crappie, perch, lake

whitefish, and round whitefish (menominee), and any other species of fish now or in the future present in the Ceded Territory which may be taken for food or sport.

Q. *Migratory Birds* - Those birds included in the terms of the convention between the United States and any other country for the protection of migratory birds and for which open seasons are prescribed in these regulations, including ducks, geese, swans, doves, pigeons, rails, coots, gallinules, woodcock and snipe.

R. *Personal Use*—The use of natural resources for direct personal or family consumption by Tribal members as food, medicine, shelter, fuel, clothing, tools, or transportation; making or selling handicraft article including the commercial sale of such articles; or for barter. For purpose of this section, the term:

1. "Family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

2. "Handicraft articles" means article produced, decorated or fashioned in the exercise of traditional Indian handicrafts such as carving, weaving, beading, pottery, drawing or painting, without the use of mass copying devices; and

3. "Barter" means the exchange of natural resources or parts thereof for personal uses between Tribal members.

S. *Physician*- A person duly licensed by any state in the United States to practice medicine or osteopathic medicine and surgery.

T. *Regulations*—These regulations including any subsequent amendments to these regulation and any separate Tribal treaty regulations enacted by a Tribe.

U. *Safety Zone*- Any area within 150 yards (450 feet) of any occupied commercial structure, public structure, dwelling house, residence, cabin, camp, cottage, barn, or other building used in connection therewith.

V. *Slingshot* - A "Y" shaped device with an elastic strip at the prong, or one strip of stretchable material, with a pocket on one end, used for projecting stones or other objects.

W. *Small game* - Ruffed grouse (partridge), mourning dove, ring-neck pheasant, cottontail rabbit, snowshoe hare, gray squirrel, black squirrel, fox squirrel, red squirrel, quail, woodchuck, porcupine, sharp tail grouse and crow.

X. *Targeting*—Fishing, hunting, trapping, or gathering activity, which has the effect of catching or taking a specific species or species of fish, wildlife, or plants.

Y. *Threatened Species*- A species at risk of becoming endangered as determined by official action of the Tribal council or by the United States Department of Interior.

Z. *Transport or Transportation* - Carrying or moving by any vehicle or vessel, causing to be carried or moved or attempting to do so, or accepting or receiving wild animals, plants, or fish or any parts thereof.

AA. *Treaty*—The March 28, 1836 Treaty of Washington with the Ottawa's, 7 Stat. 491.

BB. *Tribe or Tribes*—The Little Traverse Bay Bands of Odawa Indians, the Little River Band of Ottawa Indians and the Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians and Bay Mills Indian Community.

CC. *Tribal Court*—The Court of one of the Tribes.

DD. *Tribal License* –A gathering, hunting, trapping, or fishing License issued by a Tribe to Tribal member, which is valid and current.

EE. *Tribal Members*—Enrolled members of one of the Tribes.

FF. *Wild animals* - All creatures, not human, wild by nature, endowed with sensation, and power of voluntary motion, which includes quadrupeds, mammals, birds, fish, amphibians, reptiles, crustaceans, insects, and mollusks.

(Source: WOS 2002-07, September 8, 2002, Section 1)

4.202 TERRITORIAL JURISDICTION

A. This Code shall govern all treaty hunting, fishing, trapping and gathering activities of Tribal members on lands and waters within Ceded Territory.

B. *Open Areas.* Tribal hunters may hunt, trap, fish and gather within the Ceded Territory pursuant to the regulations contained in this Code, only on the following lands and waters:

1. Lands open to public hunting, trapping, and gathering.

2. Tribal lands which are open to hunting, trapping, fishing and gathering by Tribal members; and

3. Private lands including without limitation lands held by non-Tribal members, lands held directly by Tribal members, lands held by Tribal members subject to restrictions on alienation and lands held by the United States in trust for Tribal members, but only with permission from the owner (or restricted fee or beneficial owner), occupant or lessee.

4. All lakes, rivers, streams and creeks accessible through public right-a-ways including but not limited to public road crossings, or otherwise assessable by a landowner’s permission.

(Source: WOS 2002-07, September 8, 2002, Section 2)

4.203 HUNTING AND TRAPPING REGULATIONS

A. HUNTING LICENSES-Any Tribal Member twelve (12) years of age or older, who hunts, traps, or fishes within the Ceded Territory, while having under his/her control or immediate possession any firearm, bow and arrow, crossbow, slingshot, trapping apparatus, or any other device capable of killing or restraining fur bearers or game, shall have in his/her possession a valid and current Tribal license.

B. Hunters Safety Course- Any Tribal member 21 years of age or younger who applies for a Tribal License to hunt any small game, big game, or fur bearer shall either produce a previous license to hunt or trap from a Tribe or other lawful issuing agent within the State of Michigan or have successfully passed a recognized Hunter Safety Course. If you are over the age of 21 and can not produce evidence of a previous lawfully issued hunting license nor produce evidence of having successfully completed a certified Hunters Safety Course, you will be required to take and successfully pass a 25 question hunters safety test before being issued a license to hunt.

C. Age Limits-

1. No Tribal member less than twelve (12) years of age shall be allowed to possess a Tribal License to hunt. Any Tribal member under twelve (12) years of age may be issued a License to trap upon application signed by a parent or guardian provided that the member under 12 may not be authorized or allowed to have a firearm in his/her possession while trapping.

2. A Tribal Member must be at least fourteen (14) years of age to hunt big game with a firearm.

3. Any Tribal member under sixteen (16) years of age, while hunting with a firearm, shall be accompanied by an adult who shall have in possession a valid Tribal or State License.

D. *Harvest Tags*- In addition to the Tribal license required by this section, a Tribal Member may be required to obtain annual harvest tags in order to hunt or trap certain species. The harvest tags shall be completely filled out and affixed to the animal when transporting the game.

1. Annual harvest tags shall be obtained from the Tribe in order to hunt deer, bear, bobcat, moose, elk, or wild turkey.

2. Annual harvest tags shall be obtained from the Tribe in order to trap otter, badger or bobcat.

3. Harvest tags shall be affixed immediately after harvest to the left ear of harvested animals with exception to turkeys where the tag must be affixed to the left foot.

E. Special Use Permits

1. *Disabled Tribal Hunter Permits*- The Natural Resources Department may issue a Disabled Tribal Hunter permit to discharge a firearm, bow or crossbow from a stationary motor vehicle within a roadway other than a state or federal highway to a member who is permanently physically unable to walk without crutches, braces, or other mechanical support as verified by a Physician. The holder of such a permit must shoot away from and not across the roadway. 2) The Natural Resources Department may issue a Disabled Tribal Hunter a permit to use a cross bow during archery season provided that the member is deemed permanently unable to physically use a conventional bow (compound/re-curve) as verified by the written opinion of a Physician.

2. *Special Needs Permit*- Tribal Hunters with special needs may obtain a permit from the Natural Resources Department. The criteria for a special needs permit include, but are not limited to, being out of food, a death or birth in the immediate family, or a family hardship. The Tribal Hunter shall have a valid tribal license and request a special needs permit and tags in person. A tribal member with a special needs permit may use the services of another enrolled Tribal member to harvest an animal for them, in which case both the permittee and helper must be named on the permit.

F. Hunting and Trapping General Provisions

1. *Artificial Light*- Artificial light may only be used to hunt fox, raccoon and coyote.

2. *Possession*- A legal and current License shall be required to take transport, or possess any fish, game, furs, plants, hides, amphibians or reptiles, or auxiliary parts thereof within the Ceded Territory and for the purpose of possessing or using firearms, bows, or trapping devices in the course thereof, provided however, that nothing herein contained shall be constructed to allow the violation of any other provisions of the Tribal Code relating to the possession or use of any regulated gear.

3. *Sale of Game*- It shall be unlawful for any Tribal member to engage in the sale of the flesh of game.

4. *Transportation*- Fur bearers, big game, or small game lawfully taken by licensed Tribal Members may be transported within or outside of the Ceded Territory provided that the member shall have a valid and current Tribal license in possession. The transported game (that requires a tag) must be tagged with a harvest tag containing all necessary information required.

5. *Shooting Hours*- Shooting hours are one half-hour before sunrise to one half-hour after sunset excluding waterfowl. Fox, raccoon and coyote may be hunted after sunset with use of dogs, game call, or artificial lights.

6. *Pursuit with Vehicles*- It shall be unlawful to hunt or pursue any furbearer, small game, waterfowl, or big game with automobile, motorcycle, ORV, airplane, snowmobile, motorboat, or any other motorized or wind powered vehicle or boat.

7. *Harmful Substances*- No fur bearer, migratory birds, small game, or big game may be lawfully taken by use of explosive, drugs, poisons, medicated bait, or other harmful substances.

8. *Trapping Big Game*- It shall be unlawful to trap or snare big game animals.

9. *Shooting Fur Bearers*- It shall be unlawful to shoot furbearers, small, or big game while they are in the water.

10. *Traps*- Traps used for harvesting fur bearers, snowshoe hare or cottontail rabbit shall be either leg hold, box type, or body gripping (conibear) type. It shall be unlawful to use snares except while trapping for beaver, otter, or muskrat in the riparian corridor or submerged in streams or lakes. The snares shall be attended within forty-eight (48) hours.

11. *Trap Markings*- All traps set shall be clearly marked with the Tribal license number and the name of the person who set the trap. All traps shall be attended at least every forty-eight (48) hours.

12. *Marking of Hides*- All bobcat, otter and badger taken by trap, and all hides, pelts and furs thereof, shall be clearly marked with the Tribal License Number and the name of the person to whom it belongs within seventy-two (72) hours of being taken.

13. *Barter of Hides & Flesh*- It shall be lawful for Tribal Members to possess, sell, or use for barter, or transport hides, furs or pelts of fur bearers, big game or small game lawfully taken**,** including the sale of the flesh of beaver, raccoon and muskrat.

14. *Shipping of Hides*- All hides, furs, or pelts of fur bearers either shot or trapped shall be presented to a Tribal Enforcement Officer for inspection and registration before they are shipped by common carrier, transported outside the 1836 Ceded Territory, or offered for sale or barter.

15. *Federal Laws on Hides*- All Federal laws and regulations regarding the identification, sale, and transportation of hides, furs or pelts of any furbearer apply to the identification, sale or transportation under Federal Regulations. All shipments of raw hides or furs must be plainly marked on the outside of the package as to the contents. If you wish to export bobcat, otter or bear hides from the United States, you will need a federal permit. For details contact the Natural Resource Department.

16. *Transportation of firearms, Bows, Crossbows, and Muzzleloaders*-

a) A member may not transport firearms in any motorized vehicle within the Ceded Territory unless they are;

1) unloaded and in a gun case expressly made to contain a firearm, and the case fully encloses the firearm being zipped, snapped, buckled, tied, or otherwise fastened, and without any portion of the firearm exposed;

2) unloaded and in the closed trunk of a motor vehicle and not accessible from the driver and passenger compartment of the vehicle;

3) if a handgun, the following criteria apply:

i) While in the field, handguns must be carried in plain view. Carrying a handgun in a holster in plain view is permitted.

ii) You may transport your handguns while en route to and from your hunting area, however, handguns, including BB guns larger than .177 caliber and all pellet guns must be unloaded and carried in a container or wrapper in the trunk of the vehicle. If the vehicle does not have a trunk, the handgun must be unloaded and carried in a container or wrapper and cannot be readily accessible to any occupant of the vehicle.

iii) A restricted concealed pistol license for hunting, trapping, or target shooting does not give you any additional authority to transport a loaded or unloaded handgun in your vehicle or on any public conveyance.

b) A member may not transport an archery bow or cross bow in motor vehicle unless the bow is:

i) unstrung;

ii) completely contained in a case expressly made to contain it; or

iii) in the closed trunk of a motor vehicle and not accessible from the driver and passenger compartment of the vehicle.

c) A member may not transport a muzzleloader rifle in a motor vehicle unless the muzzleloader is

i) unloaded with the cap removed and completely contained in a case expressly made to contain it;

ii) unloaded and in the closed trunk of a motor vehicle and not accessible from the driver and passenger compartment of the vehicle.

17. *Discharging Firearms, Bows, Crossbows and Muzzleloaders-*

a) A member may not discharge a firearm, bow, crossbow or muzzleloader on, over or across an improved public highway.

b) A member may not discharge a firearm, bow, crossbow or muzzleloader within the right-of-way of an improved highway.

c) It shall be unlawful to discharge any firearm, arrow, or projectile from a motorized vehicle. Provided, however, that it is unlawful to shoot from a motorized boat as long as the motor is not running and forward momentum has ceased, except for forward motion caused by the water current.

d) Exception: It shall be lawful to discharge a firearm from a motorized vehicle if the individual possesses a valid disabled hunter permit, the vehicle is at least 150 feet from any primary road, and the motor is off.

18. *Live Animals for Trapping-* It shall be lawful to possess, in a humane way during trapping season, one live coyote and two live fox for the purpose of collecting urine and droppings for trapping; provided, at least one member of the immediate family must have a valid Tribal trapping license.

19. *Harassment of Hunters-* It shall be unlawful to harass, impede, or interfere with any legally licensed hunter.

20. *Seasons and Bag/Harvest Limits* - The seasons and bag/harvest limits for taking small game, big game, fur bearers, and turkeys, and for trapping fur bearers specified in Section 1 [WOTC 4.201] shall be as determined by Tribal regulations.

G. Hunting Restrictions

1. *Automatic & Semi-automatic Weapons-*

a) Fully automatic firearms are at no time to be used in hunting, pursuing or killing of wild animals, or be in possession of, in an area frequented by wild animals.

b) No Tribal Member shall use in hunting, pursuing or killing a wild animal, or be in possession of, in an area frequented by wild animals any semi-automatic shotgun or rifle, other than .22 caliber rim fire, capable of holding more than six (6) shells in both the chamber or magazine combined, for use for small game only, or use cartridges containing either tracer or exploding bullets.

c) All shotguns used for migratory birds (including woodcock) must be plugged so the total capacity of the shotgun does not exceed three shells.

2. *Silencers*- No Tribal Member shall use, or be in possession of, a device or apparatus known as a silencer.

3. *Hunting from Platforms*- Tribal Members may hunt deer, small game, fur bearers or bear from a tree or portable raised platform.

4. *Harvesting Restrictions*- Unless otherwise specified in this Code or special Tribal regulations, no Tribal Member shall make use of artificial light, cage, net, trap, pit, pitfall, deadfall, snare, drug, poison, chemical, fire, smoke, gas, explosive, or mechanical device other than firearm or bow and arrow for the purpose of harvesting or killing big game or small game animals.

5. *Driving Wildlife*- It shall be unlawful to set or use fire to drive wild animals or to attempt to take wild animals.

6. *Baiting-*

a) A Tribal Member may use salt and/or bait to hunt for deer in non-Tuberculosis (TB) designated counties only.

b) It shall be unlawful to establish bear bait stations prior to August 10 in the Upper Peninsula or prior to August 20 in the Lower Peninsula.

c) All bait stations must be placed on the ground and may not contain any plastic, metal, wood, products, glass, paper, or fabric.

d) All containers used to carry bait to the site must be removed from the site. 5) No drugs or poisons shall be used.

7. *Firearm Limitations-*

a) Any firearm used in hunting big game other than wild turkey must be a center fire rifle of .223 caliber or larger, muzzle loader of .40 caliber or larger, or shotgun using slug or buckshot.

b) Wild turkey may be hunted with a bow and arrow, shotgun or muzzle loading

shotgun using number four (#4) shot or smaller.

8. *Bow and Arrow Limitations*- Bow and arrow may be used to hunt both big game and small game, provided that a broad head with a cutting surface of at least one inch (1”) diameter may be used to hunt big game including wild turkey.

9. *Crossbow Limitations*- Disabled Tribal Hunters may use a crossbow to hunt big game during archery season provided that they have a valid Disabled Hunter’s Permit. Non-disabled hunters may use a crossbow to hunt big game during firearm season.

10. *Hunting Big Game with Dogs*-

a) It shall be unlawful to hunt deer, elk, moose or wild turkey with dogs.

b) Dogs may be used to hunt bear provided that no more than six dogs per pack are used and that if relaying no more than six dogs shall be used.

11. *Hunters Orange*- It shall be unlawful to hunt or trap with a firearm on any lands during daylight hunting hours from August 15 through April 30 unless one (1) square foot of hunters orange is worn and visible from all sides. This does not apply to persons hunting waterfowl, crow, wild turkey, predators, or to bow hunters, except during firearm deer season.

H. Hunting Seasons

1. *Small Game*—September 1 to April 1.

2. *Deer*

a) Archery—October 1 to January 1

b) Firearm—November 15 to December 3, provided that the Tribe may issue antler less special permits for November 13-14, and special permits/tags for either sex through December 3.

c) Muzzleloader—December 4 to December 18.

3. *Bear*—September 10 to October 30, counties open to hunting to be designated by Tribal Wildlife Biologists.

4. *Wild Turkey*

a) Fall Season—October 1 to November 14.

b) Spring Season—April 15 to May 31.

5. *Elk and Moose* – Seasons to be determined by Tribal Biologists.

6. Fur bearers

a) Hunting

b) Bobcat and mink- October 25 through March 15.

c) Gray fox, red fox, raccoon and coyote October 1 through March 15.

7. Trapping

a) Beaver and otter - November 1 through April 16.

b) Muskrat, mink and bobcat – November 1 through March 1.

c) Raccoon, red fox, gray fox, coyote and badger—November 1 to March 1.

8. Bag Limits

a) Small Game - A limit of five (5) of each species per day and a possession in transport limit of no more than two (2) days' limit per licensee.

b) Big Game

i) Deer - A limit of five deer per tribal hunter per season (includes Reservation and Ceded Territory), two (2) bucks with 3-inch antlers and three (3) does. The tribal hunter may harvest the deer with a bow and arrow, cross bow, rifle or muzzleloader. Provided that no more than two permits shall be issued at any one time and subsequent permits are issued only upon receipt of filled harvest tags.

ii) Elk, Moose and Bear – Bag limits and tags to be determined by Tribal Biologists on an annual basis. (Tags may be issued through a lottery conducted by the Tribes. The total number of tags issued by the Tribe combined will be based on a percentage of sustainable harvest. The Tribe will issue an equal number of tags based on this total.)

c) Wild Turkey - Two (2) birds per fall season; one (1) adult males with visible beards per spring season.

d) Trapping

i) Otter, badger and bobcat - one (1) per season. All other species have no

bag limit.

ii) Accidentally trapped non-target protected species such as lynx, gray wolf, fisher or marten are unlawful to possess. All live animals shall be released if possible. The trapping of all other such animals shall be reported immediately to a Conservation Officer, and the procedures set forth in Section 12.03 [WOTC 4.312 (12.03)] of the Natural Resources Regulations shall apply.

(Source: WOS 2002-07, September 8, 2002, Section 3)

4.204 MIGRATORY BIRD REGULATIONS

A. The Tribal Wildlife Biologist shall submit migratory bird rules and regulations to the United States Fish and Wildlife Service on an annual basis.

B. Any Tribal Member twelve (12) years of age or older who hunts migratory birds within the Ceded Territory shall have in possession a valid Tribal license.

C. No Tribal Member under twelve (12) years of age shall be allowed to possess a Tribal license to hunt migratory birds.

D. Shooting Hours- From one half (1/2) hour before sunrise until sunset.

E. Restrictions. It shall be unlawful to:

1. Engage in wanton destruction of migratory birds.

2. Fail to make a reasonable effort to recover dead or wounded migratory birds.

3. Take, possess, transport, or aid, assist or abet the taking, possession or transportation, of any migratory bird protected by Tribal or Federal law.

4. Exceed established limits or use prohibited means of taking migratory birds.

5. Fail to allow the inspection of any migratory bird or bird part in possession upon demand of an Enforcement Officer.

6. Take migratory game birds with trap snare swivel gun, punt gun, battery gun, automatic fired weapon, shot gun with shells longer than three and one half inches (3.5”), fish hook, poison, drug, or stupefying substance, or explosive.

7. Take migratory birds with a shotgun of any description greater than ten (10) gauge and capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, which is incapable of removal without disassembling the gun, so its total capacity

does not exceed three (3) shells.

8. Use or be in possession of any shot other than steel**,** to take migratory birds; provided, however, that it shall be legal to hunt woodcock with lead shot rather than steel.

9. Hunt migratory birds from or by means or use of a sink box, or other low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

10. Use any rim fire, center fire, or muzzle-loading rifle to take migratory birds.

11. Pursue migratory birds from a motorboat, or any other craft having a motor attached, or sailboat unless the motor is completely off, and/or the sails are unfurled, or by means of any motorized land or air conveyance.

12. Use any land, water or air conveyance to drive, concentrate or disperse migratory birds.

13. Use or attempt to use bait, or hunt on or near a baited area. Baiting for migratory birds shall mean the use and distribution of any grain, meals, salt, or other feed whatsoever so as to lure or attract such birds; and a place or locale which has been baited may be considered baited for ten (10) days after such bait has been removed. Provided, however, that it shall be legal to hunt migratory game birds in agricultural fields where crops are standing, or have been harvested as a part of normal agricultural operational procedures, or grown for wildlife management, provided that the seeds and grains are not scattered or redistributed once the crop has been harvested.

14. Violate any Federal law addressed in 50 C.F.R. Part 20 dealing with hunting migratory birds

F. Biological Monitoring of Harvest- It shall be the duty of the Tribal Biologist and Enforcement Officers working with Federal officials to monitor and sample the Tribal harvest of migratory birds through game bag checks, patrols and mail surveys. The harvest of all species shall be reported to the U.S. Fish and Wildlife Service to permit evaluation of the impacts of the Tribal harvest and modify this Code on a seasonal basis. The South James Bay Canada Goose population will be monitored particularly closely, based on band recovery, to assess the impacts of hunting by the Tribes.

G. Seasons

1. Ducks— September 20, through January 20.

2. Geese-

a) White Front, Brant, Snow and Blue Geese- October 1 through November 30.

b) Canada geese—September 1 through January 20.

3. Woodcock, snipe, sora rail- September 1- November 14.

4. Swans—It shall be unlawful to shoot or attempt to shoot swans.

H. Bag Limits

1. Ducks- The bag limit for ducks shall not exceed ten (10) per day, and shall not include more than one (1) pintail, one (1) canvasback, one (1) hooded merganser, two (2) black ducks, two (2) wood ducks, two (2) redheads, and five (5) mallards- only two of which may be hens.

2. Geese- The daily bag limits for Canada geese, brant, white-fronted, snow and blue geese, shall not exceed five (5) per day.

3. Woodcock, snipe, sora rail- The daily bag limit shall not exceed five (5) per day.

4. The possession limit for ducks and geese shall not exceed two (2) days' bag limit.

(Source: WOS 2002-07, September 8, 2002, Section 4)

4.205 SUBSISTENCE AND SPORT FISHING REGULATIONS

A. Fishing Licenses - Any Tribal member sixteen (16) years of age or older who fishes or attempts to take any fish, reptiles or amphibians while having under his/her control or in his/her immediate possession any pole, reel, tip-up hand line, trap, seine, dip net or spear, shall have in his or her possession a valid and current Tribal License.

B. Age Limits-

1. Any Tribal Member sixteen (16) years of age or older who fishes within the Ceded Territory shall have in possession a Tribal license.

2. No Tribal member under sixteen (16) years of age shall be required to possess a Tribal License to fish, take reptiles or amphibians, or gather vegetation for personal use or use by his immediate family, however, those persons shall be required to follow all applicable Tribal regulations.

C. Methods and Gear Restrictions-

1. The use of poles, reels, tip-ups and hand lines are lawful for use while fishing.

2. Seines up to thirty feet (30') by three feet (3') and dip nets up to nine (9) square feet are legal for smelt on inland lakes and 100 yards upstream on all tributaries and connecting waters of the Great Lakes.

3. Bait fish may be taken by traps, seines up to thirty feet (30') by three feet (3') and dip nets up to nine (9) square feet.

4. Individual hook and line fishing is limited to four (4) lines per person with two (2) hooks per line. Ice fishing is limited to eight (8) tip-ups and one (1) pole or hand lines, per licensee.

5. Fixed ice shanties must have the owner's name, address and number of the Tribal license number permanently affixed on all sides with letters at least three inches (3”) high. Shanties must be removed when the ice is unsafe but no later than March 15.

6. Fishing with a spear, bow and arrow, or dip net is permitted on any streams, lakes and river. The fisher shall be required to adhere to seasons, size and creel limits and other restrictions imposed by Tribal regulations. Provided that spearing is only permitted for whitefish, trout (brown, lake, steelhead only), northern pike, walleye, herring, menominee, suckers, carp, drum, bass, muskellunge, buffalo, salmon and sauger. In addition to the Tribal License required by this section, Tribal members are also required to obtain and submit complete harvest reports for the harvest of certain species of fish with a spear or bow fishing equipment.

D. Restrictions. It shall be unlawful to:

1. Use explosives, drugs, poisons, lime medicated bait or other deleterious substances to take or attempt to take fish.

2. Drive or harass fish into nets.

3. Use firearms to take or attempt to take fish.

4. Use gill nets, trap nets, seines or gorge to take fish, except as allowed for bait fish under Section 5.02 (C) and smelt under Section 5.02(B).

5. Use a weighted treble hook or weight attached after the treble hook to take or attempt to take fish.

6. Wanton destruction or waste of fish.

7. Harass or impede another fisherman or boater.

8. Take fish for the sole purpose of egg (spawn) collection.

9. Possess any fish not hooked in the month while fishing with hook and line.

E. Reporting- In addition to the Tribal License required by this section, Tribal members are also required to obtain and submit complete harvest reports for the harvest of certain species of fish

with a spear or bow fishing equipment.

1. Harvest reports must be obtained from and submitted to their perspective Natural Resource Department in order to spear or bow fish for walleye, northern pike, muskellunge, salmon, trout (including steelhead).

2. Harvest reports shall indicate the body of water where the harvest is taking place, date of harvest, and number harvested for each species.

3. Harvest reports shall be submitted within seven (7) days of harvest date.

F. Seasons

1. Trout and Salmon

a) Lakes - No closed season.

b) Streams and rivers - April 1 to December 1.

2. Largemouth bass, small mouth bass, sauger, walleye northern pike, muskellunge, and tiger muskellunge- April 1 through March 31.

3. Bluegill, sunfish, crappie, rock bass, perch, lake whitefish, menominee, catfish, and other species not listed - No closed season

4. Sturgeon - No open season.

5. Grayling—No open season.

G. Size Limits

1. Trout and Salmon-

a) Lakes - Ten inch (10") minimum.

b) Streams**:** Eight-inch (8") minimum.

2. Largemouth and small mouth bass - Twelve inch (12") minimum.

3. Northern pike - Twenty-inch (20") minimum.

4. Muskellunge and tiger muskellunge - forty-two inch (42") minimum.

5. Walleye - Fourteen inch (14") minimum

6. Bluegill, sunfish, crappie, lake whitefish, menominee, perch, catfish species, and other species not listed - No minimum size.

H. Creel Limits

1. Lake trout, rainbow trout, splake, brook trout and brown trout - Five (5) per species per day in lakes with a maximum of ten (10) in combination.

2. Brook trout, brown trout, rainbow trout in streams - a maximum of ten (10) in any combination. No more than three (3) of the total may be over sixteen inches (16") long.

3. Coho, Atlantic, Humpback and Chinook salmon - Five (5) per species per day.

4. Muskellunge and tiger muskellunge - One (1) per day.

5. Largemouth bass, small mouth bass, walleye and sauger - Five (5) per day.

6. Bluegill, sunfish, crappie, lake whitefish, and yellow perch - Fifty (50) per day.

7. Northern Pike- Five (5) per day

(Source: WOS 2002-07, September 8, 2002, Section 5)

4.206 AMPHIBIANS AND REPTILES REGULATIONS

A. General Regulations- Amphibians and Reptiles may not be shot with firearms (including spring, air, or gas propelled), conventional bow, crossbow, or slingshot.

B. Endangered and Threatened Species- No animal as defined in section 1.10 shall be taken or possessed except as authorized by the Natural Resources Department.

C. Amphibians- Amphibians may be taken the last Saturday in May through November 15 with no size limit. No more than fifty (50) of each species shall be taken per day and not more than one hundred (100) of any species may be in possession at any given time.

D. Reptile Special Use Permit- No snapping turtles or soft-shelled turtles may be taken at any time during the year without a special use permit. With a special permit, no snapping turtle less than eight inches (8”) of carapace may be taken.

E. Equipment - Taking of amphibians and reptiles may be done by hand, trap, dip nets, seines and hook and line. Frogs may be speared but not while using artificial light.

F. Taking of amphibians and reptiles shall be for personal use only.

(Source: WOS 2002-07, September 8, 2002, Section 6)

4.207 VEGETATION GATHERING REGULATIONS

It shall be lawful for Tribal Members to gather and use vegetation and natural growth for the construction of traditional crafts, handicraft articles, medicine and food, subject to the following regulations:

A. Personal/Family Subsistence- No license or permit will be required to gather fruit, berries, wild vegetables, fungi or nuts for personal or family consumption.

B. Medicinal Use- No license or permit will be required to gather vegetation or natural growth if such vegetation or natural growth is intended for religious or ceremonial purposes.

C. Gathering Permit- Tribal members seeking to harvest vegetation or natural growth for the sole purpose of incorporating it into a handicraft or artwork to be sold for a profit must acquire a gathering permit from their perspective Tribe before the harvest or attempt to harvest any vegetation or natural growth.

D. Private Property- Permission must be obtained from a private landowner prior to gathering on such land.

E. Endangered Species - It shall be unlawful to gather, collect, or be in possession of any vegetation or parts of any threatened or endangered species.

(Source: WOS 2002-07, September 8, 2002, Section 7)

4.208 BIOLOGICAL ASSESSMENT AND MONITORING

A. Biological Assessment- The Natural Resource Department may require that furbearers, small game, big game, migratory birds, fish, reptiles, amphibians or the habitats of any of them within the Ceded Territory be subject to reasonable biological assessment. The purpose of such assessment is to insure long-range management of these species and their environs, or changes to the existing regulations or any future regulations as necessary to foster such preservation and management.

B. Assessment Permits- A Tribe's Natural Resource Department may authorize a Tribal member assist with or perform an assessment to assist the tribe in gathering natural resource data to better help manage the resource more effectively. The tribal member will be required to have a valid Tribal License and have in his/her possession at all times a duly authorized assessment permit while conducting such assessment.

C. Scientific Collectors Permit- The Natural Resources Department may issue its employees collector permits for the purpose of conducting biological assessments in accordance with the approved Strategic Plan.

D. Monitoring- It shall be the duty of the Tribal biologist to monitor all take and harvest of game, fish, fur bearers, migratory birds, reptiles, amphibians, plants and the natural growth through the receipt of catch reports, through game bag checks, patrols, jawbone retrieval and mail surveys.

(Source: WOS 2002-07, September 8, 2002, Section 8)

4.209 SPECIAL USE PERMITS

A. In reviewing and taking action on a request for any Special Use Permit, the Tribe shall take into account the biological impact of the harvest and to include such terms and conditions as may be necessary to protect the resource and shall ensure compliance with all applicable law.

B. Assessment Permits- A Tribe's Natural Resource Department may authorize a Tribal member to assist with or perform an assessment to assist the tribe in gathering natural resource data to better help the manage the resource more effectively. The tribal member will be required to have a valid Tribal License and have in his/her possession at all times a duly authorized assessment permit while conducting such assessment.

C. Scientific Collectors Permit- The Natural Resource Department may issue its employees collector permits for the purpose of conducting biological assessments in accordance with the approved Strategic Plan.

D. Gathering Permit- Tribal members seeking to harvest vegetation or natural growth for the sole purpose of incorporating it into a handicraft or artwork to be sold for a profit must acquire a gathering permit from their perspective Tribe before the harvest or attempt to harvest any vegetation or natural growth.

E. Disabled Tribal Hunter Permits-

1. The Natural Resources Department may issue a Disabled Tribal Hunter permit to discharge a firearm, bow or crossbow from a stationary motor vehicle within a roadway other than a state or federal highway to a member who is permanently physically unable to walk without crutches, braces, or other mechanical support as verified by a Physician. The holder of such a permit must shoot away from and not across the roadway.

2. The Natural Resources Department may issue a Disabled Tribal Hunter a permit to use a cross bow during archery season provided that the member is deemed permanently unable to physically use a conventional bow (compound/re-curve) by a Physician.

F. Special Needs Permit- Tribal Hunters with special needs may obtain a permit from the Natural Resources Department. The criteria for a Special Needs permit include, but are not limited to, being out of food, a death or birth in the immediate family, or a family hardship. The Tribal Hunter shall have a valid tribal license and request a special needs permit and tags in person. A tribal member with a special needs permit may use the services of another enrolled tribal

member to harvest an animal for them.

G. Reptile Special Use Permit- No snapping turtles or soft-shelled turtles may be taken at any time during the year without a special use permit. With a special permit, no snapping turtle less than eight inches (8”) of carapace may be taken.

H. Road kill Special Use Permit – If a Tribal member accidentally strikes and mortally wounds a deer, elk, bear or moose while driving a motor vehicle or comes upon a fresh road kill of such animal, the Tribal member shall report the finding as soon as possible to the Natural Resource Department or the Tribal Police Department. The member shall leave it and direct the appropriate Tribal authority to the place where the animal was struck or found. After inspection of the scene, the Tribal Enforcement Officer or any officer deputized by the Tribal Council shall take a sworn statement from the Tribal member regarding the circumstance under which the animal was struck or found. The Enforcement Officer shall then authorize the issuance of a special use permit to allow the Tribal member to take and use such animal.

(Source: WOS 2002-07, September 8, 2002, Section 9)

4.210 POSSESSION AND USE FOR RELIGIOUS PURPOSES

A. No animal shall be taken, or plant or mineral gathered, by any Tribal member for any purpose except as allowed for in this Code or by the Special Use Permit issued by the Tribe under this Code.

B. If a Tribal member finds a dead eagle, hawk, furbearer, or any Endangered Species, the member shall report the finding as soon as possible to the Natural Resource Department. The member shall leave it and direct the appropriate Tribal authority to the place where the carcass was found. After inspection of the scene, the Tribal Enforcement Officer or any officer deputized by the Tribal Council shall take a sworn statement from Tribal member regarding the circumstance under which the carcass was found. The Enforcement Officer shall then deliver the carcass to the appropriate Tribal authority agency.

C. Each Tribe may choose to maintain and operate a repository to keep parts of eagles, hawks, furbearers, and any Endangered Species from species either taken in violation of this code or other applicable Tribal law or acquired pursuant to section 10.03. Tribal members may request in writing animal parts from the repository for religious purposes. Each Tribe will develop regulations to process such requests so that items in the repository can be distributed to Tribal members in a fair and efficient manner.

(Source: WOS 2002-07, September 8, 2002, Section 10)

4.211 OFFENSES

A. Misdemeanors- In addition to the violation of any of the provisions herein contained, or any other fishing, hunting, trapping or gathering regulation now or in the future enacted by Tribal Council, the

acts or omissions described in section 11.04 constitute misdemeanors.

B. Additional Penalties- In addition, an Enforcement Officer or any officer deputized by a Tribal Council may arrest any person(s) committing the offense and may seize or confiscate any fish, reptiles, amphibians, game, fur bearers, hides, vehicles, vessels, firearms, bows, traps, nets, lines, and any associated paraphernalia used in fishing, hunting, trapping or gathering, to be turned over to the Tribal Court of the offender. Any person so convicted may have any fishing, hunting, trapping or gathering equipment or paraphernalia in his possession at the scene of the offense permanently confiscated, and may also be subject to fines and incarceration as imposed by the Tribal Court.

C. Member Responsibility- It shall be no defense in any criminal or civil prosecution under this Code, pertaining to hunting, fishing, trapping, or gathering, for a Tribal Member to claim a lack of awareness or understanding of law or regulations. A conviction upon a violation of any of the provisions of this Code shall constitute a conviction of a misdemeanor of civil offense.

D. It shall be unlawful to:

1. Engage in any fishing, hunting or trapping without first obtaining a Tribal license.

2. Use or allow another person to make use of a Tribal license not his/her own.

3. Engage in wanton destruction or waste of fish, game, reptiles, amphibians or plants.

4. Take, possess or transport, or aid, assist or abet the same, of any game protected by Tribal Councilor Federal law.

5. Exceed established limits, or use prohibited means of taking game, fish, reptiles, or amphibians or the gathering of plants.

6. Hunt, fish or trap while visibly impaired due to the consumption of alcohol or controlled substances.

7. Refuse to produce a Tribal license, permit or other identification upon the request of a Tribal Enforcement Officer.

8. Engage in fraud or perjury in procuring a Tribal license.

9. Refuse to allow inspection of any game, fish, reptiles, amphibians, hides, pelts, or furs in possession upon request of a Tribal Conservation Officer.

10. Harass or interfere with any legal licensed person fishing, hunting, trapping.

11. Engage in any fishing, hunting, trapping or gathering of plants without first obtaining a Special Use Permit when the same is required under this Code or by Tribal regulations.

12. Exceed established limits, or prohibited means of taking game, fish, reptiles, amphibians

and plants or violate any other terms or conditions contained in any Special Use Permit.

13. Posses any big game or furbearers that are not properly tagged or marked.

14. Violate any other provision of this code.

15. Assault, resist, oppose, impede, threaten, bribe, or attempt to bribe or interfere with an Officer engaged in enforcing these rules. (May result in a felony conviction).

E. Any Tribal Member shooting, attempting to shoot, trapping, or attempting to trap, or to harm in any way, any Threatened or Endangered Species will be held by Enforcement Officers until taken into custody by Federal officials for violation of Federal law.

(Source: WOS 2002-07, September 8, 2002, Section 11)

4.212 FINES AND PENALTIES

A. Any licenses or permits authorized by this Code may be suspended or revoked by the issuing Tribe.

B. Any violation of the regulations contained in this Code, or of the regulations established regarding gathering, season, bag and Creel limits, or restrictions on methods or matter of gathering, or taking, game or fish shall be tried before the Tribal Court of the offender under such procedures as are prescribed by that Tribe.

C. The following are the minimum penalties (all fines include court associated costs) for the first offense for a member found guilty of killing, wounding, catching, taking or trapping, or attempting to catch, take, or trap, or possessing any of the following named protected fish, game, migratory bird, reptile, amphibian or fur bearers, or any parts thereof in violation of any of the provisions of this Code:

1. Any Endangered Species as defined in section 1.10. - $1,000.00

2. Any elk, moose or bear - $500.00

3. Any deer or wild turkey - $250.00

4. Any beaver, mink, otter, badger or bobcat - $100.00

5. Any rabbit, muskrat, squirrel or raccoon - $30.00

6. Any ruffed grouse, woodcock, morning dove, ring neck pheasant, quail or sharp tail grouse - $30.00

7. Any migratory bird - $50.00

8. Any Sturgeon, Muskellunge, or Tiger Muskellunge, - $100.00

9. Any Lake trout, Brown trout, Rainbow trout, brook trout, large mouth bass, small mouth bass, walleye, northern pike, whitefish or menominee whitefish - $50.00

10. Any fish or game animal not named - $25.00

11. Any Violation of this Code not specifically listed above- $100.00

D. Repeat offenders may be fined up to $5,000.00 and/or incarcerated for up to one (1) year and/or lose hunting, trapping or fishing privileges, at the discretion of the Tribal Court.

E. Fines are deemed to be all-inclusive. The actual monetary value of the collected fines shall be distributed/divided accordingly; one third (1/3) to the Natural Resource Department, one third (1/3) to the Tribal Council and one third (1/3) to the Tribal Court to cover associated court costs.

(Source: WOS 2002-07, September 8, 2002, Section 12)

Chapter 3. Natural Resources Regulations for the Little Traverse Bay Bands of Odawa Indians' Reservation

PREAMBLE

The Little Traverse Bay Bands of Odawa Indians adopt these Regulations as an exercise of their inherent sovereign right to regulate their members within the territory reserved by the Treaty of Washington of March 28, 1836 and confirmed by the Treaty of Detroit of July 31,1855. These Regulations enable the tribe to regulate, preserve, and conserve the resources of its reservation, to promote public safety within the lands and waters reserved by that Treaty, and to govern the wise use of the resources of the reservation by its members, with the intent that such resources will continue to flourish within the reservation for the perpetual use and enjoyment of the members of the Tribe. These regulations apply on all lands and waters within the boundaries of our reservation. These Regulations repeal and replace the Natural Resources Regulations for the Little Traverse Bay Bands of Odawa Indians' Reservation enacted July 27, 1997, being Waganakising Odawak Statute 1997015.

(Source, WOS 2001-05, March 18, 2001, Preamble)

4.301 DEFINITIONS

1.01 *Amphibians and Reptiles* – Including but not limited to frogs, toads, salamanders, turtles, lizards and snakes.

1.02 *Baitfish* - Non-game fish used for catching other fish.

1.03 *Big game* - Whitetail deer, black bear, wild turkey, and elk.

1.04 *Bow* - A weapon constructed from wood, plastic, metal, or other material with a cord connecting the two ends when bent or strung, and by means of which an arrow is propelled when drawn and released by hand.

1.05 *Cased or encased* - Storage of a firearm or bow in any device or case made to contain a firearm or bow so that no portion is exposed.

1.06 *Commercial Purposes* - The harvesting of a natural resource in which the resource harvested, or any portion thereof, is sold.

1.07 *Conservation Officer* - Any Tribal Conservation or Law Enforcement officer authorized by Tribal law to enforce Tribal conservation regulations, or federal enforcement agents, including Special Agents of the U.S. Fish and Wildlife Service.

1.08 *Conservation regulations* - These regulations and any other LTBB regulations governing any aspect of hunting, trapping, fishing and gathering within the reservation and lands ceded by the Treaty of Washington of March 28, 1836.

1.09 *Crossbow* - A device using a bow, which, once drawn, is held solely by means other than the effort of the person firing it.

1.10 *Disabled Tribal Hunter* - A person who is receiving disability benefits and/or has been issued a handicap sticker or a person who has been diagnosed by a certified Medical Physician to be physically disabled.

1.11 *Endangered Species* - Any species of wild animal or plant designated as threatened, rare or endangered by official action of the Tribal Council or by the United States Department of the Interior pursuant to 50 C.F.R. Part 17.

1.12 *Family* - Means all persons related to the fourth degree by blood, marriage, or adoption, or any person living within the household on a permanent basis.

1.13 *Federally Recognized Indian Tribe which has granted reciprocal rights* - A federally Recognized Indian tribe, band or community which has agreed in writing and so communicated with the LTBB Natural Resources Department that Tribal Members from the participating tribes with reciprocal rights may be permitted to hunt, trap, fish or gather within the territorial jurisdiction of such tribe, band or community.

1.14 *Firearm* - A weapon from which dangerous projectiles may be propelled by use of explosives, gas, or air as a means of propulsion.

1.15 *Fur bearer* - Fur bearing animals including coyote, red fox, gray fox, bobcat, beaver, otter, muskrat, mink, weasel, skunk, raccoon, badger and opossum.

1.16 *Game* - Small game and big game.

1.17 *Game Fish* - Brook trout, lake trout, splake, brown trout, rainbow (steelhead) trout, coho salmon, chinook salmon, Atlantic salmon, largemouth bass, small mouth bass, rock bass, walleye, sauger, northern pike, muskellunge, tiger muskellunge, sturgeon, bluegill, sunfish, crappie, perch, lake whitefish, and round whitefish (menominee), and any other species of fish now or in the future present within reservation boundaries which may be taken for food or sport.

1.18 *Migratory Birds* - Those birds included in the terms of the convention between the United States and any other country for the protection of migratory birds and for which open seasons are prescribed in these Regulations, including ducks, geese, swans, doves, pigeons, rails, coots, gallinules, woodcock and snipe.

1.19 *Personal use* - The use of natural resources by Tribal Members for food, medicine, shelter, fuel, clothing, tools, transportation; handicraft items or traditional artwork, including the commercial sale of such items; or for barter. For purposes of this section, the term:

A. "Traditional artwork" means articles produced, decorated or fashioned in the exercise of traditional Indian carving, weaving, quillwork, basketry, beading, pottery, drawing, painting or other art forms, without the use of mass copying devices; and,

B. "Barter" means the exchange of natural resources or parts thereof for personal uses between Tribal Members or between a Tribal Member and a member of another federally recognized Indian tribe, which has granted reciprocal rights

1.20 *Physician* – A person licensed by the State to practice medicine or osteopathic medicine and surgery under Article 15 of the public health code, 1978 PA 368.

1.21 *Regulations* - These Regulations including any subsequent amendments to these Regulations.

1.22 *Related to the Fourth Degree* - Children, grandchildren, great-grandchildren, great-great-grandchildren, parents, grandparents, great-grandparents, great-great-grandparents, siblings, aunts and uncles, nieces and nephews, grandnieces and grandnephews, great-aunts and great-uncles, first cousin.

1.23 *Safety Zone* - Any area within 150 yards (450 feet) of any occupied commercial structure, public structure, dwelling house, residence, cabin, camp, cottage, barn, or other building used in connection therewith.

1.24 *Slingshot* - A "Y" shaped device with an elastic strip at the prong, or one strip of stretchable material, with a pocket on one end, used for projecting stones or other objects.

1.25 *Small game* - Ruffed grouse (partridge), woodcock, mourning dove, ring-neck pheasant, cottontail rabbit, snowshoe hare, gray squirrel, black squirrel, fox squirrel, red squirrel, quail, woodchuck, porcupine, sharp tail grouse and crow.

1.26 *Territory* - All lands and waters described in Article I Third and Article I Fourth of the Treaty of

Detroit of July 31, 1855, 11 Stat. 621, and, in addition thereto, all lands and waters acquired by the United States of America in trust for the Tribe pursuant to the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act of September 21, 1994, 108 Stat. 2156.

1.27 *Threatened Species* - A species at risk of becoming endangered as determined by official action of the Tribal Council or by the United States Department of the Interior.

1.28 *Transport or Transportation* - Carrying or moving by any vehicle or vessel, or on foot, of fish, game, fur-bearers, migratory birds, reptiles, amphibians or plants or parts thereof or causing to be carried or moved or attempting to carry or move fish, game, fur-bearers, migratory birds, reptiles, amphibians or plants.

1.29 *Tribe* - The Waganakising Odawa, also known as the Little Traverse Bay Bands of Odawa Indians.

1.30 *Tribal Court* - The Court of the LTBB Tribe.

1.31 *Tribal license* - A gathering, hunting, trapping, or fishing license issued by the Tribe to a Tribal Member, which license is valid and current.

1.32 *Tribal Member* - Enrolled member of the Little Traverse Bay Bands (LTBB) Tribe.

1.33 *Wild animals* - All creatures, not human, wild by nature, endowed with sensation, and power of voluntary motion, which includes quadrupeds, mammals, birds, fish, amphibians, reptiles, crustaceans, insects, and mollusks.

(Source, WOS 2001-05, March 18, 2001, Section I)

4.302 TERRITORIAL JURISDICTION

2.01 These Regulations shall govern all hunting, fishing, trapping and gathering activities of Tribal Members on lands and waters within the reservation boundaries.

2.02 Tribal Members are authorized, subject to the limitations and pursuant to these Regulations, to hunt, trap, fish and gather within the reservation boundaries, only on the following lands and waters:

A. Lands and waters open to public hunting, trapping, fishing and gathering.

B. Tribal lands which are open to hunting, trapping, fishing and gathering by Tribal members; and

C. Private lands including without limitation lands held by non-Tribal members, land held in fee by Tribal Members, lands held by Tribal Members subject to restrictions on alienation and lands held by the United States in trust for Tribal Members, but only with

permission from the owner, occupant or lessee.

D. The forty-acre parcel on Osborne Road containing Ceremonial Grounds is designated as a No Hunting Zone

(Source, WOS 2001-05, March 18, 2001, Section II)

4.303 HUNTING LICENSES

3.01 *Previous Licenses* - Any Tribal Member who applies for a Tribal license to hunt any small game, big game, or furbearer shall either produce a previous Tribal license to hunt or trap from a tribe or other lawful issuing agent within the State of Michigan or have successfully passed a recognized Hunters Safety Course.

3.*02* *Licenses* - Any Tribal Member twelve (12) years of age or older, who hunts small game or traps within the reservation boundaries, while having under his/her control or immediate possession any firearm, subject to the provisions of section 3.05, bow and arrow, slingshot, trapping apparatus, or any other device capable of killing or restraining fur bearers or game, shall have in his/her possession a valid and current Tribal license.

A. *Age Limits for Hunting Licenses* - No Tribal Member less than twelve (12) years of age shall be allowed to possess a Tribal license to hunt. A Tribal Member under (12) years of age may be issued a License to trap upon application signed by a parent or guardian provided that the member under twelve (12) may not be authorized or allowed to have a firearm in his/her possession while trapping.

B. *Age Limits for Fishing, Reptiles and Amphibians and Gathering Licenses* - No Tribal Member under sixteen (16) years of age shall be required to possess a Tribal license to fish, take reptiles or amphibians, or gather vegetation for personal use or use by his immediate family; however, those persons shall be required to follow these Regulations and all other applicable Tribal regulations.

C. *Disabled Tribal Hunter*- The LTBB Natural Resources Commission shall issue a DTH license and a visible tag identifying the DTH to any persons determined to have such status under the definition at ***. The DTH tag shall be placed on the vehicle where it is visible, for example, on the windshield or the front dashboard of the vehicle.

3.03 *Adult Accompaniment* - Any Tribal Member under sixteen (16) years**,** while hunting with a firearm shall be accompanied by an adult who shall have in his/her possession a valid Tribal or State License.

3.04 *Hunting with a Firearm* - A Tribal Member shall be at least fourteen (14) years of age to hunt big game with a firearm.

3.05 *Harvest Tags* - In addition to the Tribal license required by this section, a Tribal Member may be required to obtain annual harvest tags in order to hunt or trap certain species. Harvest tags shall be completely filled out and affixed to the animal when transporting the game.

A. Annual harvest tags shall be obtained from the Tribe in order to hunt deer, bear, bobcat or wild turkey.

A. Annual harvest tags shall be obtained from the Tribe in order to trap otter, badger or bobcat.

B. Tribal Hunters with special needs may obtain a special need permit and tags for their immediate susistence hunting needs. The Program Manager may issue a temporary special needs permit until the details can be discussed at a regularly scheduled LTBB NRC meeting. The Tribal Hunter shall have a valid tribal license and request the special needs permit and tags in person. The special needs permit will be for one (1) deer either sex. A tribal member with a special needs permit may use the services of an enrolled LTBB tribal hunter for the special needs permit for subsistence hunting. The criteria for a special needs permit include, but are not limited to, being out of food, a death or birth in the immediate family, or a family hardship.

3.06 In addition to the Tribal License required by this section, Tribal members may also be required to obtain and submit completed harvest reports for the harvest of certain species of fish with a spear or bow fishing equipment.

A. Harvest reports must be obtained from and submitted to the Natural Resources Department in order to spear or bow fish for walleye, northern pike, muskellunge, or trout (including steelhead).

B. Harvest reports shall indicate the body of water where the harvest is taking place, date of harvest, and the number harvested for each species.

C. Harvest reports shall be submitted within seven (7) days of harvest date.

3.07 The Natural Resources Commission may also issue Special Licenses to members of a federally recognized Indian tribes of the Treaty of 1836, which have granted reciprocal rights. The Special License and tags must be acquired at the LTBB NRC office and the tribal hunter with reciprocal rights must follow the Reservation Regulations set by the LTBB NRC for the LTBB Reservation. The visiting tribal hunter will inform the LTBB Natural Resources Department of the approximate location and the day(s) the tribal hunter will be hunting on the LTBB Reservation. Animals harvested under the authority of another tribe or jurisdiction shall be counted toward the totals allowed under these Regulations. The LTBB Natural Resources Department has the authority to contact the reciprocating tribe to inquire about cumulative bag limits. Anyone issued a hunting license; hunting, trapping, fishing or gathering by such persons shall be limited to those lands and waters listed in Section 2.02 and may be further limited by specific license restriction.

(Source, WOS 2001-05, March 18, 2001, Section III)

4.304 HUNTING AND TRAPPING; GENERAL PROVISIONS

4.01 *Sale of Game* - It shall be unlawful for any Tribal Member to engage in the sale of game.

4.02 *Transportation* - Furbearers, big game, or small game lawfully taken by licensed Tribal Members may be transported *within* or outside of the reservation boundaries provided that the member shall have a valid Tribal license in possession. Big game must be tagged with a harvest tag whenever it is being transported.

4.03 *Shooting hours* - Shooting hours are one half hour before sunrise to one half-hour after sunset excluding waterfowl. (See section 3.01 Section 3 Migratory Birds). Fox, raccoon and coyote may be hunted after sunset with use of dogs, or game call and artificial lights.

4.04 *Pursuit with Vehicles* - It shall be unlawful to hunt or pursue any fur bearer, small game, migratory birds, or big game with automobile, motorcycle, ORV, airplane, snowmobile, motorboat, or any other motorized or wind powered vehicle or boat**,** except as provided in Section 4.15

4.05 *Harmful Substances* - No furbearer, migratory birds, small game, or big game may be lawfully taken by use of explosive, drugs, poisons, medicated bait, or other harmful substances.

4.06 *Trapping Big Game* - It shall be unlawful to trap or snare big game.

4.07 *Shooting Fur Bearers* - It shall be unlawful to shoot or discharge a firearm at furbearers, small, or big game while they are in the water.

4.08 *Traps* - Traps used for harvesting furbearers, snowshoe hare or cottontail rabbit shall be leg hold, box type, or body gripping (conibear) type or locking type snare. It shall be unlawful to use snares except for beaver, otter, or muskrat. The snares shall be attended within forty-eight (48) hours.

4.09 *Trap Markings* - All traps set shall be clearly marked with the Tribal license number and the name of the person who set the trap. All traps shall be attended within forty-eight (48) hours

4.10 *Marking of Hides* – The bobcat, otter and badger and the hides, pelts and furs thereof, shall be clearly tagged with the date harvested, place of harvest and the Tribal license number within seventy-two (72) hours of being taken.

4.11 *Barter of Hides* - It shall be lawful for Tribal Members to possess, use for barter, or to transport hides, furs or pelts of fur bearers, big game or small game lawfully taken**,** including the sale of beaver, raccoon and muskrat flesh.

4.12 *Shipping of Hides* - All hides, furs or pelts of bobcat, badger, or otter either shot or trapped shall be presented to a Tribal Conservation Officer for inspection and registration before they are shipped by common carrier, transported outside the reservation boundaries or offered for sale or barter.

4.13 *Federal Laws on Hides* - All Federal laws and regulations regarding the identification, sale, and

transportation of hides, furs or pelts of any fur bearer shall apply to the identification, sale or transportation under these Federal Regulations. All shipments of raw hides or furs must be plainly marked on the outside of the package as to the contents. If you wish to export bobcat, otter, or bear hides from the United States, you need a federal permit. For details, contact the LTBB NRC @231-439-3856.

4.14 Transportation of Firearms, Bows and Crossbows, and Muzzleloaders-

A. A member may not transport a firearm in a motor vehicle unless the firearm is (1) unloaded and in a gun case expressly made to contain a firearm, and the case fully encloses the firearm being zipped, snapped, buckled, tied, or otherwise fastened, and without any portion of the firearm exposed (2) unloaded and in the closed trunk of a motor vehicle; or (3) a handgun carried in compliance with statewide handgun regulations.

B. A member may not transport an archery bow or crossbow in a motor vehicle unless the bow is (1) unstrung (2) completely contained in a case; or (3) in the closed trunk of a motor vehicle.

C. A member may not transport a muzzleloader rifle in a motor vehicle unless the muzzleloader is (1) unloaded (cap removed) (2) completely contained in a gun case and inaccessible to the occupants or (3) in the closed trunk of a motor vehicle.

4.15 Discharging Firearms, Bows and Arrows and Muzzleloaders

A. Restrictions related to highways. (1) A member may not discharge a firearm or an arrow from a bow or crossbow on, over, or across an improved public highway. A member may not discharge a firearm, bow, or crossbow within the right-of –way of an improved highway. The Commission may by order extend the application of this subsection to the taking of migratory waterfowl in designated locations. (2) A member may not discharge a firearm, bow, or crossbow on, over, across or within the right-of-way of an improved public highway at a decoy of a big game animal that has been set out by a Band, State or Commission law enforcement officer.

B. Restrictions related to motor vehicles. A member may not take a wild animal with a firearm, bow or crossbow from a motor vehicle except that a member may do so from a stationary vehicle which is parked off of and more than 66 feet from the center of an improved two lane highway, and 122 feet from the center of a four lane highway, or as permitted in subsection 4.15(C), or 6.03(C) 18.

C. Hunting from a vehicle by a disabled hunter. The LTBB NRC may issue a Disabled Tribal Hunter license to discharge a firearm, bow or crossbow from a stationary motor vehicle within a roadway other than a state or federal highway to a member who is temporarily or permanently physically unable to walk with out crutches, braces, or other mechanical support, or who has a physical disability which substantially limits the person's ability to walk. The holder of such a permit must shoot away from and not across the roadway.

4.16 Live Animals for Trapping - It shall be lawful to possess, in a humane way during trapping season,

one live coyote and two live fox for the purpose of collecting urine and droppings for trapping; provided, that at least one member of the immediate family must have a valid Tribal trapping license.

4.17 *Seasons and Bag Limits* - The seasons and bag/harvest limits for taking small game, big game, fur bearers, migratory birds and turkeys, and for hunting and trapping of fur bearers shall be as determined by Tribal regulations.

4.305 HUNTING RESTRICTIONS

5.01 *Automatic Weapons* - No Tribal Member shall use in hunting, pursuing or killing a wild animal, or be in possession of, in an area frequented by wild animals, any semi-automatic shotgun or rifle, capable of holding more than six (6) shells in both the chamber or magazine combined, other than .22 caliber rim fire for use for small game only, or use cartridges containing either tracer or exploding bullets. Fully automatic firearms are illegal. All shotguns used for migratory birds (including woodcock) must be plugged so the total capacity of the shotgun does not exceed three shells.

5.02 *Silencers* - No Tribal Member shall use, or be in possession of, a device or apparatus known as a silencer.

5.03 *Hunting from Platforms* - Tribal Members may hunt deer, small game, fur bearers or bear from a tree or portable raised platform**.**

5.04 *Restrictions* - Unless otherwise specified in these Regulations or by special Tribal Regulations set by the LTBB NRC, no Tribal Member shall make use of artificial light, cage, net, trap, pit, pitfall, deadfall, snare, drug, poison, chemical, fire, smoke, gas, explosive, or mechanical device other than firearm or bow and arrow for the purpose of harvesting or killing big game or small game.

5.05 *Salt and Bait* - It shall be unlawful to use salt or bait to hunt deer.

5.06 *Firearms Limitations* - Any firearm used in hunting big game other than wild turkey must be a center fire rifle of .223 caliber or larger, muzzle loader of .40 caliber or larger, or shotgun using slug or buckshot.

5.07 *Limitations on Turkeys* - Wild turkey may be hunted with a bow and arrow, shotgun or muzzle loading shotgun using number four (#4) shot or smaller.

5.08 *Bow and Arrow Hunting* - Bow and arrow may be used to hunt both big game and small game, provided that a broad head with a cutting surface of at least one inch (1") diameter may be used to hunt big game including wild turkey.

5.09 *Crossbow* - Disabled Tribal Hunters may use a crossbow to hunt both big game and small game. The crossbow must be registered with the LTBB Natural Resources Department.

5.10 *Hunting with Dogs* - It shall be unlawful to hunt deer or wild turkey with dogs.

5.11 *Seasons* - It shall be unlawful to hunt on any lands during daylight hunting hours from and including September 1 through April 1 unless one (1) square foot of hunters orange is worn and visible from all sides. This does not apply to persons hunting migratory birds, crow, wild turkey, predators, nor to bow hunters, except during firearm deer season.

(Source, WOS 2001-05, March 18, 2001, Section V)

4.306 MIGRATORY BIRD REGULATIONS

6.01 *License* - Any Tribal Member twelve (12) years of age or older who hunts migratory birds within the reservation boundaries shall have in possession a valid Tribal license.

6.02 *Age Restriction* - No Tribal Member under twelve (12) years of age shall be allowed to hunt migratory birds.

6.03 *Offenses.*

A. In addition to the violation of any of the provisions herein contained, or any other hunting regulation enacted now or in the future by the Tribal Council, the acts or omissions described in Subsection C below shall constitute misdemeanors. An Enforcement Officer may arrest any person(s) committing an offense and may seize or confiscate any migratory birds, firearm, bows, vessels, vehicles, and any associated paraphernalia used in hunting at the scene of the offense.

B. In addition to any punishment provided for upon the conviction of any misdemeanor, or any other offense described herein, or upon conviction for the violation of any regulation with respect to hunting migratory birds now enacted or in the future enacted by the Tribal Council, any person so convicted may have any hunting equipment or paraphernalia that was seized at the scene of the offense permanently confiscated also, the above said person(s) is/are subject to fines and incarceration as imposed by the Tribal Court.

C. It shall be unlawful to:

1. Engage in any migratory bird hunting without first obtaining a Tribal license.

2. Use or allow another person to make use of a Tribal license not his/her own.

3. Engage in wanton destruction of migratory birds.

4. Fail to make a reasonable effort to recover dead or wounded migratory birds.

5. Take, possess, transport, or assist in the taking, possession or transportation, of any migratory bird protected by Tribal or Federal law.

6. Exceed established limits or use prohibited means of taking migratory birds.

7. Hunt while visibly impaired due to the consumption of alcohol or controlled substances.

8. Refuse to produce a Tribal license or other identification upon request of a Conservation Officer.

9. Use fraud or perjury in procuring a Tribal license.

10. Fail to allow the inspection of any migratory bird or bird part in possession upon demand of a Conservation Officer.

11. Harass or interfere with any legally licensed hunter.

12. Shoot, attempt to shoot or harm in any way any Endangered Species.

13. Take migratory game birds by any other means other than shotgun or shotguns with shells longer than three and one half inches (3.5”).

14. Take migratory birds with a shotgun of any description greater than ten (10) gauge and capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, which is incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells.

15. Use or be in possession of any shot other than steel**,** to take migratory birds; provided, however, that it shall be legal to hunt woodcock with lead shot rather than steel.

16. Hunt migratory birds from or by means or use of a sink box, or other low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

17. Use any rim fire, center fire, or muzzle-loading rifle to take migratory birds.

18. Pursue migratory birds from a motorboat, or any other craft having a motor attached, or by means of any motorized land or air conveyance.

19. Use any land, water or air conveyance to drive, concentrate or disperse migratory birds.

20. Use or attempt to use bait, or hunt migratory birds on or near a baited area, provided, however, that it shall be legal to hunt migratory game birds in agricultural fields.

21. Violate any additional Federal law addressed in 50 C.F.R. Part 20 dealing with hunting migratory birds.

6.04 *Biological Monitoring of Harvest* - It shall be the duty of the Biologist and Conservation Officers working with Federal officials to monitor and sample the Tribal harvest of migratory birds through game bag checks, patrols and mail surveys. The harvest of all species shall be reported to the U.S. Fish and Wildlife Service to permit evaluation of the impacts of the Tribal harvest.

6.05 *Seasons and Bag Limits* - The season and bag limits for the taking of migratory birds shall be subject to the provisions of the Migratory Bird Treaty Act, 16 U.S.C. Sections 703 to 711, and regulations promulgated pursuant thereto set forth at 50 C.F.R. Part 20.

(Source, WOS 2001-05, March 18, 2001, Section VI)

4.307 GATHERING VEGETATION AND NATURAL GROWTH

Tribal members, who gather and use vegetation and minerals for the construction of traditional crafts, handicraft articles, medicines, and food, are subject to the following regulations:

7.01 *Gathering* - It shall be lawful for Tribal Members to gather and use vegetation and natural growth for the construction of traditional artwork, handicraft articles, medicine and food, subject to the following regulations.

7.02 *Private Land* - Permission must be obtained from a private landowner prior to gathering vegetation and natural growth on such land.

7.03 *Gathering Permit* - A Tribal Member must acquire an Inland Hunting/Fishing/Trapping and Gathering License in order to gather vegetation and natural growth; provided, however, that no permit will be required to gather fruit, fungi and nuts, and provided further that no permit will be required to harvest vegetation or natural growth in season if such vegetation or natural growth is intended for religious or ceremonial purposes or for consumption by tribal members.

A. Vegetation or natural growth which is intended for religious or ceremonial purposes or for consumption by tribal members may be harvested out of season but only with a valid Special Gathering Permit.

B. At the time of application for the Special Gathering Permit, the Tribal Member shall specify what type or types of vegetation or natural growth, which it is intended, will be harvested and the location of the harvest.

7.04 *Biological Restrictions* - In reviewing and taking action on a request for a Special Gathering Permit, the biological impact of the harvest shall be taken into account. Such terms and conditions as may be necessary to protect the resource and to ensure compliance with applicable law shall be affixed to the Special Gathering Permit. The Natural Resources Commission may limit the quantity of particular types of vegetation taken under a Special Gathering Permit based on scarcity of the resource, heavy demand or other biological reasons

7.05 *Endangered Species* - It shall be unlawful to gather, collect, or be in possession of any vegetation or

natural growth, which constitute Endangered Species or parts of any threatened or endangered species. A tribal member may request a Special Gathering Permit to possess such items only to be issued through the LTBB Natural Resource Department.

7.06 *Sweetgrass* - Sweetgrass shall not be sold within reservation boundaries unless it has been incorporated into traditional artwork**.**

(Source, WOS 2001-05, March 18, 2001, Section I)

4.308 SUBSISTENCE AND SPORT FISHING

8.01 *Fishing License* - Any Tribal Member sixteen (16) years of age or older who fishes within reservation boundaries shall have in his/her possession a Tribal license. No license is required for a Tribal Member less than sixteen (16) years of age, but all provisions of these Regulations shall apply.

8.02 *Methods and Gear Restrictions.*

A. The use of poles, reels, tip-ups and hand lines is lawful for use while fishing.

B. Seines up to thirty feet (30') by three feet (3') and dip nets up to nine (9) square feet are legal for smelt on inland lakes.

C. Bait fish may be taken by trap seines up to thirty feet (30') by three feet (3') and dip nets up to nine (9) square feet.

D. Individual hook and line fishing is limited to four (4) lines per person with two (2) lures per line; except that there will be no limit on the number of hooks per line for smelt on designated smelt lakes. Ice fishing is limited to eight (8) tip ups and one- (1) pole or hand lines, per licensee.

E. Fixed ice shanties must have the owner's name, address and number of the Tribal license permanently affixed on all sides with letters at least three inches (3”) high Shanties must be removed prior to the ice becoming unsafe but no later than March 15.

Fishing with a dip net is permitted on any lake, stream and river subject to the following: seasons, size and creel limits and other restrictions imposed by the LTBB NRC.

Fishing with a spear or bow fishing for walleye, northern pike, muskellunge and trout (including steelhead) is permitted on designated lakes, streams and rivers, and shall be subject to seasons, size and creel limits identified in Section 4.

F. Fishing with a spear or bow fishing is permitted on all lakes, streams and rivers for all species not listed in 8.02 G above.

8.03 *Restrictions* - It shall be unlawful to:

A. Use explosives, drugs, poisons, lime medicated bait or other deleterious substances to take or attempt to take fish.

B. Drive or harass fish into nets.

C. Use firearms to take or attempt to take fish.

D. Use gill nets, trap nets, seines or gorge to take fish, except as allowed for baitfish under Section 8.02(C) [WOS 4.308(B)(3) and smelt under Section 8.02(B) [WOS 4.308(B)(2)].

E. Use a weighted trebles hook or weight attached after the treble hook to take or attempt to take fish.

F. Wanton destruction or waste of fish.

G. Take fish for the sole purpose of egg (spawn) collection.

H. Take any species of game fish determined to be threatened or endangered by the United States Fish and Wildlife Service or the LTBB NRC.

8.04 *Seasons and Creel Limits for Fish Harvest* - The seasons and creel limits for the taking of the various fish species specified in Section 4 shall be as determined by Tribal regulations.

(Source, WOS 2001-05, March 18, 2001, Section VIII)

4.309 AMPHIBIANS AND REPTILES

9.01 General Regulations: Amphibians and Reptiles may not be shot with firearms (including spring, air, or gas propelled) or bow and arrow. The following shall not be taken or possessed except as authorized by the Little Traverse Bay Bands (LTBB) Natural Resources Commission (NRC). All amphibians and reptiles protected under Part 365 (Endangered Species Act) of 1994 P.A. 451.

9.02 *Amphibians* - Amphibians may be taken from and including the last Saturday in May through November 15 with no size limit. Not more than fifty (50) of each species may be taken per day and not more than one hundred (100) of any species may be in possession at any given time.

9.03 *Reptiles* - No snapping turtles or soft-shelled turtles may be taken at any time during the year without a Special Use Permit. Snapping turtles and soft-shelled turtles may be taken throughout the year with a Special Use Permit provided that no commercial harvest is allowed. No snapping turtle less than twelve inches (12) of carapace (shell measured from head to tail) may be taken even with a Special Use Permit.

9.04 *Equipment* - Taking of amphibians and reptiles may be done by hand, trap, dip nets, seines and hook

and line. Frogs may be speared but not while using artificial light.

9.05 *Personal Use* - Taking of amphibians and reptiles shall be for personal use only. No reptiles or amphibians or parts thereof may be harvested for commercial purposes within the reservation boundaries.

(Source, WOS 2001-05, March 18, 2001, Section IX)

4.310 BIOLOGICAL ASSESSMENT AND MONITORING

10.01 *Biological Assessment* - To conduct biological assessment, habitat evaluation, or other biological study, upon authorization by the LTBB Natural Resources Department Program Manager with the advise of the LTBB NRC, may require that fur bearers, small game, big game, migratory birds, fish, reptiles, amphibians, vegetation and natural growth, or the habitats of any of them, within the reservation boundaries shall be subject to reasonable biological assessment. A Tribal Member conducting such assessment shall, nevertheless, have a valid Tribal license in his/her possession at all times while conducting such assessment. The purpose of such assessment is to ensure the preservation and proper long-range management of these species and their environs, and to make modifications or changes to the existing or any future regulations or as necessary to foster such preservation and management.

10.02 *Monitoring* - It shall be the duty of the tribal biologist and biological staff of the LTBB NRC to monitor all take of game, fish, furbearers, migratory birds, reptiles, amphibians and plants. Monitoring practices include the receipt of catch reports, through game bag checks, patrols, jawbone retrieval, and mail surveys as appropriate.

(Source, WOS 2001-05, March 18, 2001, Section X)

4.311 SPECIAL USE PERMITS AND SPECIAL LICENSE

11.01 Nothing in these Regulations shall prohibit the harvest or use of any Natural Resources by Tribal members for religious or ceremonial purposes or for consumption by Tribal members except as provided in paragraph 11.02 and 11.03.

11.02 No Tribal member shall harvest out of season a natural resource for religious or ceremonial purposes or for consumption by Tribal members without a Special Use Permit from the LTBB Natural Resources Commission. It shall be a violation to fail to comply with the terms and conditions of any such Special Use Permit.

11.03 In reviewing and taking action on a request for any Special Use Permit, the LTBB Natural Resources Commission shall take into account the biological impact of the harvest to include such terms and conditions as may be necessary to protect the resource and shall ensure compliance with all applicable law.

11.04 *Special Use Permit* - A Special Use Permit may be issued by the Natural Resources Commission authorizing use of a firearm or hunting accessory not listed in Section 5 of these Regulations**.**

11.05 *Special License* - A Special License to hunt, trap, fish or gather may be issued to a person who is a member of a federally recognized Indian tribe of the Treaty of 1836, which has granted reciprocal rights.

A. All provisions of these Regulations shall apply to a person with a Special License, and such person shall be classified a Tribal Member for the purposes of application of these Regulations.
By application for a Special License, a person shall be deemed to have submitted to the full and complete jurisdiction of the Tribal Court.

11.06 *Provision for immediate action*- In cases where a Special Use Permit or a Special License is requested prior to a regularly scheduled LTBB NRC meeting the NRC Program Director can issue a temporary permit until the Commissioners can approve and/or authorize the permit or license at the next regularly scheduled meeting.

(Source, WOS 2001-05, March 18, 2001, Section XI)

4.312 POSSESSION AND USE FOR RELIGIOUS PURPOSES

12.01 No animal shall be taken, or plant or mineral gathered, by any Tribal member for any purpose except as allowed for in these Regulations or by the Special Use Permit issued by the Tribe under these Regulations.

12.02 *Possession for Religious Purposes* - Nothing in these Regulations shall be construed to prohibit the possession or use of any species of plant or animal for religious purposes with appropriate permit issued by the Natural Resources Commission. The Natural Resources Commission may issue a special permit or letter stating how the animal or plant will be used for traditional, religious or ceremonial purposes.

12.03 *Disposal of Edible Resources* - Any big game or small game obtained by a Tribal Conservation Officer under these regulations and which is obtained in edible condition shall be properly stored at the LTBB Natural Resource Department to maintain the edible state of the found/confiscated game. The LTBB Natural Resources Department shall authorize the distribution of the edible game. The LTBB Program Director or a LTBB Natural Resources designated staff member will determine if the game is edible.

(Source, WOS 2001-05, March 18, 2001, Section XII)

4.113 OFFENSES

13.01 *Misdemeanors* - A violation of any of the provisions herein contained, or any other fishing, hunting, trapping or gathering regulation now or in the future enacted by the Tribe, constitute misdemeanors. In addition, a Tribal Conservation Officer authorized by the Tribe may arrest any person(s) committing the offense and may seize or confiscate any fish, reptiles, amphibians, game, migratory birds, fur bearers, hides, vehicles, vessels, firearms, bows, traps, nets, lines, and any associated paraphernalia used in fishing, hunting, trapping or gathering, to be turned over to the Tribal Court of the offender.

13.02 *Additional Penalties* - In addition to any punishment provided for upon the conviction for violations of any provisions of these Regulations, or of the violation of any regulation now or in the future enacted with respect to fishing, hunting, trapping or gathering activities by the Tribe, any person so convicted may have any fishing, hunting, trapping or gathering equipment or paraphernalia in his possession at the scene of the offense permanently confiscated, and shall be subject to fines and incarceration as imposed by the Tribal Court.

13.03 *Member Responsibility* - It shall be no defense in any criminal or civil prosecution under these Regulations, pertaining to hunting, fishing, trapping, or gathering, for a Tribal Member to claim a lack of awareness or understanding of law or regulations.

13.04 *Offenses* - It shall be unlawful to:

A. Engage in any fishing, hunting or trapping without first obtaining a Tribal license.

B. Use or allow another person to make use of a Tribal license not his/her own.

C. Take, possess or transport, or aid, assist or abet the same, of any game, fish, reptiles, amphibians, fur bearers, migratory birds or plants protected by Tribal or Federal law.

D. Exceed established limits, or use-prohibited means of taking game, fish, reptiles, or amphibians.

E. Hunt, fish or trap while visibly impaired due to the consumption of alcohol or controlled substances.

F. Refuse to produce a Tribal license, Special Use Permit or other identification upon the request of a Tribal Conservation Officer.

G. Engage in fraud or perjury in procuring a Tribal license.

H. Refuse to allow inspection of any game, fish, migratory birds, reptiles, amphibians, hides, pelts, or furs in possession upon request of a Tribal Conservation Officer.

I. To wantonly harass or interfere with any legally licensed person fishing, hunting, trapping or gathering.

J. Engage in any fishing, hunting, trapping or gathering of plants without first obtaining a Special Use Permit when required under these or Future Regulations.

K. Exceed established limits, or prohibited means of taking game, fish, reptiles, amphibians and plants or violate any other terms or conditions contained in any Special Use Permit.

L. Assault, resist, oppose, impede, threaten, bribe, and attempt to bribe, or interfere with a Conservation Officer engaged in enforcing these rules.

13.05 Endangered Species - Any Tribal Member shooting, attempting to shoot, trapping, or attempting to trap, or to harm in any way, any Endangered Species will be held by Tribal Conservation Officers until taken into custody by Federal officials for violation of Federal law.

(Source, WOS 2001-05, March 18, 2001, Section XIII)

4.314 HUNTING SEASONS

14.01 Small Game - September 1 through April 1. Crows no closed season.

14.02 Deer

A. Archery - October l through January (3).

B. Firearm - November 15 through December 3 provided that the Tribe may issue antler less special permits for November 13-14 and an extended season for antler less deer only shall run from December 19 through January 3.

C. Muzzleloader - December (4) through December 18.

14.03 Bear - No open season under Tribal regulations.

14.04 Wild Turkey

A. Fall Season - October 1 through November 14.

B. Spring Season - April (15) through May 31.

14.05 Elk – No open season under Tribal Regulations.

14.06 Fur bearers

A. Hunting

1. Bobcat and mink- October 25 through March 15. See special instructions for preparing Furbearers for Registration.

2. Gray fox, red fox, raccoon and coyote - October 1 through March 15.

B. Trapping

1. Beaver and otter - November 1 through April 16.

2. Muskrat, mink and bobcat - November 1 through March 1.

(Source, WOS 2001-05, March 18, 2001, Section XIV)

4.315 BAG LIMITS

15.01 *Small* Game - A limit of five (5) of each species per day and a possession in transport limit of no more than two (2) days' limit per licensee.

A. The limit of rabbit, squirrel and grouse is five (5) species per day and a possession limit of no more than two- (2) days' limit per licensee.

B. Crow- No limit

15.02 *Big Game*

A. Deer - A limit of five (5) deer per tribal hunter per season, two (2) bucks with 3-inch antlers or three does. The tribal hunter can harvest the deer with a bow and arrow, rifle or muzzleloader. Provided that no more than two (2) permits shall be issued at any one time and subsequent permits are issued only upon receipt of filled harvest tags.

B. Bear - No open season under Tribal Regulations

C. Wild Turkey - Two (2) birds of either sex per fall season; two-(2) adult male(s) with visible beard(s) per spring season.

D. *Trapping*

1. Otter, badger and bobcat - two (2) species per season. All other species have no bag limit.

2. Accidentally trapped non-target protected species such as lynx, gray wolf, fisher or marten, etc. are unlawful to possess. All live animals shall be released if possible. The trapping of all other such animals shall be reported immediately to a Conservation Officer, and the procedures set forth in Section 12.03 [WOTC 4.312(12.03)] of the Natural Resources

Regulations shall apply.
(Source, WOS 2001-05, March 18, 2001, Section XV)

4.316 MIGRATORY BIRDS

16.01 Shooting Hours - From one half (½) hour before sunrise until sunset.

16.02 Ducks

A. Season Dates: Open September 20, close January 20, 2001.

B. Daily Bag Limits: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 wood ducks, 1 pintail, 1 hooded merganser, and 1 canvasback.

16.03 Geese

A. Season Dates: Open September 1, close November 30, 2000, then open January 1, 2001, close February 8, 2001.

B. Daily Bag Limits: Five geese.

16.04 Rails, Snipe, and Woodcock

A. Season Dates: Open September 1, close November 14, 2000.

B. Daily Bag Limit: Five rails, five snipe, and five woodcock.

16.05 General: Possession limits are twice the daily bag limits.

(Source, WOS 2001-05, March 18, 2001, Section XVI)

4.317 SUBSISTENCE AND SPORT FISHING

17.01 Seasons

A. Trout and salmon, except as otherwise stated in these Regulations

1. Inland Lakes - No closed season.
2. Streams and rivers - No closed season.

B. Largemouth bass, small mouth bass, sauger, walleye northern pike, muskellunge, and tiger muskellunge.

1. Inland Lakes and Streams-No closed season.

C. Bluegill, sunfish, crappie, rock bass, perch, lake whitefish, menominee, catfish, and other species not listed - No closed season

D. Sturgeon - No open season.

17.02 Size Limits

A. Trout and salmon

1. Inland Lakes - Ten inch (10") minimum.

2. Streams**:** Eight-inch (8") minimum.

B. Largemouth and small mouth bass - Twelve inch (12") minimum.

C. Northern pike - Twenty-inch (20") minimum.

D. Muskellunge and tiger muskellunge - forty-two inch (42") minimum.

E. Walleye - Fourteen inch (14") minimum

F. Bluegill, sunfish, crappie, lake whitefish, menominee, perch, catfish species, and other species not listed - No minimum size.

17.03 Creel Limits

A. Lake trout, rainbow trout, splake, brook trout and brown trout - Five (5) per species per day with a maximum of ten (10) in combination.

B. Brook trout, brown trout, rainbow trout in streams - a maximum of ten (10) in any combination. No more than three (3) of the total may be over sixteen inches (16") long.

C. Coho and Chinook salmon - Five (5) per species per day.

D. Muskellunge and tiger muskellunge - One (1) per day.

E. Largemouth bass, small mouth bass, walleye and sauger - Ten (10) per day.

F. Bluegill, sunfish, crappie, lake whitefish, and yellow perch - Fifty (50) per day.

G. Northern Pike- Five (5) per day

H. Rainbow smelt, suckers, carp, menominee, minnows and others not listed above: No limit.

(Source, WOS 2001-05, March 18, 2001, Section XVII)

4.318 ENFORCEMENT, FINES AND PENALTIES

18.01 *Violations of Natural Resources Regulations* - The Tribal Court shall hear charges against a Tribal Member. If there is more than one (1) violation, each violation shall be heard separately.

18.02 *Citation and Notification of a violation* - A Tribal Conservation Officer shall issue a citation of a violation of these regulations to an alleged violator at the time the officer becomes aware of a violation.

A. The Tribal Conservation Officer shall proceed to the location of the alleged violation.

B. The Tribal Conservation Officer shall identify him/herself, his/her title and badge number.

C. The Tribal Conservation Officer shall investigate the alleged violation(s) and give the alleged violator the citation. The Tribal Conservation Officer shall retain a copy of same. The citation shall include:

1. the violation.
2. the location description.
3. the penalties.
4. the date, time and place of hearing.

D. Citations shall be processed through the office of the Tribal Prosecutor in accordance with the rules of procedure of the Tribal Court.

18.03 *Suspension or Revocation of Licenses* - Any licenses or permits authorized by these Regulations may be suspended or revoked by the Tribe. A missed Catch Report authorizes' license suspension or revocation.

18.04 *Penalties* - The following are the minimum penalties for the first offense for a Tribal Member found guilty of killing, wounding, catching, taking or trapping, or attempting to catch, take, or trap, or possessing any of the following named protected fish, game, migratory bird, reptile, amphibian or fur bearers, or any parts thereof in violation of any of the provisions of this code:

A. Any Endangered Species or any species determined to be rare, threatened or endangered by the Tribe or the United States - $1,000.00

B. Any elk or bear - $500.00

C. Any deer or wild turkey - $250.00

D. Any beaver, mink, otter, badger or bobcat - $100.00

E. Any rabbit, muskrat, squirrel or raccoon - $30.00

F. Any ruffed grouse, woodcock, morning dove, quail or sharp tail grouse - $30.00

G. Any migratory bird - $50.00

H. Any sturgeon, muskellunge, or tiger muskellunge - $100.00

I. Any lake trout, brown trout, rainbow trout, brook trout, large mouth bass, small mouth bass, walleye, northern pike, whitefish or menominee whitefish - $50.00

J. Any fish or game animal not named - $25.00

18.05 Repeat offenders may be fined up to $5,000.00 and/or incarcerated for up to one (1) year and/or lose hunting, trapping or fishing privileges, at the discretion of the Tribal Court.

(Source, WOS 2001-05, March 18, 2001, Section XVIII)

4.319 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source, WOS 2001-05, March 18, 2001, Section XIX)

4.320 EFFECTIVE DATE

This Statute shall take effect immediately upon enactment [March 18, 2001].
(Source, WOS 2001-05, March 18, 2001, Section XX)

Chapter 4. The Little Traverse Bay Bands of Odawa Indians Reservation Hunting, Fishing, Trapping and Gathering Regulations

4.401 HUNTING SEASONS

A. *Small Game* - September 1 to April 1.

B. *Deer*

1. Archery - October l to January 1.

2. Firearm - November 15 to November 30, provided that the Tribe may issue antler less special permits for November 13-14, and special permits for either sex through December 3.

3. Muzzleloader - December 4 to December 18.

C. *Bear* - September 10 to October 30, counties open to hunting to be designated by Tribal ordinance.

D. *Wild Turkey*

1. Fall Season - October 1 to November 14.

2. Spring Season - April 20 to May 31.

E. *Elk* - Elk season may be permitted through a lottery conducted by the Tribe. The total number of permits issued by the Tribe combined will be based on a percentage of sustainable harvest. The Tribe will issue an equal number of permits based on this total.

F. *Fur bearers*

1. Hunting

a. Bobcat and mink- October 25 to March 15.

b. Gray fox, red fox, raccoon and coyote - October 1 to March 15.

2. Trapping

a. Beaver and otter - November 1 to April 16.

b. Muskrat, mink and bobcat - November 1 to March 1.

3. Raccoon, red fox, gray fox, coyote and badger - November 1 to March 1.

(Source: WOS 1997015, July 27, 1997, Regulations Section 1)

4.402 BAG LIMITS

A. *Small* Game - A limit of five (5) of each species per day and a possession in transport limit of no more than two (2) days' limit per licensee.

B. *Big Game*

1. Deer

a. Archery - A limit of one (1) buck with 3 inch (3”) antlers and one antler less deer per season; provided that a hunter who utilizes only archery throughout the season may request a Special Use Permit for one (1) additional antler less deer and one (1) additional buck.

b. Firearm/Muzzleloader - A limit of one (1) buck with three inch (3") antlers and one (1) antler less deer per season; provided that a hunter who utilizes only firearms throughout the season may request a Special Use Permit for one (1) additional antler less deer and one (1) additional buck.

2. Bear - One per season with either firearm or bow.

3. Wild Turkey - Two (2) birds per fall season; one (1) adult male with visible beard per spring season.

C. *Trapping*

1. Otter, badger and bobcat - One (1) per species per season. All other species have no season limit.

2. Accidentally trapped non-target protected species such as lynx, gray wolf, fisher or marten are unlawful to possess. All live animals shall be released if possible. The trapping of all other such animals shall be reported immediately to a Conservation Officer, and the procedures set forth in Section 12.03 [4.312(C)] of the Natural Resources Regulations shall apply.

(Source: WOS 1997015, July 27, 1997, Regulations Section 2)

4.403 MIGRATORY BIRDS

A. *Shooting Hours* - From one half (½) hour before sunrise until sunset E.S.T.

B.. *Bag and Possession Limits*

1. The bag limit for ducks shall not exceed five (5) per day, but shall not include more than one (l) pintail, one (l) canvasback, one (l) black duck, two (2) wood ducks and one (1) hen mallard.

2. The daily bag limit for Canada geese shall not exceed two (2) per day. The daily bag limits for all other geese, including brant, white-fronted, snow and blue geese, shall not exceed five (5) per day.

3. The possession limit for ducks and geese shall not exceed two (2) days’ bag limit.

C. *Seasons*

1. Ducks, whitefront, brant, snow and blue geese - October 1 through November 30.

2. Canada geese - September 1 through November 30 and January 1 through February 7.

3.. Swans - It shall be unlawful to shoot or attempt to shoot swans.

(Source: WOS 1997015, July 27, 1997, Regulations Section 3)

4.404 SUBSISTENCE AND SPORT FISHING

A. *Seasons*

1. Trout and salmon

a. Lakes - No closed season.

b. Streams and rivers - April 1 to December l.

2. Largemouth bass, small mouth bass, sauger, walleye northern pike, muskellunge, and tiger muskellunge - April 1 through March l

3. Bluegill, sunfish, crappie, rock bass, perch, lake whitefish, menominee, catfish, and other species not listed - No closed season

4. Sturgeon - No open season.

5. Grayling - No open season.

B. *Size Limits*

1. Trout and salmon

a. Lakes - Ten inch (10") minimum.

b. Streams: Eight inch (8") minimum.

2. Largemouth and small mouth bass - Twelve inch (12") minimum.

3. Northern pike - Twenty inch (20") minimum.

4. Muskellunge and tiger muskellunge - forty two inch (42") minimum.

5. Walleye - Fourteen inch (14") minimum

6. Sturgeon - Fifty inch (50") minimum.

7. Bluegill, sunfish, crappie, lake whitefish, menominee, perch, catfish species, and other species not listed - No minimum size.

C. *Creel Limits*

1. Lake trout, rainbow trout, splake, brook trout and brown trout - Five (5) per species per day in lakes with a maximum of ten (10) in combination.

2. Brook trout, brown trout, rainbow trout on streams - a maximum of ten (10) in any combination. No more than three (3) of the total may be over sixteen inches (16") long.

3. Coho and chinook salmon - Five (5) per species per day.

4. Muskellunge and tiger muskellunge - One (1) per day.

5. Largemouth bass, small mouth bass, walleye and sauger - Five (5) per day.

6. Sturgeon - One (1) per season

7. Bluegill, sunfish, crappie, lake whitefish, menominee, perch, rock bass, and other species not listed - Fifty (50) per day.

(Source: WOS 1997015, July 27, 1997, Regulations Section 4)

Chapter 5. Natural Resources Commission

4.501 GENERAL PROVISIONS

A. The Little Traverse Bay Bands of Odawa Indians has determined that it is in the best interests of its members to regulate the wise utilization of Natural Resources within its jurisdiction in order to promote, honor and respect our traditional, spiritual and physical relationship with the land and waters, and the resources on, above, below and within the land and waters.

B. This statute is adopted under the provisions of the Constitution and By-Laws of the Little Traverse Bay Bands of Odawa Indians, the governance of which was recognized and extended by Section 8(a)(2) of Public Law 103-324. This Statute repeals and replaces the Natural Resources Commission Statute enacted on March 26, 1995, being Waganakising Odawak Statute1995005. It is intended that this statute continue in full force and effect not only until such time as the Little Traverse Bay Bands of Odawa Indians adopt a new constitution under the Indian Reorganization Act, as authorized by Section 8(a)(1) of public Law 103-324, but thereafter as well, unless and until it is modified, amended or revoked by the duly authorized and elected governing body as created by the new constitution.

C. Definitions. In implementation of this statute, the following terms shall have the meanings set forth:

1. “Commission” shall mean the LTBB Natural Resources Commission consisting of a five (5) member body, as created pursuant to Article II of this statute, with the powers and authority vested

therein.

2. "Commissioner" shall mean the individual designated to chair the Commission who shall have powers and authority vested in that office pursuant to this statute.

3. "Associate Commissioner" shall mean one of the four (4) members of the Commission appointed to serve thereon according to Article II of this statute, with powers and authority vested in such members pursuant to this statute.

4. "Tribal Council" shall mean the elected governing body of the Little Traverse Bay Bands of Odawa Indians.

5. "LTBB" shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2001-04, March 18, 2001, Section I)

4.502 NATURAL RESOURCES COMMISSION

A. There is hereby created the Natural Resources Commission, which shall consist of five (5) persons appointed according to Section B of this Article, which Commission is created for purposes described in Article I of this statute. The Commission is charged with the oversight and regulation of utilization of natural resources within LTBB's jurisdiction and shall exercise the powers and authorities described in Article IV [WOTC 4.504] hereof and such other powers and authorities described as may be delegated by the Tribal Council by resolution, amendment of this statute or by a separate statute.

B. The Natural Resources Commission shall consist of the following persons to be appointed according to Section C of this Article:

1. A Commissioner who shall serve as the Chair of the Commission and shall exercise the duties and responsibilities as set forth in this statute. The Commissioner shall be a duly enrolled member of the Little Traverse Bay Bands of Odawa Indians, shall be at least 18 years of age upon appointment to his or her first term of office.

2. Four (4) Associate Commissioners, who shall have the duties and responsibilities as set forth in this statute. An Associate Commissioner shall be a duly enrolled member of the Little Traverse Bay Bands of Odawa Indians, shall be at least 18 years of age upon appointment to his or her first term of office.

C. The Commissioner and the Associate Commissioners shall be appointed as follows:

1. Initial appointments. The Tribal Council shall appoint a Commissioner and two Associate Commissioners who shall serve for two (2) years, and two (2) Associate Commissioners who shall serve for four (4) year terms.

2. Future appointments. At the expiration of the terms of any Commissioners, the Tribal Council shall fill such vacancies by appointment.

3. At least forty-five (45) days prior to the expiration of the term of any Commissioner, the Commission's Administrative Assistant shall notify the Tribal Council to publicize the vacancy and shall seek applicants for appointment and nominations of individuals to be appointed.

D. The term of office of the Commissioner shall be four (4) years, and an individual may serve a total of two (2) terms in such capacity, whether or not consecutive. There shall be no limit on the terms that Associate Commissioners may serve and a past Commissioner may serve as an Associate Commissioner. The Commissioner and Associate Commissioners will continue to serve until their successors are appointed and sworn in.

E. As soon as practicable after appointment, the Tribal Court shall administer the oath of office to the Commissioner and to Associate Commissioners. The oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this statute, the mandates of the CORA Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron and Michigan, the Natural Resources Regulations for the Little Traverse Bay Bands of Odawa Indians' Reservation and the Uniform Conservation Code of the Odawa/Ottawa and Chippewa of Northern Michigan and future statutes adopted by the Tribal Council.

F. Removal from the office of Commissioner or Associate Commissioner.

1. Grounds for removal of an individual from office of Commissioner or Associate Commissioner shall include:

a. Conviction of felony in Tribal, State or Federal court during a term of office;
b. Fraud, conspiracy to commit fraud or material misrepresentation or malfeasance in the performance of duties and responsibilities under this statute.
c. Failure to attend three (3) consecutive meetings of the Commission without valid excuse.

2. Procedure for removal of an individual from the office of Commissioner or Associate Commissioner shall be in accordance with the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 1997005), or such successor statute as the Tribal Council may enact.

3. In the event a vacancy occurs in the office of Commissioner or Associate Commissioner, by virtue of death, resignation or removal, the Tribal Council shall appoint a member meeting the eligibility requirements of this Statute to fill the remaining term.

(Source: WOS 2001-04, March 18, 2001, Section II)

4.503 MEETINGS OF THE NATURAL RESOURCES COMMISSION

A. Regular Meetings. Regular meetings of the Natural Resources Commission shall be held at least once a month for the purpose of conducting the business of the Natural Resources Commission. Regular meetings will be subject to the following requirements:

1. Notice of such meetings, including the date, time and location, shall be provided to each member of the Natural Resources Commission at least ten days prior to the date of the meeting.
2. Commissioner and each Associate Commissioner shall have a vote on all issues except when they have a conflict of interest.

3. Complete minutes of such meetings shall be taken and retained, subject to the exception contained in Section D of this Article, and shall become a part of the official records of the Natural Resources Commission.

4. Notice of upcoming meeting dates shall be posted in all Tribal Buildings and announced in the Odawa Trails Newsletter.

B. Public Informational Meetings. One time per year, the Commission shall hold its regular monthly meeting at a location suitable for any interested Tribal members to attend and receive information on the work and activities of the Commission. The following requirements apply to this annual meeting.

1. The agendas of such meetings shall be primarily informational in nature.

2. Substantial time shall be set aside at such meeting to permit the membership of the Little Traverse Bay Bands of Odawa Indians the opportunity to provide input on any aspect or issue which is relevant to the purpose and authority of the Natural Resources Commission.

3. Notice of such meetings shall be published in local periodicals wherever concentrations of members reside no later than ten days prior to such meeting, such notice to set forth the place, date, time and duration of such meeting and the agenda for such meeting.

4. Complete minutes of such meetings shall be taken and retained, and shall become a part of the legislative history of the Natural Resources Commission.

C. Special meetings. Special meetings of the Natural Resources Commission shall be held as needed upon the directive of the Natural Resources Commissioner or any two (2) Associate Commissioners upon receipt of five (5) days notice in writing. Special meetings shall be held in accordance with the requirements of the Stipend policy or such other statute or policy of the Tribal Council governing special meetings of commissions.

D. Regular and special meetings shall be conducted pursuant to the following additional rules:

1. It shall be the standard that all meetings of the Natural Resources Commission shall be open to all members of the Little Traverse Bay Bands of Odawa Indians; however, the Commissioner or a

majority of the present Associate Commissioners may direct all or a portion of a regular or special meeting to be conducted in closed session when necessary to deal with personnel issues or to discuss any legal matters.

2. Minutes of all regular and special meetings of the Natural Resources Commission shall be transcribed, shall be kept on permanent file in the offices of the Natural Resources Commission, and shall be available for inspection by any member of the Little Traverse Bay Bands of Odawa Indians in accordance with the procedures developed by the Tribal Council.

3. The Commissioner and Associate Commissioners shall not participate in making any decision that involves a personal or financial interest of the member of his or her immediate family unless such interest is held in common with the Tribe and its members.

4. Quorum. A quorum shall consist of three members of the Commission. The Commissioner counts toward a quorum.

(Source: WOS 2001-04, March 18, 2001, Section III)

4.504 POWERS AND AUTHORITIES OF THE LTBB NATURAL RESOURCES COMMISSION

A. The primary responsibility of the Natural Resources Commission shall be to implement the provisions of this statute, the mandates of the CORA Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron and Michigan, the Natural Resources Regulations for the Little Traverse Bay Bands of Odawa Indians' Reservation and the Uniform Conservation Code of the Odawa/Ottawa and Chippewa of Northern Michigan and future statutes adopted by the Tribal Council pertaining to Natural Resources.

B. The Natural Resources Commission shall have the following additional powers:

1. To promulgate rules for the purpose of implementing this statute and the aforementioned mandates in Article IV Section (A) [WOTC 4.504(A)] addressing the commercial fishery and the harvest inland of natural resources; to issue orders and directives not inconsistent with either statute; to take any and all steps necessary, not inconsistent with other statutes, to carry out the purposes set forth in Article IV. Section (A).

2. When expressly authorized by Tribal Council action, to enter into contracts of all types with agencies of Federal, State, local or other Tribal governments, with private parties, including individuals, partnerships, corporations or other enterprises.

3. To issue, suspend or revoke licenses contemplated by this statute and the aforementioned mandates in Article IV. Section (A) [WOTC 4.504(A)], addressing the commercial fishery and the harvest of the inland natural resources.

4. To issue, suspend or revoke special permits contemplated by this statute and the aforementioned mandates in Article IV. Section (A)[WOTC 4.504(A)] addressing the commercial

fishery and the harvest of inland natural resources.

5. Setting of seasons where none are specifically provided, closing or shortening seasons when necessary for the preservation of the resources, or extending or opening seasons when determined that it will not harm the resources, or conflict with any governing court order.

(Source: WOS 2001-04, March 18, 2001, Section IV)

4.505 POWERS OF THE COMMISSIONER

The Natural Resources Commissioner shall have the following powers and authority:

A. To chair meetings of the Natural Resources Commission.

B. To act in all respects on behalf of the Natural Resources Commission, subject, however, to ratification by the Natural Resources Commission on any action taken.

C. To represent the Natural Resources Commission, whenever it is appropriate for the Natural Resources Commission to be represented.

D. To serve on other boards or commissions as a representative of the Natural Resources Commission.

E. To delegate to any Associate Commissioner any of the duties and responsibilities of the Commissioner.

F. To exercise any other authority delegated to the Commissioner by statute or by action of the Tribal Council.

(Source: WOS 2001-04, March 18, 2001, Section V)

4.506 SAVINGS CLAUSE

In event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source: WOS 2001-04, March 18, 2001, Section VI)

4.507 EFFECTIVE DATE

This Statute takes effect immediately upon enactment [March 18, 2001]. Provided, the Commissioner and Associate Commissioners serving under the previous statute shall remain in place for the remainder of the terms to which they were appointed.

(Source: WOS 2001-04, March 18, 2001, Section VII)

Chapter 6. Protection of Great Lakes

4.601 TITLE AND PURPOSE

A. Title. This Statute may be cited as the Little Traverse Bay Bands of Odawa Indians Great Lakes Protection Statute.

B. Purpose. The Bands that make up the Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) historically resided in the Great Lakes Region in harmony with the natural environment since well before the arrival of Europeans. The Great Lakes, especially Lakes Michigan, Huron and Superior, have provided the Tribe with food, water, and transportation for hundreds of years. The central mission of the Tribal government stated in the Tribe's Constitution is "to provide for the perpetuation of our way of life and the welfare and prosperity of our people, to preserve the right of self government, and to protect our property and resources." Preserving the environmental quality of the Great Lakes and their resources for the present and future generations is absolutely essential to the Tribe. This Statute is enacted to help protect and preserve the Great Lakes ecosystem.

(Source: WOS 1999010, June 27, 1999, Section I)

4.602 DEFINITIONS

The following definitions apply to this Statute:

A. Great Lakes. "Great Lakes" means any of the following bodies of water: Lake Ontario (including the Saint Lawrence River from Lake Ontario to the forty-fifth parallel of latitude), Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and all connecting waters.

B. Sale. "Sale" means any selling or attempted selling of water from any of the Great Lakes

C. Divert/Diversion. "Divert or Diversion" means any increased activity removing water from any of the Great Lakes to a point outside of the Great Lakes Basin. The term does not include movement of waters through locks designed to protect the Great Lakes from pollution that are already in use as of the date of enactment of this Statute
(Source: WOS 1999010, June 27, 1999, Section II)

4.603 DRILLING, SALE AND DIVERSION PROHIBITION

A. No person under the jurisdiction of LTBB may commence or carry out any drilling activity (including any slant or directional drilling) to extract oil, gas or other petroleum products from lands beneath waters under any of the Great Lakes.

B. No person under the jurisdiction of LTBB may commence or carry out any activities to sell or divert

any waters from the Great Lakes.

C. The Tribal Prosecutor, as directed by the Tribal Council, shall bring any action necessary to enforce the prohibition contained in this section.
(Source: WOS 1999010, June 27, 1999, Section III)

4.604 VIOLATIONS OF FEDERAL LAW BASED ON TREATIES

A. Under Article VI of the United States Constitution, "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and
the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." LTBB was a party to numerous treaties with the United States including the1836 Treaty of Washington, 7 Stat. 491, in which the Tribe reserved the right to utilize Great Lakes resources for subsistence and commercial purposes. Federal Courts have upheld the continued vitality of this Treaty right. Degradation and destruction of the Great Lakes ecosystem constitutes an unauthorized limitation or negation of this Treaty right. Any such degradation or destruction therefore violates the "supreme law of the land."

B. Any drilling, sale or diversion which has the potential for impacting the waters of Lakes Michigan, Superior or Huron ceded by the 1836 Treaty of Washington would violate Federal law and Tribal law, and LTBB will take any appropriate and necessary action to prevent such activity including seeking Federal prosecution therefore.

(Source: WOS 1999010, June 27, 1999, Section IV)

4.605 SAVINGS CLAUSE.

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

(Source: WOS 1999010, June 27, 1999, Section V)

4.606 EFFECTIVE DATE

This Statute shall take effect immediately upon enactment [June 27, 1999].

(Source: WOS 1999010, June 27, 1999, Section VI)

Chapter 7. Solid Waste Disposal

4.701 INTRODUCTION/ PURPOSE

The Little Traverse Bay Bands of Odawa Indians recognizes that unsanitary, inefficient, and inappropriate methods of disposal of solid waste have an adverse impact upon the environment and the natural resources of the Little Traverse Bay Bands of Odawa Indians and its citizens, and the promulgation of standards of solid waste disposal and recycling are in the best interests of the Little Traverse Bay Bands of Odawa Indians people. Accordingly, the purposes of this Statute are to promote the health, safety and welfare of the Little Traverse Bay Bands of Odawa Indians' members and all others within LTBB's jurisdiction through the establishment of standards necessary to the sanitary and environmentally sound disposal of solid waste.

(Source: WOS 2003-001, January 5, 2003, Section I)

4.702 DEFINITIONS

A. "Brush" means cut or broken branches.

B. "Campfire" means small fire of not more that 3.5 ft. in diameter, which has been contained in a pit, or metal or masonry burner. Used for cooking, warmth or recreation.

C. "Collection Site" means any place designated by the Tribal Council or Natural Resource Department as the site where solid waste may be presented for disposal including transfer stations.

D. "Collector" means any natural or legal person, that person's employees and agents, who gather solid waste from another person.

E. "Commercial Grade Waste Wood" means any wood of commercial nature that has been treated, stained, painted, tarred, shingled, or glued.

F. "Garbage" means all putrescible (decayable) wastes, including animal and vegetable matter, animal offal and carcasses and recognizable industrial by-products, but excluding sewage and animal wastes.

G. "Garbage Pits" means holes, pits and or depressions in the normal topography created for the sole purpose of depositing and/or placing garbage and refuse as a means of disposal.

H. "Hazardous Solid Waste" means any solid waste defined as hazardous by the Environmental Protection Agency under the provisions of the Resource and Conservation Act of 1976, as amended, and includes but is not limited to, explosives, pathological wastes, pesticides, chemicals, and other toxic materials, which are harmful to public health.

I. "Non-recyclable Waste" means all solid waste not listed in Subsection (O) of this section, excluding hazardous waste.

J. "Open Burning" means any fire wherein the products of combustion are emitted directly into the atmosphere and are not directed thereto through a stack or chimney, incinerator, or other devices.

K. "Open Dump" means the consolidation of solid waste from one or more sources at a disposal site with unsanitary conditions, little or no cover, usually burning, and little or no management.

L. "Person" means any individual, firm, governmental unit, organization, partnership, corporation, or company.

M. "Putrescible" means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gasses, such as kitchen wastes, food scraps, offals and carcasses.

N. "Radioactive Solid Waste" means any radioactive material.

O. "Recyclable Waste" means glass containers, metal cans, jar lids, newspaper, magazines, phone books, hard-cover books, cardboard, brown paper bags, office/writing
paper, envelopes, file folders, plastics (HDPE and PET), aluminum cans, foil, batteries and motor oil.

P. "Refuse" means all non-putrescible wastes.

Q. "Solid Waste" means all garbage, refuse, rubbish, trash, and other discarded, solid
materials, including solid wastes materials resulting from industrial, commercial, and agricultural operations, from community activities and individual people, but doses not include solid or dissolved materials in domestic sewage or other significant
pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved materials in irrigation return or other common pollutants.

R. "Solid Waste Collector" means LTBB approved tribal or non-tribal entity responsible for collecting, transporting and properly disposing of solid waste.

S. "Solid Waste Disposal" means the collection, storage, treatment, utilization, processing or final disposal of solid waste.

T. "Solid Waste Disposal Facility" means any land, personnel equipment, or resource approved for and used in the disposal of solid waste.

U. "Solid Waste Reduction" means reduction of waste at the source of generation, prior to recycling.

V. "Spoiled Food" means any food, which has been removed from sale by the United States Department of Agriculture.

W. "Transfer Station" means any facility approved by the LTBB Tribal Council for the purpose of collecting, transporting and disposing of solid wastes.

X. "Tribal Health" means the Health Director and/or his authorized representative or Department representatives.

Y. "Tribe or LTBB" means the Little Traverse Bay Bands of Odawa Indians.

Z. "Vector" means an insect or other animal, which transmits infectious diseases from one person or animal to another.

AA. "Waste Wood" means any wood of commercial nature that has not been treated, stained, painted, tarred, shingled, or glued.

BB. "Yard Waste" means any waste associated with common yard maintenance, such as grass clippings, pulled weeds, leaves, twigs and branches.

(Source: WOS 2003-001, January 5, 2003, Section II)

4.703 APPLICABILITY

This Statute applies to all real property and persons under the jurisdiction of the Little Traverse Bay Bands of Odawa Indians.
(Source: WOS 2003-001, January 5, 2003, Section III)

4.704 SOLID WASTE DISPOSAL

The following provisions shall apply to all solid waste disposal within LTBB Tribal jurisdiction.

A. No person shall leave, deposit, and/or dump solid waste anywhere within LTBB's jurisdictions except at a collection site or tribally approved transfer station.

B. No person shall store any solid waste on any properties or land within LTBB Tribal jurisdiction except for in containers, which have been approved and accepted by the solid waste collector.

C. No person shall burn and/or incinerate any solid waste on any properties within LTBB jurisdiction with the exception of those waste allowed for by permit (brush, yard waste and/or waste wood). This shall include but not be limited to burn barrels, burn baskets, in ground pits, garbage piles and the like.

E. No person shall deposit solid waste from any stopped or moving vehicle onto state, county, or tribal highways, roads, or right-of-ways, within LTBB Tribal jurisdiction.

F. No person shall dispose of any commercial hazardous and/or nuclear waste within LTBB jurisdiction.

G. No person shall deposit solid waste at a collection site or transfer station except in a manner approved by the solid waste collector.

H. The owner and/or occupant of any premise, business establishment, or industry within LTBB jurisdiction shall be responsible for the proper disposal of any solid waste produced by or accumulated at said premise, business establishment, or industry.

(Source: WOS 2003-001, January 5, 2003, Section IV)

4.705 SOLID WASTE REDUCTION, REUSE AND RECYCLING

Solid waste reduction, reuse and recycling are the preferred methods of handling solid waste. LTBB is and will continue to be committed to solid waste reduction, reuse and recycling.
(Source: WOS 2003-001, January 5, 2003, Section V)

A. All Tribally owned or funded facilities and/or enterprises shall implement a solid waste recycling and reduction policy developed by the Tribal Council or its designee.

B. The Tribe will make available at all Tribal housing sites and/or developments recycling collection bins.

C. All Tribally owned and/or funded facilities and/or enterprises and the collector contracted to empty the recycling collection bins shall not dispose of the said collected recyclables in any fashion other than which would allow the said recyclables to be recycled.

7.706 OPEN BURNING

Burning is not a recommended method of waste disposal. However, open-air burn permits may be issued for the burning of brush, other yard wastes and waste wood if conditions are conducive to safety and environmental protection.

A. The applicant must request a permit and receive approval in writing from the LTBB Natural Resources Department prior to any burning.

B. The permittee will be required to inform the nearest local fire authority as to the time and location of the intended burn.

C. The permittee will be held responsible for any damages that may result from the fire itself or any other fires caused by the initial fire.

D. All permitted fires shall be attended at all times.

E. The permit will be valid for thirty (30) days after the date issued. The permittee must request in writing another permit after the expiration date.

F. All burning must cease and the permit becomes void if a burn ban is issued (contact local fire authority). The permittee shall be required to obtain a new permit in writing to continue burning once the restriction or ban has been lifted.

G. The permittee will be required to comply with any burning restrictions and/or bans that may be currently in place or enacted.

H. Burn permits are not required for campfires.

I. No permit shall be required when an inch or more of snow is present provided that no other restrictions apply.

(Source: WOS 2003-001, January 5, 2003, Section VI)

4.707 SOLID WASTE COLLECTION AND TRANSPORT

A. Any solid waste transported within LTBB jurisdiction shall be collected and transported in a manner that prevents the waste from leaking, blowing off, or falling from the transport vehicle. If there is any solid waste lost from or if there is any spillage from the collection container or transportation vehicle, the material shall be immediately picked up by the solid waste collector and returned to the vehicle or container and the area properly cleaned.

B. Commercial vehicles or containers used for collection and transportation of garbage and other putrescible wastes, or solid waste containing such materials, shall be covered, leak proof, durable, and of easily cleanable construction. These shall be cleaned to prevent nuisances, pollution, or insect breeding and shall be maintained in good repair.

(Source: WOS 2003-001, January 5, 2003, Section VII)

4.708 ENFORCEMENT

A. LTBB's Law and Conservation Enforcement officers shall be empowered to enforce all provisions of this Solid Waste Statute. When necessary to enforce this Statute, Tribal law enforcement or natural resources conservation officers may file reports with the Tribal Prosecutor.

B. Any duly authorized agent, in the performance of his or her duty, may enter into any premises on or in which he or she has reasonable cause to believe a violation of this Statute is occurring after obtaining a valid search warrant from the Tribal Court, subject to the common law exceptions for exigent circumstances.

C. Violation of any provision of this Statute is a civil penalty, which may not exceed $500. Each day of any continuing violation may be charged as a separate violation, and a separate penalty may be imposed.

D. In addition to a civil penalty, any personal property that has been used in connection with a violation of this Statute, including vehicles and other equipment may be seized and forfeited in satisfaction of any judgment rendered pursuant to this Statute.

E. Any person found in violation this Statute shall be responsible for any damage, clean up and/or remediation that may be necessary as a result of the said violation.

F. Repeated violations by occupants or Tribal Members that are renting or leasing from the Tribe may be punished by the termination of the rental agreement and/or lease.

G. Nothing herein shall prevent the Little Traverse Bay Bands of Odawa Indians from bringing suit against any violator of this Statute for monetary damages, for harm to any LTBB resources, or for injunctive relief.
(Source: WOS 2003-001, January 5, 2003, Section VIII)

4.709 PERMITS

The Little Traverse Bay Bands of Odawa Indians Natural Resource Department shall be responsible for the issuance of permits under this Statute.

(Source: WOS 2003-001, January 5, 2003, Section IX)

4.710 LIMITATIONS

Nothing within this Statute shall be constructed to limit the authority of the Tribal Council from adopting more stringent solid waste disposal requirements than those set forth in this Statute.

(Source: WOS 2003-001, January 5, 2003, Section X)

4.711 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section 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.

(Source: WOS 2003-001, January 5, 2003, Section XI)

4.712 EFFECTIVE DATE

This Statute shall take effect upon enactment by Tribal Council [January 5, 2003].

(Source: WOS 2003-001, January 5, 2003, Section XII)

Chapter 8. Conservation and Cultural Preservation Easement Act

4.801 PURPOSE

The way of life of the Little Traverse Bay Bands of Odawa Indians (LTBB) relies upon environmental protection for cultural perpetuation. This is rooted in the traditional reliance on Great Lakes and inland fishing and hunting, and the many plant species that have cultural, medicinal, and spiritual values for the Tribe. For centuries, LTBB Tribal members have subsisted by making good use of the natural resources available to them, including the flora and fauna in their environment, for food, medicines, clothing, shelter, and heat. This way of life continues to be threatened by the increasing popularity of LTBB's 1836 and 1855 Treaty Reservation and surrounding area both as a resort locale and as a permanent home. Development is still on the rise to accommodate the large numbers of people visiting and relocating in the area. The escalating development and rise in population density will continue to have a negative impact on the area's natural resources that hold such central importance to the Tribe.

The Little Traverse Bay Bands of Odawa Indians strives to protect vital areas such as sites of cultural significance, scenic view-sheds, open space, wetland areas, waterfront property, plant and animal habitat, and endangered/threatened species, etc. By protecting these vital areas in perpetuity, LTBB ensures that these areas and thus the LTBB way of life will be protected for the next seven generations.

(Source: WOS 2004-01, July 25, 2004, Section I)

4.802 DEFINITIONS

As used in this Statute:

A. "Conservation easement" means an interest in land which provides limitation on the use of land or a body of water, or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming ,open space, or forest use, or similar use or condition.

B. "Cultural/Historic preservation easement" means an interest in land which provides a limitation on the use of a structure or site that is listed as a national historic landmark pursuant to the historic sites act of 1935, Public Law 74-292; is listed on the national register of historic places pursuant to the national historic preservation act of 1966, Public Law 89-665; is recognized as a site of cultural and/or historical significance according to the Little Traverse Bay Bands of Odawa Indians Archives and Records Department, or prohibits certain acts on or with respect to the structure or site, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will or other instrument executed by or on behalf of the owner of the structure or site or in an order of taking, which interest is appropriate to the preservation or restoration of the structure or site.

C. "Traditional use easement" means a provision in a restriction, easement, covenant, deed, will or other instrument executed by or on behalf of the owner of the land that allows LTBB members to hunt, fish, gather plants, hold ceremonies and/or erect temporary or permanent structures as specified in such provision. A conservation easement as defined in Section II(A) and a cultural/historic preservation easement as defined in Section II(B) may also contain traditional use easements.

(Source: WOS 2004-01, July 25, 2004, Section II)

4.803 ENFORCEABILITY OF CONSERVATION EASEMENT: RECORDATION

A conservation easement granted to a governmental entity, including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, shall be enforceable against the owner of the land or body or water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity. Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section III)

4.804 ENFORCEABILITY OF CULTURAL/HISTORIC PRESERVATION EASEMENT: RECORDATION

A cultural/historic preservation easement granted to a governmental entity including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, whose purposes include the preservation or restoration of structures or sites described in section II(B) shall be enforceable against the owner of the structure or site subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to the particular structure or site, or the fact that the benefit may be assigned to another governmental entity or legal entity whose purposes include the preservation or restoration of structures or sites described in section II(B). Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section IV)

4.805 ENFORCEABILITY OF TRADITIONAL USE EASEMENT

A traditional use easement granted to a governmental entity, including but not limited to the LTBB Tribal Government, or to a charitable or educational association, corporation, trust, or other legal entity, including but not limited to those formed under the laws of LTBB, before or after the effective date of this Statute, shall be enforceable against the owner of the land or body or water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity. Any such easement created after the effective date of this Statute that is for lands within the exclusive jurisdiction of LTBB or granted to LTBB or an entity formed under the laws of LTBB shall be filed with the LTBB Archives and Records Department as well as the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value or other grantee without actual notice.

(Source: WOS 2004-01, July 25, 2004, Section V)

4.806 ENFORCEABILITY OF OTHER RESTRICTIONS, EASEMENTS, COVENANTS OR CONDITIONS

This Statute does not render a restriction, easement, covenant, or condition, which does not have the benefit of this Statute unenforceable.

(Source: WOS 2004-01, July 25, 2004, Section VI)

4.807 RECORDATION OF EASEMENTS; ENFORCEMENT; ASSIGNMENT AND ACQUISITION

A. A conservation easement, historic preservation easement or traditional use easement is an interest in real estate, and a document creating one or more of those easements shall be considered a conveyance of real estate and shall be enforced either by an action at law or by an injunction or other equitable proceedings.

B. A conservation easement described in section II(A) and a traditional use easement described in section II(C) may be assigned to a governmental or other legal entity, which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

C. A cultural/historic preservation easement described in section II(B) may be assigned to a governmental or other legal entity whose purposes include preservation or restoration of structures or sites described in section II(B), which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land

(Source: WOS 2004-01, July 25, 2004, Section VII)

4.808 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source: WOS 2004-01, July 25, 2004, Section VIII)

4.809 EFFECTIVE DATE

This Statute takes effect thirty days from the date of enactment. [from July 25, 2004]

(Source: WOS 2004-01, July 25, 2004, Section IX)

Chapter 9. Fishing Vessel Safety

4.901. INTRODUCTION/ PURPOSE

In order to protect members engaged in commercial fishing pursuant to the rights reserved in the Treaty of 1836 and in accordance with the Memorandum of Understanding with the United States Coast Guard (USCG), the Little Traverse Bay Bands of Odawa Indians (LTBB) hereby enacts this Statute in an attempt to decrease the potential of death, personnel injury, and or property damage that may be associated with the high risk activity of commercial fishing. Any duly licensed LTBB commercial fisherman shall ensure that he and any vessel he may operate are in full compliance with the following safety provisions. Failure to comply with the following safety provisions could result in fines, suspension or revocation of fishing license.

(Source: WOS 2004-02, July 25, 2004, Section I)

4.902. DEFINITIONS

A. Auxiliary Craft: a vessel that is carried onboard a commercial fishing vessel and is normally used to support fishing operations.

B. Buoyant Apparatus: a buoyant apparatus approved by the Commandant.

C. Coast Guard: a commissioned, warrant, or petty officer of the U.S. Coast Guard
Boarding Officer having authority to board any vessel under the Act of August 4, 1949, 63 Stat. 502, as amended (14 U.S.C. 89).

D. Cold Waters: water where the monthly mean low water temperature is normally 59º F (15º C) or less.

E. Commandant: the Commandant of the U.S. Coast Guard or an authorized representative of the Commandant of the U.S. Coast Guard.

F. Commercial Fishing: a fishing activity engaged in for the purpose of sale of fish or parts of fish.

G. Enforcement Officer: any Tribal, Federal or State officer authorized under this Statute, the 2000 Great Lakes Consent Decree or the LTBB/USCG MOU to enforce LTBB fishing rules and regulations.

H. Fishing Vessel: a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

I. Inflatable Buoyant Apparatus: an inflatable buoyant apparatus approved by the Commandant.

J. Traditional Craft: a vessel such as a dugout canoe, cedar strip or birch bark canoe, that is hand made and is not powered by anything other than hand paddles and the elements of nature.
K. USCG: means the United States Coast Guard.

L. Warm Waters: water where the monthly mean low water temperature is normally above 59º F (15º C).

(Source: WOS 2004-02, July 25, 2004, Section II)

4.903. EQUIPMENT

A. Lights

1. Vessels 39.4 feet and less are required to have the following:

   a. Side lights: Sidelights that are visible from dead ahead to 22 ½ degrees abaft the beam (red port light and green starboard light).

   b. Masthead and/or stern light: An all around white light.

2. Vessels over 39.4 feet are required to have the following:

   a. Side lights: Sidelights that are visible from dead ahead to 22 ½ degrees abaft the beam (red port light and green starboard light).

   b. Masthead and/or stern light: A stern light and a masthead light that shows dead ahead to 22 ½ degrees abaft the beam on either side.

B. Distress Signals

1. Visual:

   a. Vessels that operate within three miles of the Coastline of the Great Lakes are required to have the following:

      I. Night visual distress signals: One electric distress light or 3 approved flares; and

      ii. Day visual distress signals: One distress flag, or 3 approved flares, or 3 approved smoke signals.

   b. Vessels that operate more than three miles from the Coastline of the Great Lakes are required to have the following:

      I. 3 parachute flares, 6 handheld flares, and 3 smoke signals.

2. Sound:

   a. Vessels 39.4 feet and less are required to have the following:

I. A means of making an efficient sound signal audible within one nautical mile of the vessel.

b. Vessels over 39.4 feet are required to have the following:

ii. Whistle and bell.

3. Emergency Position Indicating Radio beacon (EPIRB):

a. Vessels less than 36 feet in length that operate more than three miles from the coastline of the Great Lakes are required to have the following:

I. A manually activated Category 2 406 MHz EPIRB. This EPIRB shall be installed in a readily accessible location at or near the principle steering station; or

ii. A float free automatically activated Category 1 406 MHz EPIRB. This EPIRB shall be stowed in a manner so that it will float-free if the vessel sinks, or

iii. Personal Category 2, 406 MHz EPIRB.

b. Vessels 36 feet or more in length that operate more than three miles from the coastline of the Great Lakes are required to have the following:

I. A float free automatically activated Category 1 406 MHz EPIRB. This EPIRB shall be stowed in a manner so that it will float-free if the vessel sinks.

c. Servicing/Maintenance: The captain or individual in charge of the vessel must ensure that each EPIRB on board is in good working order and that it is tested and serviced as required by this section.

I. The EPIRB must be tested immediately after installation and at least once each month thereafter. The test shall be conducted in accordance with the manufactures instructions, using the visual or audio indicator on the EPIRB. Each test shall be recorded on a log to be kept on the vessel.

ii. Batteries for the EPIRB shall be replaced after the EPIRB deployed for any purpose other than testing and before the expiration date of the battery.

iii. All non-functioning or damaged EPIRB's must be replaced with an operational EPIRB.

d. Exceptions:

I. A skiff/work boat or auxiliary craft is not required to carry an EPIRB if-

1. Its "mother ship" is required to carry an EPIRB and;

2. When not in use, the skiff/work boat or auxiliary craft is carried on board the mother ship.

C. Communication Equipment:

1. Each vessel must be equipped with an operational VHF FM handheld submersible ship to shore radio; or

2. An operational cell phone capable of communicating in the area fished.

D. Life Preservers and Personal Floatation Devices:

1. Types: Each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device (PFD) of the proper size for each individual on broad and as specified below. Each life preserver or PFD must be stowed so that it is readily accessible to the individual for whom it is intended.

a. Lake Superior: Immersion Suit.

b. Lake Michigan and Lake Huron

I. Vessels 40 feet or more in Length: Type I, Type V commercial hybrid, immersion suit, or exposure suit.

ii. Vessels 40 feet or less in length: Type I, Type II, Type III, Type V commercial hybrid, immersion or exposure suit.

2. Markings: Each immersion suit, exposure suit or PFD must be marked with the name of either the vessel, the owner of the device, or the individual to whom it is assigned. The lettering used in marking must be in block capital letters.

3. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each immersion suits, exposure suits, or wearable PFD must be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

4. Approved equipment/materials: All immersion suits, exposure suits, or wearable personal flotation devices must be equipped with a Coast Guard approved PFD light and have at least 31 square inches per side of retro-flective material attached to the front and back.

E. Throwable Flotation Device:

1. Types: Each vessel as specified below must be equipped with a throwable floatation device or ring buoy and a proper corresponding length of line.

a. Vessels less than 16 feet: No throwable flotation devices are required.

b. Vessels 16 feet or more but less than 26 feet: One (1) throwable buoyant cushion or ring buoy equipped with a line at least 60 feet in length.

c. Vessels 26 feet or more but less than 65 feet: One (1) orange Coast Guard approved ring buoy at least 24 inches in size equipped with a line at least 60 feet in length.

d. Vessels 65 feet or more: Three (3) orange ring buoys at least 24 inches in size each equipped with a line at least 90 feet in length.

2. Markings: All throwable flotation devices and ring buoys must be marked with the name of the vessel. The lettering used in marking must be in block capital letters.

3. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each throwable flotation device and/or ring buoy be in good working order, ready for immediate use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

4. Approved equipment/materials: All throwable flotation devices and ring buoys must be U.S. Coast Guard certified or approved.

F. Survival Craft

1. Warm Waters:

a. All vessels (regardless of length), which operate within three miles of the Great Lakes Coastline and have 3 or fewer people on board are not required to have a survival craft.

b. All vessels (regardless of length) that operate beyond three miles of the Great Lakes Coastline and have 3 or fewer people on board are required to have a buoyant apparatus.

2. Cold Waters:

a. Vessels less than 36 feet in length are required to have a buoyant apparatus.

b. Vessels 36 feet in length or more are required to have an inflatable buoyant apparatus.

3. Markings: Each inflatable life raft, inflatable buoyant apparatus or any auxiliary craft used in their place must be marked with the name of either the vessel or the owner of the device. The lettering used in marking must be in block capital letters.

4. Operation Readiness and Maintenance: The captain or individual in charge of the vessel must ensure that each item of lifesaving equipment must be in good working order, ready for immediate

use, and readily accessible before the vessel leaves port and at all times when the vessel is in operation.

G. Fire Extinguisher

1. Vessels under 16 feet in length:

   a. Must either have a fixed Fire Extinguishing System in the machinery space; or

   b. One (1) B-I hand portable U.S. Coast Guard approved fire extinguisher.

2. Vessels 16 feet or more but less than 26 feet in length:

   a. Must either have a fixed Fire Extinguishing System in the machinery space; or

   b. One (1) B-I hand portable U.S. Coast Guard approved fire extinguisher.

3. Vessels 26 or more but less than 40 feet in length:

   a. Must have a fixed Fire Extinguishing System in the machinery space and one (1) B-I hand portable U.S. Coast Guard approved fire extinguisher; or

   b. Two (2) B-I hand portable U.S. Coast Guard approved fire extinguishers.

4. Vessels 40 feet or more but not over 65 feet in length:

   a. Must have a fixed Fire Extinguishing System in the machinery space and two (2) B-I hand portable U.S. Coast Guard approved fire extinguishers; or

   b. Three (3) B-I hand portable U.S. Coast Guard approved fire extinguishers.

(Source: WOS 2004-02, July 25, 2004, Section III)

4.904. ALCOHOL AND CONTROLLED SUBSTANCES

A. Operation of Fishing Vessel Under the Influence: No member shall operate a fishing vessel on the waters of the Ceded Territory if either of the following applies:

1. The member is under the influence of intoxicating liquor or a controlled substance or combination thereof; or

2. The member has an alcohol content of .90 percent or higher; or

3. The intoxicant's effect on the member's manner, disposition, speech, muscular movement, general appearance, or behavior is apparent by observation.

B. Zero Tolerance Members under 21 Operating a Fishing Vessel Under the Influence: A member who is less than 21 years of age shall not operate a fishing vessel on the waters of the Ceded Territory if the member has any presence of alcohol within the member's body resulting from the consumption of intoxicating liquor.

C. Preliminary Chemical Breath Analysis: A duly authorized enforcement officer who has reasonable cause to believe that a member was operating a fishing vessel on the waters of the Ceded Territory and that by consumption of intoxicating liquor the member's ability to operate a vessel may have been affected or who has reasonable cause to believe that a member under the age of 21 was operating a fishing vessel while having any bodily alcohol content, that officer may require the member to submit to a preliminary chemical breath analysis. The results of such analysis may be used as the basis to issue a citation or other discipline.

D. Refusal to Submit Preliminary Chemical Breath Analysis: A member who refuses to submit to a preliminary chemical breath analysis upon the request of an officer shall be subject to a civil remedial forfeiture action with a maximum fine of up to $1,000.00.

(Source: WOS 2004-02, July 25, 2004, Section IV)

4.905. DOCKSIDE INSPECTIONS

A. Any vessel utilized for commercial fishing activities shall be inspected by duly authorized enforcement personnel at dockside every two (2) years. Proof of inspection shall be demonstrated by the affixing by enforcement personnel to the vessels outer hull a U.S. Coast Guard- approved Fishing Vessel Compliance decal.

(Source: WOS 2004-02, July 25, 2004, Section V)

4.906. REQUIRED DECALS

A. Injury Placard:

1. Each vessel must have posted in a highly visible location accessible to the crew a placard measuring at least 5 inches by 7 inches, which reads:

Notice
Report of Injuries

United States law, 46 United States Code 100603, requires each seaman on a fishing vessel, fish processing vessel or fish tender vessel to notify the master (captain) or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability or injury arose.

B. Discharge of Oil Prohibited:

1. All vessels 26 feet and larger in length must have a placard of at least 5 by 8 inches, made of durable material affixed to a conspicuous place in each machinery space, or at the bilge and ballast pump control station which read the following:

Notice

Discharge of Oil Prohibited

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States, or the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to or under the exclusive management authority of the United States, if such discharge causes a film or discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water. Violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment.

C. Discharge of Plastics/Garbage Prohibited:

1. All vessels 26 feet and larger in length must have a placard of at least 4 by 9 inches, made of durable material, with lettering at least 1/8 inch high and displayed in prominent locations and in sufficient numbers so that they can be read by the crew and passengers. The placard shall read as follows:

Notice

Discharge of Plastics/Garbage Prohibited (MARPOL):

The discharge of all garbage into the Great Lakes or their connecting or tributary waters is prohibited. A person who violates the above requirements is liable for civil penalty for each violation, and the criminal penalties of a class D felony.

(Source: WOS 2004-02, July 25, 2004, Section VI)

4.907. ADDITIONAL PROVISIONS

A. It shall be criminal offense for any person to commit any of the following acts:

1. Carry any firearms on the vessel.

2. Assault, resist, oppose, impede, threaten, bribe or attempt to bribe or interfere with an officer engaged in enforcing any provisions of regulations found within this Statute.

3. Violate any court order relating to the use of a vessel or fishing activity.

4. Violate sec.IV.A., IV.B. or IV.D [WOTC 4.904(A),(B) or (D)].

(Source: WOS 2004-02, July 25, 2004, Section VII)

4.908. ENFORCEMENT

A. Boardings:

1. To facilitate the boarding of vessels by the appropriate enforcement officer (U.S. Coast Guard or Tribal Conservation Enforcement Officer or State Officers) in the exercise of their authority, any vessel if underway and upon being hailed by the U. S. Coast Guard, Tribal

Conservation Enforcement, or State Conservation Enforcement must stop immediately and lay to, or must maneuver in such a way to permit the boarding officer to come aboard. Failure to permit the Coast Guard or Tribal Conservation Enforcement Officer to board a vessel or refusal to comply will subject the operator or owner of the vessel to the penalties provided by law.

2. Coast Guard, Tribal, and State boarding vessels will be identified by their corresponding insignias and enforcement markings. The boarding officers from each agency will be dressed in the appropriate Coast Guard, Tribal or State uniforms. The boarding officer upon boarding the vessel will identify himself to the captain, owner or operator and explain his mission.

(Source: WOS 2004-02, July 25, 2004, Section VIII)

4.909. PENALTIES

A. Termination of Voyage: An Enforcement Officer may direct the captain, owner or operator of the vessel to immediately take reasonable steps necessary for the safety of individuals on board the vessel if the Enforcement Officer observes the vessel being operated in an unsafe manner and determines that an especially hazardous condition exists. The Enforcement Officer may terminate the voyage and instruct the captain, owner or operator of the vessel to return the vessel to a mooring, dock or shore until the hazardous condition is corrected. Hazardous conditions may include but are not limited to the following:

1. An insufficient type or number of lifesaving equipment onboard may include insufficient number of required PFD's, immersion suits, exposure suits or survival craft capacity.

2. Improperly maintained or non-operational PFD's, immersion suits, exposure suits or survival craft capacity.

3. An inoperable Emergency Position Indicating Radio Beacon (EPIRB).

4. Inoperable radio communication equipment (when required).

5. Inadequate fire fighting equipment on board.

6. Inoperable bilge system.

7. Intoxication of the captain (master) or individual in charge of the vessel.

8. A lack of adequate or operational navigation lights during periods of reduced visibility.

9. Flooding or uncontrolled leakage in any space.

B. Vessel Use Restriction: No vessel may be used for commercial fishing, which has been found to violate any provision of this Statute until its owner or operator provides proper documentation to Tribal Court that the violation has been remedied. The Tribal Court may request that the vessel pass a dockside inspection to confirm the correction.

C. Penalties:

1. Violation of any applicable provisions found in sec. III.[WOTC 4.903] *Equipment*- up to $150.00. This monetary fine may be in addition the *Termination of Voyage* or any *Vessel Use Restrictions* that may be applied as stated above.

2. Failure to Display Required Decals- up to $75.00 per decal.

3. Failure to Report an Injury- up to $150.00

4. Discharge of oil- up to $500.00

5. Discharge of Plastics/Garbage- up to $500.00

6. Failure to permit the Coast Guard or Tribal Conservation Enforcement to board a vessel or refusal to comply with their directives - up to $600.00

7. Alcohol/Controlled Substance Related Violations:

   a. Operation of Fishing Vessel Under the Influence - Offender may be sentenced to a jail term not to exceed 180 days or to a fine not to exceed $2,000.00 or suspension of his/her commercial fishing license or to all or a combination thereof.

   b. Members under 21 Operating a Fishing Vessel Under the Influence - Members under the age 21 who have not exceed the alcohol percentage in sec.IV.A.2 [WOTC 4.904(A)(2)] may be sentenced to a jail term not to exceed 30 days or a fine not to exceed $1,000.00 or suspension of his/her commercial fishing license or to all or a combination thereof.

   c. Refusal to Submit Preliminary Chemical Breath Analysis- a maximum fine of up to $1000.00.

8. Any other violations of this Statute not specifically mention in above- up to $400.

D. Arrest:

1. A Conservation Enforcement Officer or any other duly authorized enforcement officer may arrest a member without a warrant when the officer has reasonable cause to believe the member was the operator of a fishing vessel at the time it was involved in an accident and that member was in violation of sec. IV, A or B [WOTC 4.904(A) or (B)].

2. A Conservation Enforcement Officer or any other duly authorized enforcement officer may arrest a member without a warrant any person committing in his/her presence or view a violation of sec. VII [WOTC 4.907].

(Source: WOS 2004-02, July 25, 2004, Section IX)

4.910. EXEMPTIONS

A. Exemption Procedure: Tribal members may request exemptions from these and the parallel U.S. Coast Guard commercial fishing safety rules and regulations by submitting a written request to the U. S. Coast Guard District Office or the Little Traverse Bay Bands of Odawa Indians Natural Resources Commission with joint authority in the waters where the vessel will be operating. The request must specify the reasons for the request in detail. Requests will be evaluated using the following criteria:

1. Good cause exists for granting the exemption; and

2. The safety of the vessel and those on board will not be adversely affected.

B. Exemption Denial or Approval Letter: The exemption request will be denied or approved in writing. Any copy of any exemption approved the Little Traverse Bay Bands of Odawa Indians shall be forwarded to the USCG. If approved, the member will receive an exemption letter specifying the terms and conditions of the exemption. This letter will then be required to be on the vessel to which the exemption applies at all times.

C. Types of Exemptions:

1. Specific Exemption: an exemption for an individual commercial fishing vessel.

2. Class Exemption: an exemption for a class or fleet of commercial fishing industry vessels.

D. Right of Appeal: Any person directly affected by a decision or action taken under this part may appeal in accordance with federal rules and regulations, or to LTBB Tribal Court in the event LTBB and the USCG enter into an agreement granting LTBB authority over such exemptions.

E. Rescinding of an Exemption Letter: Exemptions granted may be rescinded by the U.S. Coast Guard if it is subsequently determined that the safety of the vessel and those onboard is adversely affected.

F. Traditional Craft:

Traditional Craft shall be exempt from all provisions and requirements except personal flotation devices in this statute provided that the Traditional Craft is not used as a supplement for a powered vessel and the captain and every crewmember on board during any commercial fishing operations have provided the Natural Resources Commission with signed and witnessed statements indicating the following: "I understand the inherent risk to life and limb while engaging in fishing operations and I have chosen of my own free will to fish from a Traditional Craft with no requirements for modern safety devices with the knowledge that these requirements were enacted in an attempt to decrease the potential of death, personal injury and or property damage that may be associated with the high risk activity of commercial fishing." This exemption requires no application and is effective upon receipt of the appropriate signed statements and cannot be revoked.

(Source: WOS 2004-02, July 25, 2004, Section X)

4.911. LIMITATIONS

Nothing within this Statute shall be constructed to limit the authority of the Tribal Council from adopting more stringent commercial fishing vessel safety regulations than those set forth in this Statute.

(Source: WOS 2004-02, July 25, 2004, Section XI)

4.912. SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section 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.

(Source: WOS 2004-02, July 25, 2004, Section XII)

4.913. EFFECTIVE DATE

This Statute shall take effect thirty (30) days from the day of its enactment [July 25, 2004] by Tribal Council

(Source: WOS 2004-02, July 25, 2004, Section XIII)

Chapter 10. Act Prohibiting the Patenting of Organisms

4.1001. PREAMBLE AND GENERAL DEFINITIONS

The purpose of this Act Prohibiting the Patenting of Organisms is the protection of the health, welfare and economic security of the Tribe through the control of the patenting of natural organisms within the Tribe's jurisdiction.

The Tribe recognizes that the biodiversity of its territory encompasses the full range of genes, species and ecosystems within its jurisdiction. This biodiversity constitutes an essential resource for the Tribe because it produces the varied plants, animals and organisms that together provide the Tribe with food, medicinal plants, energy, fibers, materials for shelter and warmth, materials for the creation of art and materials for ceremonial use.

The Tribe also recognizes that the biodiversity of its territory creates several finely-balanced ecosystems, and that these ecosystems purify the air and water, stabilize and moderate the climate, and decrease flooding, drought and other environmental disasters.

Furthermore, the Tribe recognizes that the biodiversity of its territory creates harmony between the Tribe and nature and fosters the ethical and peaceful co-existence of the Tribe with the living species surrounding it.

The Tribe finds that by providing food for sustenance, medication, energy and protection from the elements, the Tribe's biodiversity sustains the health of all Tribal members. In addition, the Tribe finds that by providing materials that sustain health and materials that are essential to the Tribe's traditional knowledge, art forms, and ceremonies, the Tribe's biodiversity sustains the welfare of all Tribal members. Finally, the Tribe finds that by providing food and other goods that can be exchanged for sale, and by stabilizing the climate and preventing natural disasters, the Tribe's biodiversity creates an environment conducive for economic activity and security. Thus, in light of the fundamental resource that the biodiversity of its territory constitutes, the Tribe finds that conservation of its biodiversity is essential to protect the health, welfare and economic security of all present and future generations of the Tribe.

The Tribe recognizes that scientists from firms and research facilities are mining indigenous communities for unique organisms that may be used for the creation of new agricultural and pharmaceutical products. Such firms and research facilities frequently attempt to acquire samples of organisms and obtain an exclusive property right in the organisms by patenting them. The Tribe finds that although the intent of the patenting is frequently to prevent competition by other firms and research facilities, the effects can be much more far-reaching. The Tribe recognizes that the patenting of organisms threatens the loss of biodiversity by limiting access to genetic variants through the enforcement of proprietary rights and by encouraging the spread of a single variant of an organism in place of other natural variations. For these reasons, the patenting of organisms threatens the Tribe's health, welfare and economic security.

(WOS 2004-03, July 25, 2004, Section I)

4.1002. DEFINITIONS

The following definitions apply to this Statute:

A. "Jurisdiction" means the jurisdiction of the Tribe as defined in the Tribe's Constitution.

B. "Organism" means a whole, living, viable entity; a genetic structure, whether that structure comprises all or only a portion of an entity or a total genetic structure of an entity; and a reproductive cell or developmental stage of an organism.

C. "Person" means an individual person and any corporation, partnership, limited liability company, or any other form of legal entity.

D. "Tribe" means the Waganakising Odawak, also known as the Little Traverse Bay Bands of Odawa Indians.

(WOS 2004-03, July 25, 2004, Section II)

4.1003. PROHIBITION AGAINST PATENTING OF ORGANISMS

Within the jurisdiction of the Tribe, no person may patent or claim any exclusive property interest in the makeup of any organism.

(WOS 2004-03, July 25, 2004, Section III)

4.1004. PENALTY

Within the jurisdiction of the Tribe, any person who attempts to or successfully patents or claims any property interest in any organism will have their equipment and research materials confiscated by the Tribe and to the extent allowed under the Tribe's Constitution and applicable law, may be banished from the Tribe's territory and denied permission and access for any research activities related to such organism.

(WOS 2004-03, July 25, 2004, Section IV)

4.1005. ENFORCEMENT

The Tribal Prosecutor shall have the authority to enforce this statute by bringing an action against any person accused of violating this statute in Tribal Court and obtaining a Tribal Court order providing for relief in the form of the penalties described in Section IV [WOTC 4.1004] above.

(WOS 2004-03, July 25, 2004, Section V)

4.1006. SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section 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 phrase, part, provision, paragraph, subsection or section 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.

(WOS 2004-03, July 25, 2004, Section VI)

4.1007. EFFECTIVE DATE

This Statute takes effect thirty (30) days from the date of its enactment [July 25, 2004].

(WOS 2004-03, July 25, 2004, Section VII)

TITLE V. CHILD WELFARE

Chapter 1. Child Welfare Code

5.101 CHILDREN'S COURT DIVISION

A. While proceeding under this Code, the Court shall be termed the Children's Court Division of the Little Traverse Bay Bands Tribal Court.

B. Proceedings under this Code shall not be deemed to be criminal proceedings.

(Source: WOS 1998016, December 20, 1998, Section I)

5.102. PURPOSE

A. Children are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. Feeling pride from their identity, as Odawak, will help them grow into strong, healthy responsible adult Tribal members.

B. The purpose of this Code is to ensure that children receive their rightful care, and to protect them from abuse and neglect, by helping and treating families, and placing children when necessary for their care. Specifically:

1. The Court shall protect the rights and interests of its young by proceeding with a course of action that will provide for the welfare, care and protection of its Children and their Families;

2. To preserve the unity of the family, by separating the children from their parents and siblings, only as a course of last resort;

3. To take action that will best meet the spiritual, emotional, mental, and physical needs of the Children, and preserve the interest and culture of the Tribe;

4. To recognize and acknowledge the traditional customs and practices of the Little Traverse Bay Bands of Odawa Indians regarding child rearing;

5. To preserve and strengthen children's cultural ethnic identity whenever possible;

6. To provide procedures for intervention in state court proceedings involving Indian Children and for the transfer of jurisdiction over Indian children from state and other tribal courts to the Little Traverse Bay Bands Tribal Court.

7. To secure the rights of and ensure fairness to the children, their parents, guardians, custodians, extended family members, and other parties who come before this Court under the provisions of this Code.

8. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community based alternatives; and

9. To transfer appropriate cases to any traditional or alternative dispute resolution body created by the Tribe.

(Source: WOS 1998016, December 20, 1998, Section II)

5.103 DEFINITIONS

For the purposes of this Statute, the words and phrases shall have the meanings delineated below.

A. "Abandon" When the parent leaves a child without communication or fails to support the child and there is no indication of the parent's willingness to assume their parental role for a period exceeding six (6) months.

B. "Adult" A person eighteen (18) years of age or older, or other wise emancipated by order of a Court of competent jurisdiction.

B1. "Best interests of the child" means the promotion and protection of the physical, emotional and spiritual well being of the child in a manner that recognizes the fundamental importance of the child's Indian heritage, culture and family relationships.

C. "Child" An unmarried person who is less then eighteen (18) years of age, and has not been emancipated by order of a court of competent jurisdiction, or a person who is eighteen (18) years of age, but remains under the continuing jurisdiction of the Court. The plural encompasses the singular, and the singular encompasses the plural wherever appropriate.

D. "Child born out of wedlock" A child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

E. "Child in need of care". A child:

1. Who has no parent, guardian or custodian available and willing to care for him/her.

2. Who has suffered or is likely to suffer a physical injury, inflicted upon him/her by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;

3. Whose parent, guardian or custodian has not, for reasons other then poverty, provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his/her health and well being;

4. Who has been sexually abused or exploited by a parent, guardian or custodian either intentionally, or negligently;

5. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;

6. Who has been emotionally abused or emotionally neglected; or

7. Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical and/or mental harm to the child.

F. **"Child offender"** is a child who:

1. Has committed an act, which is designated as a crime, if committed by an adult under the laws of the Little Traverse Bay Bands of Odawa Indians, or under the laws of the United States applicable to the Reservation of the Little Traverse Bay Bands of Odawa Indians;

2. Has violated a tribal law, including laws relating exclusively to minors, within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians;

3. Is habitually truant;

4. Is unamenable to parental control;

5. Is a runaway; or

6. So deports self as to injure or endanger the health or well being of self or others.

G. **"Child Protection Team"** A team established to involve and coordinate the child protection services of various agencies as set forth in Section IX of this Code [WOTC 5.109].

H. **"Child Welfare Commission"** A Commission created by Tribal Statute and appointed by the Tribal Council to protect the interests of the children of the Tribe.

I. **"Controlled Substance"** any substance defined or described as such in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as amended.

J. **"Children's Court"** The Little Traverse Bay Bands Tribal Court when exercising jurisdiction under this Code, abbreviated in this Code as "the Court."

K. **"Children's Court Judge"** Any duly appointed judge of the Little Traverse Bay Bands Tribal Court when exercising jurisdiction under this Code.

L. **"Commit" Means** to transfer legal custody.

M. **"Custodian"** A person, other than a parent or guardian, to whom legal custody of a child has been given.

N. **"Domicile"** A person's permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent, guardian or custodian. Domicile includes the intent to establish a permanent home or the place where the parent, guardian or custodian considers to be his/her permanent home.

O. **"Extended Family"** A person who is the child's grandparent, great aunt or uncle, aunt or uncle, brother or sister, step-brother or step-sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step parent, or other individual considered part of the child's extended family by Tribal tradition and custom.

P. **"Father "** Means:

1. A man married to the mother at any time from a child's conception to the child's birth unless the child is determined not to be an issue of the marriage;

2. A man who legally adopts the child, or;

3. A man whose paternity is established in one of the following ways within time limits, when applicable, set by the Court pursuant to this Code:

a. The man and the mother of the child acknowledge that he is the child's father in a writing executed and notarized and filed in the Court.

b. The man and the mother file a joint written request for a correction of the certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth;

c. The man acknowledges the child, without the acknowledgment of the mother, with the approval of the Court; or

d. A man who by order of filiation or by judgment of paternity is determined to be the father of the child.

Q. **"Guardian"** A person, other than a parent, assigned by a court of competent jurisdiction to exercise the duty and authority to provide care and control of a child.

R. **"Indian"** Any enrolled or eligible member of a federally recognized Indian Tribe, band or community, or Alaskan Native, and/or any person so defined by Tribal, federal or state law.

S. **"Indian Child"** A child who is a member of a tribe, or eligible for membership in a tribe, or a child domiciled on the LTBB reservation whose parent is an LTBB member.

T. **"Least Restrictive Alternative"** The placement alternative which is the least restrictive method, in terms of restrictions to be placed upon the child and family, or obtaining the objectives of the Court and this Code.

U. **"Parent"** A person who is legally responsible for the control and care of the child including a mother, father, guardian or custodian, including a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established. The term encompasses the singular, and the singular encompasses the plural wherever appropriate.

V. **"Probation Officer"** Staff person/s of the Court who monitor and supervises the restrictions related to probationary status imposed by the Court.

W. **"Protective Services Worker"** The protective service worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities as set forth in Section VIII of this Code [WOTC 5.108].

X. **"Reservation"** All lands within the boundaries of the reservations for Little Traverse 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 reservation by the Department of the Interior.

Y. **"Tribe"** The Little Traverse Bay Bands of Odawa Indians.

Z. **"Tribal Council"** The Tribal Council of the Little Traverse Bay Bands of Odawa Indians.

AA. **"Tribal Court"** The Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

BB. **"Tribal Social Services"** The Department of the Tribe which provides social and human services to the membership and residents of the Little Traverse Bay Bands of Odawa Indians' reservation.

(Source: WOS 1998016, December 20, 1998, Section III; as amended by WOS 2000-06, May 21, 2000 which added subsection B1 "best interests of the child" definition.)

5.104 JURISDICTION

A. **JURISDICTION OF THE CHILDREN'S COURT DIVISION.** Except as provided herein, the Children's Court Division of the Tribal Court shall have:

1. Exclusive jurisdiction, regardless of any other Court proceeding, involving any Little Traverse Bay Bands of Odawa Indians child who commits an act as a child offender within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians Reservation; and

2. Exclusive jurisdiction over any Indian child alleged to be in need of care who is found or resides within the exterior boundaries of the Reservation of the Little Traverse Bay Bands of Odawa Indians, except that if the child is a member of another federally recognized tribe, and in such instance, LTBB or the tribe of the child's enrollment may exercise jurisdiction. Further, if the child is not an LTBB member and is found or resides on non-trust land within the exterior boundaries of the reservation, the Tribal Court has the discretion to accept or deny the exercise of jurisdiction over the child.

3. Jurisdiction over the child's extended family residing in the household, whenever the Court deems it appropriate and necessary to carry out its responsibility to protect the child and prevent family dysfunction. Jurisdiction requires that such person be provided notice and opportunity for hearing.

4. Jurisdiction over any adult whose behavior causes or tends to cause the child to come within or remain within the jurisdiction of the Court.

5. Jurisdiction over any proceeding, which is transferred to the Children's Court by a state court or the tribal court of another tribe.

6. Once the Court asserts jurisdiction over a person under this Code, the Court retains jurisdiction over that person even if he/she leaves the physical boundaries of the Reservation.

7. Once the Court asserts jurisdiction over a child under this Code, jurisdiction shall be retained until dismissed by order of the Court.

9. Proceedings seeking to terminate parental rights to a minor, who is either a member, or is eligible for membership in the Little Traverse Bay Bands of Odawa Indians.

10. Jurisdiction for the issuance of orders of support of minor children.

(Source: WOS 1998016, December 20, 1998, Section IV; as amended by WOS 2000-06, May 21, 2000 which re-wrote subsection (A)(2))

5.105 TRANSFER OF JURISDICTION

A. APPLICATION OF THE INDIAN CHILD WELFARE ACT. The Children's Court Division may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this Code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court Division except where specifically provided for in this Code.

B. TRANSFER TO STATE OR OTHER TRIBAL COURT. In any proceeding before the Children's Court, the Court may transfer the proceedings to an appropriate state Court, or another tribal

Court where the state or the other Indian tribe has a significant interest in the child, and the transfer would be in the best interest of the child.

C. TRANSFER FROM OTHER COURTS. The Children's Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from federal, state or other tribal Courts.

D. PROCEDURES FOR TRANSFER FROM STATE COURTS.

1. Receipt of Notice: The tribal agency for service of notice of state court child custody proceedings, as required by the Indian Child Welfare Act, shall be the Tribal Social Services Department.

2. Intervention: If the notice involves a child who is a member, or eligible for membership, in the Tribe, the Tribal Social Services Department shall cause a motion to intervene to be filed with the state Court within five (5) days of the receipt of notice.

3. Investigation and Pre Transfer Report: The Tribal Social Services Department shall conduct an investigation and file a written report with the Child Welfare Commission.

4. Decision to Transfer: The Child Welfare Commission shall determine whether the Tribe should petition for a transfer of proceedings from the state Court, or not. The Child Welfare Commission in their determination shall consider these factors:

a. The best interest of the child,

b. The best interest of the Tribe,

c. Availability of services for the children and their family, and;

d. The prospects for permanent placement for the children.

5. Petition for Transfer: The tribal petition for transfer shall be filed by the tribal attorney within five (5) days of the receipt of the determination from the Child Welfare Commission with a copy sent to the tribal Court. If there is no tribal attorney, the Child Welfare Commission shall file the petition for transfer.

6. Acceptance of Transfer: The Children's Court has discretion whether to accept or deny the transfer.

7. Hearing/s: Upon the receipt of the transfer of jurisdiction from state Court, the tribal Court shall hold appropriate hearings in accordance with this Code.

E. FULL FAITH AND CREDIT; CONFLICT OF LAWS.

1. State Court Orders: State child custody orders involving children over whom the Children's Court could take jurisdiction may be recognized by the Children's Court only after a full independent review of the state court proceedings leads to the following findings:

a. The state Court had jurisdiction over the child; and

b. The provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, were properly followed; and

c. Due process was provided to all interested persons participating in the state proceeding; and

d. The state Court proceeding does not violate the public policies, customs, or common law of the Tribe.

2. Court Orders of other Tribal Courts: Court orders of other tribal courts involving children over whom the Children's Court may take jurisdiction shall be recognized by the Children's Court after the Court has determined:

a. That the other Tribal Court exercised proper subject matter jurisdiction over the parties, and;

b. Due process was accorded to all interested parties participating in the other Tribal Court proceeding.

(Source: WOS 1998016, December 20, 1998, Section V)

5.106 PROCEDURES AND AUTHORIZATIONS

A. Rules of procedure. The procedures in the Children's Court shall be governed by the rules of procedure for the Tribal Court, which are not in conflict with this Code.

B. Cooperation and Grants. The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program/s and to receive grants in aid to carry out the purposes of this Code. This authority is subject to the approval of the Tribal Council, if it involves the expenditure of tribal funds.

C. Social Services. The Children's Court shall utilize social services as may be furnished by any tribal, federal, or state agency provided that such services are economically administered without unnecessary duplication and expense.

(Source: WOS 1998016, December 20, 1998, Section VI)

5.107 CHILDREN'S COURT PERSONNEL

A. Counsel for Parents and Child Offenders. Parents and those children alleged to be child offenders under Section XVI [WOTC 5.116]. May be represented at each stage of proceedings under this Code by an attorney or lay advocate at their own expense. The Court may appoint an attorney or advocate to represent a party if funding is available for such purpose.

B. Court Appointed Attorney for Child. At every stage of the proceedings conducted under this Code, the Children's Court may appoint a lawyer or advocate for the child.

(Source: WOS 1998016, December 20, 1998, Section VII)

5.108 PROTECTIVE SERVICE WORKERS AND PROBATION OFFICERS

A. Powers and duties of protective service workers. A protective service worker shall:

1. Receive from any source, oral or written, information regarding a child who may be a child in need of care.

2. Upon receipt of any report or information under subsection(1), within twenty four (24) hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and course of any condition which is contrary to the child's best interest and the name, age, and condition of other children in the home.

3. In conducting the investigation, the protective service worker shall seek the assistance of and cooperate with law enforcement officials within twenty-four (24) hours after becoming aware that one or more of the following conditions exist:

a. Abuse or neglect is the suspected cause of a child's death.

b. The child is the victim of suspected sexual abuse or sexual exploitation.

c. Abuse or neglect resulting in severe physical injury to the child that requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well being of a child.

d. Law enforcement intervention is necessary for the protection of the child, the protective service worker, or another person involved in the investigation.

e. The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

4. Take a child into temporary custody if necessary pursuant to Section XI [WOTC 5.111]. Law enforcement officials shall cooperate with protective services personnel to remove a child from the custody of his parents, guardian or custodian when necessary.

5. After investigation, evaluate and assess the home environment of the children in the home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent.

6. Substantiate whether there is probable cause to believe that the child is a child in need of care.

7. Offer to the family of any child found to be a child in need of care, appropriate services which may include, but shall not be restricted to, prevention services, and document such offer/s.

8. Within thirty (30) days after a referral of a potential child in need of care, submit a written report of his/her investigation and evaluation which shall be included in the files maintained by the protective services division of the Tribal Social Services Department and shall include a determination as to whether the report is substantiated or unsubstantiated. Upon completion of the investigation by the local law enforcement agency or the protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.

B. COOPERATION FROM LAW ENFORCEMENT. Law enforcement officials shall cooperate with the protective services worker and the Tribal Social Services Department in conducting investigations pursuant to this Section.

C. LIMITATIONS OF AUTHORITY; DUTY TO INFORM. Before offering protective services to a family, a worker shall inform the family that he/she has no legal authority to compel the family to receive such services. If the family declines the offered services, the worker may request authorization to initiate a child protection petition in the Children's Court. Nothing in this Section limits the authority of the protective services worker to act in emergency situations pursuant to Section XI [WOTC 5.111] or to obtain a medical evaluation of the child pursuant to Section XXIV [WOTC 5.124].

D. DUTIES OF THE PROBATION OFFICER. The Probation officer shall have the following duties:

1. Investigate and make dispositional recommendations to the Court of all cases involving child offenders.

2. Attend all hearings involving a child offender and supervise implementation of dispositional orders.

3. Schedule case review hearings for child offenders and advise the Court of the efforts of the child and his/her family in complying with the Court's dispositional orders.

4. Provide support, preventive and supervisory counseling to all child offenders and their families placed on probation by the Court order.

5. Provide information and supportive services to agencies and Courts who work with child offenders, subject to Children's Court jurisdiction.

6. Provide supervision to child offenders and alleged child offenders in secure detention.

7. Assist in the development and implementation of programs and services to prevent and rehabilitate children who are at risk of anti-social, and/or criminal behavior.

8. Inform offenders and their families, as to the cost, constraints, and responsibilities of maintaining House Arrest electronic monitoring equipment. Provide installation services in the offenders home, Communicate with the Electronic monitoring equipment agency, and assist law enforcement in monitoring the actions of the offender.

(Source: WOS 1998016, December 20, 1998, Section VIII)

5.109 CHILD PROTECTION TEAM

The Child Protection Team is technical and advisory in nature and is not intended to replace the authority and responsibility of the Child Welfare Commission, individual agencies, or the Court. It is designed to promote cooperation, communication and consistency among agencies. The Child Protection Team shall facilitate the decision making process. Confidentiality shall be maintained by all team members.

A. Team Duties. The Child Protection Team shall:

1. Monitor child abuse and neglect cases to ensure that adequate preventive, protective and corrective services are provided.

2. Review and track all child abuse and neglect cases which have been referred by the protective services worker for case plan recommendations.

3. Monitor, review and recommend case plans for children subject to Court jurisdiction and for tribal children subject to the jurisdiction of another Court. Case plans for children subject to the jurisdiction of the Children's Court Division shall be filed with the Court.

B. Child Protection Team Membership. The Child Protection Team shall consist of the LTBB Tribal presenting officer, an LTBB protective services worker, and a representative from the LTBB Tribal Law Enforcement Department. The Team may request the assistance of any other person in carrying out its responsibilities, such as persons with knowledge and experience in the following matters: Medical/health, mental health, substance abuse, social services, law enforcement, protective services, and law.

C. Service Facilitation. The Child Protection Team shall undertake the following in carrying out its duties under subsection (A):

1. Identify available community resources, programs and services.

2. Provide recommendations to various pertinent agencies.

3. Promote cooperation, communication and consistency among agencies.

4. Provide a forum for debating what actions would be best to promote the well being of Indian Children.

5. Respond to inquiries from the community, area Child protection teams and other individuals, and groups.

D. Team Technical Assistance. The Child Protection Team shall provide the following types of technical assistance for the Tribe:

1. Develop procedures to provide effective and efficient preventive, protective and corrective child abuse and neglect services.

2. Provide information and technical recommendations to decision-making agencies.

3. Educate communities about child abuse, neglect problems and solutions.

4. Identify high risks practices, which prompt intervention and/or preventive actions.

5. Assist in the development and implementation of plans to promote the long term well being of children and their families.

6. Assist in the development and implementation of strategies by communities to create environments, which provide opportunities for community members to lead meaningful, productive, and rewarding lives. These environments should promote dignity, self worth, self-respect, and self-sufficiency of and for community members.

(Source: WOS 1998016, December 20, 1998, Section IX; as amended by WOS 2000-06, May 21, 2000, which re-wrote subsection B.)

5.110 DUTY TO REPORT CHILD ABUSE AND NEGLECT

A. General Duty to Report. Any person who has a reasonable cause to suspect that a child is "in need of care" shall immediately make a report to the Protective Services Division of Tribal Social Services or to the Tribal Law Enforcement Department. Any person so reporting may remain anonymous, unless such person is in a category listed in subsection (B) below.

B. Specific Duty to Report.

1. A physician, coroner, dentist, medical examiner, nurse, a person licensed to provide emergency medical care, community health representative, audiologist, psychologist, family therapist, certified social worker, social worker, social work technician, substance abuse counselor, school administrator, school counselor or teacher, law enforcement officer, or duly regulated child care provider who has reasonable cause to suspect that a child may be a child in need of care shall immediately make by phone or otherwise an oral report, or cause an oral report to be made, of the suspected condition to the Tribal Protective Services Division, or Law Enforcement Department.

2. Within seventy-two (72) hours after making an oral report the reporting person shall file a written report. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of said entity of his finding and that the report has been made and shall make a copy of the written report available to the person in charge. One report from a hospital, agency or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this Section or for cooperating in an investigation.

3. The Protective Services Division shall provide to any person making a report pursuant to subsection "b" within sixty (60) days of its receipt the Division's determination of the report as founded or unfounded.

C. Immunity from Liability. All persons or agencies complying in good faith with the provisions of this Section shall be immune from civil liability and criminal prosecution.

D. Abrogation of Privilege. Any legally recognized privileged communication, except that between attorney and client, is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this Section.

E. Penalty for not Reporting. Any person mandated to report under subsection "b" who knowingly fails to do so or willingly prevents someone else from doing so shall be subject to a charge of civil contempt with a civil forfeiture of up to $5,000.00.

F. Abuse and Neglect Reports. Persons mandated to report under this Section shall include the following information in their written report:

1. Names, addresses, and tribal affiliation of the child and his/ her parents, guardian or custodian.

2. The children's age.

3. The nature and content of the child's abuse or neglect.

4. Previous abuse or neglect of the child and/or siblings.

5. Name and address of the person alleged to be responsible for the child's abuse or neglect.
6. Name and address of the person or agency making the report.

G. Medical Examinations. The Protective Services Division may request a Court order for a medical evaluation of a child pursuant to Section XXIV [WOTC 5.124] of this Code. The Division shall have a medical evaluation done without a Court order if the child's health is seriously endangered and a Court order cannot be obtained.

1. When a child suspected of being a child in need of care is seen by a physician, the physician shall make the necessary examinations which may include physical examinations, X-rays, photographs, laboratory studies, and other pertinent studies.

2. The physician shall immediately report the results of the evaluation to the Protective Services Division, law enforcement and the Court, if requested to do so. The physician's written report to the Division shall contain a summary of the evaluation.

(Source: WOS 1998016, December 20, 1998, Section X)

5.111 INVESTIGATION AND EMERGENCY REMOVAL

A. Investigative Orders; Orders for examination. Upon a showing of probable cause to believe that a child is a child in need of care, which may be done *ex parte*, the Court may order further investigation and discovery, including but not limited to taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, by a physician, dentist, psychologist, or psychiatrist.

B. Authority to Remove. Upon application by any person which may be *ex parte*, if the Court finds probable cause to believe the child is a child in need of care and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well being the Court may order the child be taken into custody. The Court may include in such an order:

1. An authorization to enter specified premises to remove the child, and

2. A directive to place the child in protective custody pending a preliminary hearing.

3. **Emergency Removal without a Court Order**. A child may be taken into protective custody without a Court order by a law enforcement officer or the Tribe's protective services worker if such person has probable cause to believe the child is a child in need of care, and

a. Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm, or;

b. The parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his/her own basic necessities of life, and no satisfactory arrangements have been made by the parents, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

C. If grounds for removal are corrected, the child may be returned to the parent by the person originally authorizing removal or by the protective service worker.

(Source: WOS 1998016, December 20, 1998, Section XI)

5.112 NOTICE OF REMOVAL

A. **Notice to the Children's Court.** After a child is removed from his/her home the person who removed the child shall attempt to contact the Children's Court within six (6) hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made by the removing person, no later then 12:00 PM of the next working day.

B. **Notice to the Parent, Guardian or Custodian.** The person removing the child shall make reasonable efforts to notify the parents, guardian or custodian, within 12 hours of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child. Said notice shall advise the parent, guardian or custodian of their rights under this Code.

C. **Notice to child's tribe if different from the tribe whose court is exercising jurisdiction.** If the Children's Court asserts jurisdiction over a person who is a member of an Indian Tribe other than the Little Traverse Bay Bands of Odawa Indians, the Tribal Court shall notify the tribal Court of its tribal member that jurisdiction has been asserted.

(Source: WOS 1998016, December 20, 1998, Section XII)

5.113 PLACEMENT OF CHILDREN

A. **Restrictions.** A child alleged to be a child in need of care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the

detention of children alleged to have committed an act, which would be criminal if committed by an adult.

B. Placement Priorities. A child may be placed in the following community based shelter facilities listed in order of preference:

1. Members of the child's extended family;

2. An Indian family of the same tribe as the child, which is approved by the Commission or an Indian family otherwise authorized by law to provide care for the child;

3. A facility operated by a licensed child welfare services agency or an Indian tribe; or

4. Any other suitable placement, which meets the standards for shelter care facilities established by the Tribe.

C. Least Restrictive Setting. If a child cannot be returned to his/her parents, the child shall be placed in the least restrictive setting which most approximates a family and in which his/her special needs if any, may be met. The child shall also be placed in reasonable proximity to his/her home, taking into account any special needs of the child.

(Source: WOS 1998016, December 20, 1998, Section XIII)

5.114 INFORMAL ADJUSTMENT CONFERENCE

A. After the filing of a petition, the Children's Court may hold an informal conference with the child and parent, guardian or custodian to discuss alternatives to going forward with the petition if:

1. An informal adjustment of the matter would be in the best interest of the child and the Tribe; and

2. The child and the child's parent, guardian or custodian consent to an informal adjustment conference after they have received an explanation of their rights.

B. This Section does not authorize the Children's Court to compel any involuntary action of the parties involved.

C. At the informal adjustment conference (with the voluntary agreement of the parties) the Court may:

1. Refer the child and the child's parent, guardian or custodian to a community agency for assistance; or

2. Define terms of supervision calculated to assist and benefit the child, which regulates the child's activities and are within the ability of the child to perform.

D. The Children's Court shall set forth in writing conference findings and the disposition agreed to by the parties. The report shall be made available to and signed by the child, the child's parent, guardian or custodian. The child advocate and parent's attorney shall also receive copies of the report.

E. If an informal adjustment is agreed to, the Children's Court shall hold the petition in abeyance or order it dismissed to be re-filed, if at all, at a later date without prejudice.

F. Any disposition arranged through the informal adjustment procedure of this Section shall be concluded within six (6) months.

G. The Child Welfare Commission or its designee shall review the child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Commission concludes that positive results are not being achieved, the Commission shall direct the protective service worker to file a petition for a formal adjudicatory hearing.

H. No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding involving the child under this Code.

(Source: WOS 1998016, December 20, 1998, Section XIV)

5.115 FILING CHILD PROTECTION PETITION

A. **Authorization to File Petition.** Upon authorization by the tribal prosecutor, the child protective service worker shall initiate formal child protection proceedings by filing a child protection petition on behalf of the Tribe and in the best interest of the child. Nothing in this Section shall preclude law enforcement or protective services personnel from taking emergency action under Section XI of this Code [WOTC 5.111].

B. **Time Limitations.** If a child has been removed from the home, then a child protection petition shall be filed with the Children's Court no later then 12:00 PM of the second working day following the removal.

C. **Contents of Petition.** The child protection petition shall set forth the following with specificity:

1. The name, birth date, sex, residence and tribal affiliation of the child;

2. The basis for the Court’s jurisdiction;

3. The specific allegation, which cause the child to be a child in need of care;

4. A plain and concise statement of the facts upon which the allegations of a child in need of care are based, including the date, time and location at which the alleged facts occurred;

5. The names, residence and tribal affiliation of the child's parents, guardians or custodians, if known; and

6. If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

(Source: WOS 1998016, December 20, 1998, Section XV)

5.116 FILING CHILD OFFENDER PETITION

A. Authorization to File Petition. The Tribal Prosecutor shall initiate child offender proceedings on behalf of the Tribe. Nothing in this Section shall preclude law enforcement or protective services personnel from taking emergency action under Section XI of this Code [WOTC 5.111].

B. Contents of Petition. The child offender petition shall set forth the following with specificity, which may be incorporated through the attachment of a citation issued or incident report prepared by law enforcement personnel.

1. The name, birth date, age, sex, residence and tribal affiliation of the child.

2. The basis for the Court's jurisdiction.

3. The specific allegations, which cause the child to be a child offender;

4. A plain and concise statement of facts upon which the allegations of child offender are based, including the date, time, and location at which the alleged facts occurred;

5. The names, residence and tribal affiliation of the child's parents, guardians, or custodians, if known; and

6. If the child is in emergency detention, the location of placement and the facts on which the determination to place was based, including the time and date of placement.

C. Time Limitations. If a child has been placed in emergency detention, the child offender petition shall be filed with the Children's Court no later then 12:00 p.m. of the second working day following placement.

D. Transfer To Adult Tribal Court.

1. The presenting officer or the minor may file a petition requesting the Children's Court to transfer the minor to Adult Tribal Court if the minor is fourteen (14) years of age or older, and is

alleged to have committed an act that would have been considered a crime if committed by an Adult.

2. The Children's Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to Adult Tribal Court.

a. The transfer hearing shall be held not more then ten (10) days after the petition is filed.

b. Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least seventy- two (72) hours prior to the hearing.

3. Prior to the hearing, a study and a report in writing shall be submitted to the Children's Court by the Tribal Dept. of Social Services, or the Child Welfare Commission.

4. The following factors shall be considered when determining whether to transfer jurisdiction of the minor to Adult Tribal Court.

a. The nature and seriousness of the offense with which the minor is charged.

b. The nature and condition of the minor, as evidenced by his/her age, mental and physical condition; past record of offenses; and responses to past Children's Court efforts at rehabilitation.

5. The Children's Court may transfer jurisdiction of the minor to adult tribal Court if the Children's Court finds clear and convincing evidence that both of the following circumstances exist:

a. There are no reasonable prospects for rehabilitating the minor through resources available to the Children's Court; and

b. The offense allegedly committed by the minor is serious and constitutes a substantial danger to the public.

6. When a minor is transferred to adult tribal Court, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

(Source: WOS 1998016, December 20, 1998, Section XVI)

5.117 NOTICE AND SERVICE OF SUMMONS

A. General. Unless a party must be summoned as provided in subsection (b), a party shall be given notice of a proceeding in the Children's Court in any manner authorized by this Code or the Tribal Court Code.

B. Summons. In a Children's Court proceeding, the summons shall be issued and served on the parent and the person with whom the child resides, if other than a parent or a Court ordered custodian, directing such person to appear with the child for trial. The summons shall include a notification of the parties' rights under this Code. The Court may direct that the Child's appearance in Court is unnecessary.

1. In a proceeding for termination of parental rights, the summons for a hearing on the Petition must be issued and served on the parent and the person with whom the child resides, if other than the parent or a guardian. The Court may direct that the child's appearance in Court is unnecessary.

2. Contents. The summons shall direct the person to whom it is addressed to appear with the child (unless the child's appearance has been excused) at a time and place specified by the Court and must:

a. Identify the nature of the hearing;

b. Include a prominent notice that the hearing could result in termination of parental rights; and

c. Have a copy of the petition attached to the summons.

3. Manner of Serving Summons.

a. Except as provided in subsections (b) and (c) below, a summons required under Section XVII [WOTC 5.117] must be served delivering the summons to the party personally.

b. If personal service of the summons is impracticable or cannot be achieved, the Court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.

c. If the Court finds service cannot be made because the whereabouts of the person/s to be summoned has not been determined after reasonable effort, the Court may direct any manner of substituted service reasonably calculated to provide notice, including publication.

4. Time of Service.

a. A summons shall be served at least:

i. Seven (7) days prior to adjudication,

ii. Fourteen (14) days prior to a hearing on a petition to terminate parental rights.

b. If the summons is served by registered mail, it must be sent at least seven (7) days earlier than subsection (a) requires for personal service of a summons.

c. If service is by publication, the published notice, which does not require publication of the petition itself, shall appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The published notice must appear one or more times, fourteen (14) days prior to the hearing.

C. Notice of Hearing. Notice of hearing must be given in writing which may be on the record or mailed to the last known address at least seven (7) days prior to the hearing, unless provided for otherwise in this Code.

1. Persons Entitled to Notice. The Court shall insure that the following persons are notified of each hearing.

a. The parent or parents,

b. The attorney for the parent,

c. The child or the advocate for the child,

d. The legal guardian or custodian other than the parent, if any,

e. The Tribal Prosecuting Attorney,

f. The responsible child placement agency.

g. The CASA of a party appointed pursuant to this Code,

h. Any other person the Court may direct to be notified.

2. Preliminary Hearing. When a child is placed, reasonable efforts shall be made to notify the parents of the child or extended family pursuant to Section XI [WOTC 5.111] (emergency removal) as soon as the hearing is scheduled, the notice may be in person, in writing, on the record, or by telephone.

3. Termination Proceedings. Notice of a hearing on a petition to terminate parental rights must be given in writing or on the record at least 14 days prior to the hearing.

4. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

D. Subpoenas. The attorney for a party or the Court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired. It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.

E. Waiver of Service. A person may waive notice of hearing or service of process. The Waiver shall be in writing. When a party waives service of a summons required by Section XVII(B) [WOTC 5.117(B)], the party must be advised as set forth in Section XVII(B)(3) [WOTC 5.117(B)(3)].

F. Subsequent Notices. After a party's first appearance before the Court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party, either personally or by ordinary mail, except that a summons must be served before a trial or termination hearing as provided in subsection (B) unless a prior Court appearance of the party in the case, was in response to service by summons.

G. Putative Fathers. If the Court determines that the child has no father as defined in Section III (P) [WOTC 5.103(P)], the Court shall take appropriate action as described in this Section.

1. The Court shall take initial testimony on the tentative identity and address of the natural father. If the Court finds probable cause to believe that an identifiable person is the natural father of the child, the Court shall direct that notice be served on that person in the manner as provided in this Section. The notice shall include the following information.

a. That a petition has been filed with the Court;

b. The time and place of hearing at which the natural father is to appear to express his interest, if any, in the child; and

c. A statement that failure to attend the hearing will constitute a denial of interest in the child, a waiver of notice for all subsequent hearings, and could result in termination of any parental rights.

2. After notice to the putative father the Court may conduct a hearing and determine that:

a. The putative father has been personally served or served in some other manner, which the Court finds to be reasonably calculated to provide notice to the putative father. If so, the Court may proceed in the absence of the putative father.

b. A preponderance of the evidence establishes that the putative father is the natural father of the child and justice requires that he be allowed fourteen (14) days to establish his relationship according to Section III (P) [WOTC 5.103(P)], provided the Court may extend the time for good cause shown if the best interests of the child so require.

c. There is probable cause to believe that another identifiable person is the natural father of the child. If so, the Court shall proceed with respect to the other person in accord with this subsection (G).

d. If after diligent inquiry, the identity of the natural father cannot be determined. The Court shall publish a notice at least once, in a manner calculated to alert a person who may be the father of the child. If no person comes forward the Court shall terminate the parental rights of the unknown father and proceed without further notice.

3. The Court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights if;

a. He fails to appear after proper notice, or

b. He appears, but fails to establish paternity within the time set by the Court.

(Source: WOS 1998016, December 20, 1998, Section XVII)

5.118 PRELIMINARY HEARING

A. Time for Hearing. If a child:

1. Has been released to his/her parents, guardian or custodian; the Court shall conduct a preliminary hearing within seven (7) days after filing of the petition.

2. Has been placed out of home, the Court shall conduct a preliminary hearing by 12:00 PM on the second work day following the placement for the purpose of determining:

a. Whether probable cause exists to believe the child is subject to the jurisdiction as a child in need of care or a child offender; and

b. Whether the home conditions continue to be such as there is no alternative to removal to adequately safeguard the child.

B. Absence of Parent at Preliminary Hearing. If the child’s parent, guardian or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the child's parent, guardian or custodian, the Court shall recess for not more than twenty four (24) hours and direct the petitioner to make continued efforts to obtain the presence of the child's parent's, guardian or custodian. The preliminary hearing may be conducted in the parent's absence.

B. Conduct of Preliminary Hearing. The Court shall read the allegations in the petition in open Court, unless waived and shall advise the parent of the right to have counsel represent them, at their own expense, and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Court shall allow the parent an opportunity to deny or admit the allegations and make a statement of explanation. The same procedure shall be followed for a preliminary hearing

involving a child alleged to be a child offender, provided that the rights stated herein for parents shall be afforded to the child in such a hearing.

C. Testimony at Preliminary Hearing. The Court shall hear testimony concerning:

1. The circumstances that gave rise to the petition; and

2. The need for continued placement.

D. Finding of No Probable Cause. If probable cause to believe the child is a child offender or a child in need of care is not found, the petition shall be dismissed and the child shall be released.

E. Finding of Probable Cause. If the Court finds that probable cause exists to believe the child is a child offender or child in need of care, the Court:

1. Shall order the parent, guardian or custodian to appear at an adjudicatory hearing on a date and time set by the Court; and

2. May release the child in the custody of either of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well being of the child; or

3. May order placement of the child with someone other than a parent, guardian or custodian if the Court, after hearing, determines that both of the following conditions exist:

a. Custody of the child with a parent, guardian or the custodian presents a substantial risk of harm to the child's life, physical health or mental well being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk; and

b. Conditions of custody of the child away from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.

F. Court Ordered Examinations. The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent, guardian or custodian to undergo a physical, mental or psychological examination by a qualified professional.

(Source: WOS 1998016, December 20, 1998, Section XVIII)

5.119 ADJUDICATORY HEARING

A. Purpose. The Court shall conduct an adjudicatory hearing for the purpose of determining whether the facts support a finding that the child is a child in need of care or that the child is a child offender.

B. Commencement. The adjudicatory hearing shall commence as soon as possible but not later than forty-five (45) days after the petition is filed with the Court.

C. Continuances. Continuances of an adjudicatory hearing may be granted by the Court but only for any of the following purposes:

1. Upon stipulation of the parties;

2. Where service of process cannot be completed;

3. The Court finds that the testimony of a presently unavailable witness is needed;

4. One time only for up to fourteen (14) days at a parent's request for the parent to obtain counsel, or for an alleged child offender to obtain counsel; or

5. For good cause shown.

D. Exclusion of Public. The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the Court Appointed Special Advocate (CASA), and other persons determined necessary or useful to the proceedings by the Court shall be admitted.

E. Evidence and Conduct of Hearing.

1. The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence, which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Court to the extent of its probative value.

2. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports.

F. Findings and Judgment. If the allegations of the petition are sustained by a preponderance of the evidence, the Court shall find the child to be a child in need of care, or a child offender, as the facts indicate, and schedule a dispositional hearing. The Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child. If the allegations of the petition are not sustained, the Court shall dismiss the matter and release the child.

(Source: WOS 1998016, December 20, 1998, Section XIX)

5.120 DISPOSITIONAL HEARING

A. A dispositional hearing is conducted to determine measures to be taken by the Court with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the child comes within its jurisdiction.

B. Time for Hearing. The dispositional hearing may be held immediately after the adjudicatory hearing. The interval if any, between the adjudicatory hearing and the dispositional hearing is within the discretion of the Court. When the child is in placement, the interval may not be more than 60 days except for good cause. If the dispositional hearing is not held immediately after the adjudication, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with Section XVII [WOTC 5.117](Notice and Service of Summons).

C. Proposed Disposition (Case Plan).

1. The Little Traverse Bay Bands Social Services Department, and/or other agency designated by the Court shall prepare and submit a proposed disposition/case plan in writing to the counsel of record, the CASA, and the Tribal Prosecutor at least three (3) days prior to the dispositional hearing.

2. The Little Traverse Bay Bands Social Service Department shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the involved child placement agency, if any, and the protective service worker. The report shall contain a specific plan for the care of and assistance to, the child and/or the child's parent, guardian or custodian designed to resolve the problems presented in the petition.
2. The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the child. The report shall include the effort to prevent removal, and to rectify conditions that caused removal, of the child from the home.

3. If the report recommends placement of the child some where other than with the child's parent, guardian or custodian, it shall state the specific reasons underlying its placement recommendations.

4. Each case plan shall be reviewed by the Child Welfare Commission; the Commission shall advise the Court in writing of the disposition which is recommended by vote of the members.

D. Evidence. All relevant and material evidence, including sworn oral testimony and written reports shall be received and included into the record as evidence, subject to the following:

1. The parties shall be given an opportunity to examine and controvert written reports so received and may cross-examine individuals making reports.

2. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the disposition phase, or material prepared pursuant to a Court ordered examination, interview, or course of treatment.

E. Disposition Order. The Court shall enter an order of disposition after considering the case service plan and other evidence offered bearing on the disposition, the Court shall approve a case service plan and may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child. The order of disposition shall state whether

reasonable efforts have been made to prevent the child's removal from his/her home or to rectify the conditions that caused the child's removal from his/her home.

F. Dispositional Alternatives. If a child has been found to be a child offender, or a child in need of care, the Court may make the following dispositions, which are listed by priority:

1. Permit the child to remain with his/her parent, guardian or custodian, subject to such conditions as the Court may prescribe;

2. Place the child with a relative within the primary service area of the Tribe, subject to such conditions as the Court may prescribe;

3. Place the child in a licensed foster home within the Tribe's primary service area, subject to such conditions as the Court may prescribe;

4. Place the child in a foster home, or home of a relative, outside of the primary service area of the Tribe, subject to such conditions as the Court may prescribe;

5. Place the child in a group home or residential care facility designated by the Court;

6. Place the child in a juvenile offender facility designated by the Court; or

7. Direct the Tribal Prosecutor to file a petition to terminate parental rights under this Code.

G. Amended Orders. If a child remains under the jurisdiction of the Court, an order may be amended or supplemented within the authority granted to the Children's Court in this Code at any time as the Court considers it necessary and proper and in the best interest of the child.

(Source: WOS 1998016, December 20, 1998, Section XX)

5.121 DISPOSITIONAL REVIEW HEARING

A. Frequency. The dispositional order is to be reviewed at the discretion of the Court but at least once every six (6) months.

B. Notice of Review. Notice of the review hearing shall be provided on the record or by ordinary mail as provided in Section XVII(C) [WOTC 5.117(C)].

C. Purpose and Content of Review.

1. At a review hearing the Court shall review on the record the compliance with the case service plan prepared pursuant to Section XX [WOTC 5.120] and the previous orders of the Court including:

a. Service provided or offered to the child and his/her parent, guardian or custodian and whether the parent, guardian or custodian has complied with and benefited from those services.

b. If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur was or infrequent.

2. After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child offender or a child in need of care. The Tribal Social Services Dept., or other Court designated agency may submit a modified case plan, taking into account circumstances which arose or became known since the time of the original case plan development. The Court may modify any part of the case plan including, but not limited to, the following:

a. Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child offender or a child in need of care.

b. Prescribing additional actions to be taken by the parent, guardian or custodian to rectify the conditions that caused the child to become or remain a child offender, or a child in need of care.

3. At a review hearing the Court shall determine the continuing necessity and appropriateness of the child's placement and review the recommendations on such placement of the Child Welfare Commission, the Child Protection Team and the child placement agency, and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

4. If the child remains in placement, the Court shall determine at the dispositional hearing and at each review hearing whether the case should be reviewed before the next review hearing required under this Section. In making this determination, the Court shall consider, but not be limited to, both of the following:

a. The parent ability and motivation to make necessary changes to provide a suitable environment for the child.

b. Whether there is a reasonable likelihood that the child may be returned to his/her home prior to the next review hearing required by this Section.

D. Return of Child Without Hearing. In the event that the agency charged with the supervision of the child determines that the child should be returned to his home, the agency shall request a hearing on the determination, subject to the notice provisions of Section XVII [WOTC 5.117]. If no party files an objection to the return within the time period prior to the hearing, the Court may issue an order permitting return of the child without a hearing.

E. **Reports.** An agency report filed with the Court shall be accessible to all parties to the action and shall be offered into evidence.

(Source: WOS 1998016, December 20, 1998, Section XXI)

5.122 PERMANENCY PLANNING HEARINGS

A. **Purpose.** A permanency planning hearing shall be conducted to review the status of the child adjudicated as in need of care and the progress being made toward the child's return to his/her natural parent or to some other permanent home.

B. **Frequency of Hearings.** The Court shall conduct a permanency planning hearing not more than twenty four (24) months after entry of the order of disposition and every twelve (12) months thereafter, so long as the child remains a child in need of care. A permanency planning hearing may be combined with a disposition review hearing under Section XXI [WOTC 5.121] of this Code.

C. **Determination**.

1. **Child Returned.** If parental rights to the child have not been terminated and the Court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well being, the Court shall order the child returned to his/her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the Court as evidence that return of the child to his/her parent would cause a substantial risk of harm to the child's life, physical health, or mental well being.

2. **Child not Returned.** If the Court determines at a permanency planning hearing that the child should not be returned to his/her parent, the Tribal Social Services Department and the Child Welfare Commission shall each propose one of the following alternative permanent placement plans:

a. The child be placed permanently with a relative within the primary service area of the Tribe.

b. The child be placed permanently with a relative who resides outside the primary service area of the Tribe.

c. The child remain in long-term foster or residential care.

d. A petition for guardianship under the Tribal code be filed by the current caretaker of the child, the child, or the Tribal Social Services Department.

3. If the Court recommends permanency, a petition to terminate parental rights under this Code be filed by the Tribal Social Services Department.

(Source: WOS 1998016, December 20, 1998, Section XXII)

5.123 TERMINATION OF PARENTAL RIGHTS

A. Purpose. The purpose of this is to provide for the voluntary and involuntary termination of the parent child relationship and for the substitution of parental care and supervision by judicial process. This Section shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and the individual family members when that unit remains united, and that termination of the parent child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interest of the child concerned and of the Tribe to proceed under this Section.

B. Grounds for Involuntary Termination. The Court may terminate the parental rights of a parent to a child adjudicated as a child in need of care if the Court finds, beyond a reasonable doubt, one or more of the following exist:

1. The parent of the child has abandoned the child without provisions for his/her support and without communication for a period of at least six (6) months. The failure to provide support and to communicate for a period of at least six (6) months shall be presumptive evidence of the parent's intent to abandon the child.

2. The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

a. A parent's act caused the physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

b. A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so, and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

3. The parent was a respondent in a proceeding brought under this Code, twelve (12) or more months have elapsed since the issuance of the initial dispositional order, and the Court, finds beyond a reasonable doubt, that either of the following exist:

a. The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child, and there is a reasonable expectation that custody of the child by the parent is likely to result in serious emotional or physical damage to the child; or

b. Other conditions exist that cause the child to be a child in need of care, and there is a reasonable expectation that custody of the child by the parent is likely to result in serious emotional or physical damage to the child. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

4. Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful, and there is a reasonable expectation that custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

C. Termination at Initial Disposition. If a petition to terminate parental rights to a child is filed, the Court may enter an order terminating parental rights under subsection(b) at the initial dispositional hearing.

D. Quality of Evidence. The same rules of evidence which apply at adjudication under Section XIX [WOTC 5.119] shall apply in termination proceedings.

E. Termination of Parental Rights Order. An order terminating parental rights under this Code may not be entered unless the Court makes findings of fact, states its conclusions of law, and includes the legal basis for the order. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient. The Court shall state the findings and conclusions in a written opinion. If the Court does not issue a decision on the record following hearing, it shall file its decision within sixty (60) days after the taking of final proofs.

F. Voluntary Relinquishment of Parental Rights. Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his/her parental rights shall be provided an interpreter if he/she does not understand the English or Odawa language used by the Court. Prior to the entry of an order of termination, the Court shall determine that entry of such an order is in the best interest of the affected child and of the Tribe.

G. Withdrawal of Voluntary Relinquishment. A parent who has voluntarily relinquished parental rights to a child may withdraw such consent to termination of parental rights at any time prior to the issuance of a final decree of adoption. A person who has voluntarily relinquished parental rights may withdraw such consent and demand re-establishment of the parent child relationship upon a showing to the Court of clear and convincing evidence that such consent was obtained by fraud or duress.

H. Child's Continued Right to Benefits. An order terminating the parent child relationship shall not disentitle a child to any benefits due the child from any third person, agency, state or the United

States, nor shall any action under this Code be deemed to affect any rights and benefits that the child derives from the child's membership in or eligibility for membership in a federally recognized tribe.

I. Advise of Right to Appeal. Immediately upon entry of an order terminating the parental rights, the Court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order. Appellate review shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the Children's Court on appeal from an order terminating parental rights.

J. Post Termination Review Hearings. If a child remains a ward of the Court following the termination of parental rights to the child, the Court shall conduct a review hearing, at least every twelve (12) months to review the progress toward permanent placement of the child. The Court shall make findings on whether reasonable efforts have been made to establish permanent placement for the child and may enter such orders, as it considers necessary in the best interest of the child.

(Source: WOS 1998016, December 20, 1998, Section XXIII)

5.124 AUTHORIZATION OF MEDICAL TREATMENT

A. Circumstances for Court Order. At any time, regardless of whether a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:

1. A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

2. A physician informs the Court orally or in writing that in his/her professional opinion, the life of a child would be greatly endangered without certain treatment and the parent, guardian or custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian or custodian an informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.

B. Parental use of spiritual treatment to be given consideration. In making its order the Court shall give due consideration to any treatment being given the child by prayer or through other traditional spiritual practices, if the child or his/her parent, guardian or legal custodian are adherents of an established religious denomination that relies on this form of treatment, in lieu of medical treatment.

C. Written Order. After entering any authorization under this Section, the Court shall reduce the circumstances, findings and authorization to writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate Physician, hospital, or both.

D. Oral Authorization for Treatment Sufficient. Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance on the Court's authorization, and any function performed there under shall be regarded as if it were performed with the child's and/or the parent authorization.

(Source: WOS 1998016, December 20, 1998, Section XXIV)

5.125 COST OF SUPPORT AND CARE

With the exception of permanent custody orders, in the event that a child is removed from his/her home by an order of the Children's Court, the child's parent, guardian or custodian may be ordered by the Court to pay the costs of the child's support. Such payments are to be made to the Clerk of the Tribal Court, who shall in turn release the support money to the person or organization with whom the child is placed. Whenever the Court enters such a reimbursement order and the parent, guardian or custodian refuses to pay, that person may be punished under the contempt powers of the Tribal Court.

(Source: WOS 1998016, December 20, 1998, Section XXV)

5.126 EMANCIPATION

A child who is seventeen (17) years of age may petition the Court for emancipation. The Court shall grant such status when the child proves to the Court that the child is capable of functioning as an independent and responsible member of the community.

(Source: WOS 1998016, December 20, 1998, Section XXVI)

5.127 POWER OF ATTORNEY

A parent, legal custodian, or guardian (including Tribal Social Service Agencies), by a properly executed power of attorney, may delegate to another person for a period not exceeding six (6) months, any of the parent's, legal custodian, or guardian's child, except the power to consent to marriage, or adoption of a child and the power to release a child for adoption.

(Source: WOS 1998016, December 20, 1998, Section XXVII)

5.128 LIMITED GUARDIANSHIP

The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interest of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent and the child’s extended family shall be granted visitation rights unless deemed inappropriate by the Court. A temporary guardianship shall be established by parental consent only, and shall be revocable by the Court upon parental request.

(Source: WOS 1998016, December 20, 1998, Section XXVIII)

5.129 CHILD PROTECTION RECORDS

A. Children's Court Records. A record of all hearings under this Code shall be made and preserved. All Children's Court records shall be confidential and shall not be open to inspection to any but the following:

1. The Child;

2. The child's parent, guardian or custodian;

3. The child's counsel or Court appointed special advocate;

4. The Children's Court personnel directly involved in the handling of the case;

5. Any other person by order of the Court, having legitimate interest in the particular case or work of the Court.

B. Law Enforcement and Social Services Records. All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:

1. The Child;

2. The child's parent, guardian or custodian;

3. The child's counsel or Court appointed special advocate.

4. Law enforcement and human service personnel, including the Child Welfare Commission and Child Protection Team, Tribal Prosecuting Attorney, directly involved in the handling of the case.

5. The Children's Court personnel directly involved in handling of the case.

6. Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

C. Access to Child Protection Records. Upon written request to the protective services worker, child protection records shall be released under the following procedures:

1. Records may be released only to a person identified in subsection (B) above. All information in the record shall be released, unless mental health records in the file are subject to a statement from the mental health provider that such records contain information, which, if released, might be harmful to the mental health client or others.

2. The Tribal Social Services Department shall review the record to determine which sections may be shared without revealing the identity of the reporting person.

3. The name and other identifying information of the reporting person need not be deleted if the entity requesting record access is a law enforcement agency, prosecuting attorney, or a child protection agency of another jurisdiction.

4. In the event that compelling reasons exist for the release of the reporting person's name, that person must authorize release of his/her identity in writing. If the person does not do so, a Court order shall be requested for release of the name.

5. Any information released from child protection files shall be clearly designated as confidential.

D. Unauthorized Release of Confidential Information. Any person who permits or encourages the unauthorized dissemination of information subject to this Section shall be subject to a civil remedial forfeiture, not to exceed $5,000.00 for each action or omission. The Court may remit all or a portion of the forfeiture to any person demonstrating harm from the unauthorized release and dissemination of confidential information.

(Source: WOS 1998016, December 20, 1998, Section XXIX)

5.130 RE-HEARINGS

A. Time and Grounds. A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within thirty (30) days after the decision of the disposition or supplemental disposition. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the Court, or presented but not previously considered by the Court, which if true would cause the Court to reconsider the case.

B. Notice. All parties must be given notice of the motion in accordance with Section XVII [WOTC 5.117].

C. Response by Parties. Any response by parties must be in writing and filed with the Court and opposing parties within seven (7) days after notice of the motion.

D. Procedure. The judge may affirm, modify or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion finds appropriate for the case.

E. Hearings. The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings. The Court shall state the reasons for its decision on the motion on the record or in writing.

F. Stay. The Court may stay any order pending a ruling on the motion.

(Source: WOS 1998016, December 20, 1998, Section XXX)

5.131 APPEALS

A. Who Can Appeal. Any party to a Children's Court hearing may appeal a final Children's Court order to the Appellate Court. An order terminating parental rights is appealable by right.

B. Time Limit for Appeal. Any party seeking to appeal a final Children's Court order shall file a written notice of appeal with the Court clerk within thirty (30) days of the final order.

C. Review of Standard. The clearly erroneous standard shall be used in reviewing the findings of the Children's Court on appeal.

D. Record. For purposes of appeal, a record of the proceedings in Children's Court shall be made available to the child his/her parents, guardian or custodian, their counsel and others upon Court order. Cost of obtaining this record shall be paid by the party seeking the appeal.

E. Stay of Order. An order of the Children's Court may be stayed upon order of the Appellate Court.

(Source: WOS 1998016, December 20, 1998, Section XXXI)

5.132 EFFECTIVE DATE

This Statute shall take effect on January 1, 1999.

(Source: WOS 1998016, December 20, 1998, Section XXXII)

5.133 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of or governing the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source: WOS 1998016, December 20, 1998, Section XXXIII)

Chapter 2. Child Welfare Commission

5.201 SHORT TITLE AND PURPOSE

A. Short Title. This Statute may be cited as the “Child Welfare Commission Act.”

B. Purpose. Children are the Tribe’s most vital and cherished resource. The Tribe’s future depends on the health and well being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. Feeling pride from their identity, as Odawa, will help them grow into strong, healthy responsible adult Tribal members. The

purpose of the Child Welfare Commission created under this statute is to protect and promote the welfare of Tribal children and families by fully exercising the Tribe's rights and responsibilities under the Indian Child Welfare Act of 1978 and Tribal Law.

(Source: WOS 1996006, June 23, 1996, Section I)

5.202 CREATION OF CHILD WELFARE COMMISSION

A. **Creation of Commission**. The Tribal Council hereby creates the Child Welfare Commission, which shall consist of five (5) Tribal members at least eighteen years of age appointed by the Tribal Council. Members of the Tribal Council shall not be appointed to the Commission.

B. **Term and compensation**. Members of the Child Welfare Commission shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, two people shall be appointed to two (2) year terms, and three people shall be appointed to three (3) year terms. All appointments thereafter shall be for three (3) year terms. One of the Commission members shall be appointed by the Commission to serve as Chairperson for a one-year term. There shall be no limit on reappointment as long as the chairperson remains on the Commission. The Tribal Council may determine and authorize compensation to be paid to members of the Commission based upon the Tribal Council's determination of the time required to be expended upon Commission duties and the qualifications of the appointed Commissioners.

C. **Oath of Office**. Immediately upon appointment, the Tribal Chairman shall administer the oath of office to the members of the Child Welfare Commission which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this Statute.

D. **Vacancies**. In the event a vacancy occurs in the Child Welfare Commission, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office.

E. **Removal**. Members of the Child Welfare Commission shall not be removed during their terms of office except for misconduct, or neglect of duties, including violation of any provision of this Statute or other applicable Tribal law. The procedure for removal shall be as follows:

> **a.** In the event the Tribal Council has cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section, or upon receipt of a petition signed by at least twenty (20) members of the Little Traverse Bay Bands of Odawa Indians alleging the same, or receipt of a petition by two members of the Child Welfare Commission alleging the same, the Chairman of the Little Traverse Bay Bands of Odawa Indians shall call a special meeting of the Tribal Council to deal with a request to remove the member.

b. In the event the Tribal Council determines that a sufficient number of valid signatures are affixed to the petition and that the charges set forth in the petition, if verified, constitute grounds for removal of the Commissioner from his or her appointed position, the Tribal Council shall set a date for hearing the charges on the petition and shall provide notice to the member of the Child Welfare Commission whose removal is being sought.

c. Notice to the member whose removal is being sought shall be served no later than two (2) weeks prior to the date set for the hearing, shall include the date, time and location of the hearing, shall attach a full and complete copy of a statement of the Tribal Council or the petition seeking removal, and shall attach a copy of the rules to be followed during the hearing. Upon good cause shown, the Tribal Council may postpone the hearing to a later date. Notice shall also advise the recipient of the availability of Tribal Council subpoena power to require the presence of any witness or the production of any document, which the recipient deems necessary in order to attempt to defend against the charges contained in the petition.

d. The Tribal Council shall also provide copies of the notice to the other members of the Child Welfare Commission and to each member of the Little Traverse Bay Bands of Odawa Indians who signed the petition, advising each of them of the opportunity to appear and to present evidence, either in support of the charges against the member of the Child Welfare Commission whose removal is sought or in support of the defense of such member. Any person who has properly signed such petition shall have the ability to request the Tribal Council to issue a subpoena to require the presence of witnesses or production of documents deemed necessary to support the charges contained in the petition.

e. The Tribal Council shall preside at the hearing of the charges contained in any such petition and shall allow as much time as necessary for the testimony of witnesses and presentation of evidence in support of the charges, as much time as necessary for the testimony of witnesses and presentation of evidence to refute the charges, and such time as the Tribal Council deems appropriate for summary statements and arguments. At any time, the Tribal Council may recess the hearing until a later time certain. At the request of the member whose removal is at issue, the hearing may be held in closed session. The Tribal Council also may elect to receive in closed session any evidence public disclosure of which might compromise any on-going law-enforcement investigation.

f. Upon the conclusion of the presentation of evidence and of summary statements and arguments, the Tribal Council shall deliberate in closed session and shall either dismiss the petition or shall remove the member charged in the petition from the Child Welfare Commission, upon such findings of fact as may be appropriate. The decision of the Tribal Council shall be final.

(Source: WOS 1996006, June 23, 1996, Section II; as amended by WOS 2000-06, May 21, 2000, which changed subsection A to prohibit Tribal Council members from serving on the Child Welfare Commission.)

5.203 DUTIES OF THE CHILD WELFARE COMMISSION

The Child Welfare Commission shall have the following duties:

A. Be advised of pending state court proceedings as provided in the Indian Child Welfare Act and make recommendations to the Tribal prosecutor and Tribal Court regarding intervention in such proceedings and transfer of jurisdiction from state court to the Tribal Court.

B. Monitor child welfare proceedings involving tribal members in the state or tribal courts.

C. Advise the Tribal Council and Tribal Court on child welfare matters and recommend statutes, policies and procedures to protect children and help families.

D. Conduct informal conferences with children and parents, guardians, or custodians to explore alternatives to formal court jurisdiction for resolving concerns about the proper care and supervision of children.

E. Make recommendations to the Tribal Court regarding the need to take formal Court action to protect a child.

F. Make case management recommendations with Tribal Social workers and officials regarding the care, custody and supervision of tribal children under court jurisdiction, including recommendations as to a case plan, guardianship, placement and termination of parental rights. The Commission may review case plans developed by social workers and make alternative recommendations to the Tribal Court if the social worker and Commission are not in agreement.

G. License and monitor group, shelter, foster and adoptive homes and child placing agencies in consultation with social workers and other applicable Tribal entities.

H. Engage in further activities as directed by the Tribal Council to protect and improve the welfare of Tribal Children.

(Source: WOS 1996006, June 23, 1996, Section III)

5.204 NOTICE AND STAFFING

A. Pending State Court Proceedings. The Tribal Council and Tribal Administrative Staff shall insure that the Chairperson of the Commission receives notice of all proceedings pending in State Court where the Tribe has been notified under the Indian Child Welfare Act.

B. Children domiciled on the Reservation. Tribal social services staff or the Tribal prosecutor shall notify the Commission of all instances where they believe Tribal Court action may be necessary to protect a child domiciled on the Reservation.

C. Administrative Staff. The Tribal Council is authorized to assign administrative staff to assist the Commission.

(Source: WOS 1996006, June 23, 1996, Section IV)

5.205 MEETINGS, VOTING, INVESTIGATION, CONFLICTS OF INTEREST, CONFIDENTIAL RECORDS

A. Meetings. The Child Welfare Commission shall meet at least one time per month. Provided, the Commission may on its own decide to convene as often as necessary to carry out its duties. Due to the confidential nature of the business conducted by the Child Welfare Commission, meetings or portions of meetings where specific cases are being discussed shall be closed to all persons other than those whose participation is necessary and appropriate to the specific case.

B. Voting. Actions of the Child Welfare Commission shall be decided by a majority vote of those present at the meeting. The Chair is entitled to vote on all matters before the Commission. A quorum shall consist of three (3) members including the Chair. Provided, an action may be ratified by non-attending members. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax, and all ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

C. Investigation. The Commission shall not be involved in gathering information on Tribal families and children outside of Commission meetings. Fieldwork, such as home studies, shall be conducted by Tribal social services staff. When requested by the Commission, social services staff shall provide the Commission with all written reports and studies on Tribal families and children. The Commission may direct social services staff to gather additional information where appropriate. All members shall have access to the same information. If Commission members are contacted individually, they shall refer inquiries to the appropriate Tribal official or staff member.

D. Conflicts of Interest. Commission members who are serving as foster parents or guardians may participate in the review of the status of children under their own care only to the extent as any other foster parent or guardian. Commission members shall not participate in the review of the status of children under the care of members of their immediate family (father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, child, step-child) and may absent themselves in any situation where their relationship with individuals before the Commission may interfere with their objectivity, or the Commissioner otherwise believes that he/she has or appears to have a conflict of interest.

E. Confidential Records. All records of the Commission involving specific child welfare matters shall be kept strictly confidential. Only the Tribal Court may review or receive copies of written records kept by the Commission.

(Source: WOS 1996006, June 23, 1996, Section V)

5.206 SAVINGS CLAUSE

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

(Source: WOS 1996006, June 23, 1996, Section VI)

Chapter 3. Direct Consent and Open Adoptions

5.301 PURPOSE

The purpose of this statute is to allow for the voluntary adoptive placement of Tribal children to foster their stability and well being, and, whenever appropriate, provide for the continued contact between the adopted child, the child's biological parents, grand-parents, and/or other members of the extended family.

(Source: WOS 2000-09, July 23, 2000, Section I)

5.302 DEFINITIONS

A. "Court" means the Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

B. "Parent" means the biological parent of a child.

C. "Petitioner" means a person who files a petition to adopt a child.

D. "Child" means a person less than eighteen years of age.

E. The terms "parent" and "petitioner," include the plural unless inconsistent with the context where such terms appear.

(Source: WOS 2000-09, July 23, 2000, Section II)

5.303 PETITION FOR ADOPTION

A. An adoption proceeding is commenced when a person, or if married, husband and wife jointly, who desires to adopt a child over whom the Tribal Court properly exercises jurisdiction, files a petition for adoption in the Court. Petitioner must serve the petition on the biological parents of the child whose rights have not been terminated by a court of competent jurisdiction, and the Child Welfare Commission of the Little Traverse Bay Bands of Odawa Indians.

B. Contents of Petition. The petition for adoption shall be verified by each petitioner and shall contain the following information:

1. The name, date and place of birth, and place of residence of each petitioner, including the maiden name of the adopting mother.

2. The name, date and place of birth, and place of residence if known of the adoptee.

3. The relationship, if any, of the adoptee to the petitioner.

4. The full name by which the adoptee shall be known after adoption.

5. The full description of the property, if any, of the adoptee.

6. The names of the parents of the adoptee and the place of residence of each living parent if known, and whether, to the best of Petitioner's knowledge, the parents intend to consent to adoption by petitioner.

7. The name and place of residence of the guardian or attorney of the person or estate of the adoptee, if any has been appointed.

8. Simultaneously with the Petition or a soon as practicable thereafter, the petitioner shall file with the Court a copy of a pre-placement assessment prepared in accordance with section IV [WOTC 5.304] of this statute, of the petitioner completed or updated within 1 year before the petition is filed with a finding that the petitioner is suitable to be a parent of an adoptee.

(Source: WOS 2000-09, July 23, 2000, Section III)

5.304 PRE-PLACEMENT ASSESSMENT

A. The Court shall not order a pre-adoptive placement until it receives and reviews a pre-placement assessment either prepared by the Tribal Social Services Department or prepared by a social services agency of a different jurisdiction and approved by the Tribal Social Services Department.

B. A pre-placement assessment must contain the following information:

1. Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any.

2. Marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent.

3. Physical and mental health, including any history of substance abuse.

4. Educational and employment history and any special skills and interests.

5. Property and income, including outstanding financial obligations as indicated in a current financial report provided by the individual.

6. Reason for wanting to adopt.

7. Whether the individual has ever been the respondent in a domestic violence proceeding or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding.

8. Whether the individual has ever been convicted of a crime.

9. Any fact or circumstance that raises a specific concern about the suitability of the individual as an adoptive parent, including the quality of the environment in the home, the functioning of other children in the household, and any aspect of the individual's familial, social, psychological, or financial circumstances that may be relevant to a determination that the individual is not suitable. A specific concern is one that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well being of the child.

(Source: WOS 2000-09, July 23, 2000, Section IV)

5.305 CONSENT OF BIOLOGICAL PARENTS

A. A biological parent whose parental rights to a child being considered for adoption have not been terminated by a court of competent jurisdiction may voluntarily consent to the adoption of the child by petitioner.

B. Requirements for validity. A consent to adoption must be executed either:

1. In the presence of the Court after the Court explains:
   a. The consent may result immediately in a pre-adoptive placement with petitioner. Once the pre-adoptive placement is ordered by the Court, the parent will have no legally enforceable right to visit or have any contact with the child, unless ordered under Section VI [WOTC 5.306] of this Statute.
   b. The consent may result in a final order of adoption. Upon entry of the final adoption order, the parent shall have no legally recognized relationship to the child, and have no legally enforceable right to visit or have any contact with the child, unless ordered under Section V [WOTC 5.306] of this Statute.
   c. If for any reason prior to the entry of a final adoption order, petitioner does not retain custody of the child, the child will be returned to the custody of the biological parent unless the biological parent is also subject to involuntary removal under the Child Welfare Code (WOTC 5.101 *et seq.*)
2. Outside of the presence of the Court, with two witnesses and notarized, and containing such statements and under such circumstances as the Court is assured that the consent was voluntarily executed and that the parent fully understood the ramifications set out in subsection III(A)(1) above.

C. Consent conditioned on open adoption. A consent to adoption may be expressly conditioned on entry of an order of the Court approving an open adoption agreement between the parent and petitioner under Section VI [WOTC 5.306] of this Statute.

(Source: WOS 2000-09, July 23, 2000, Section V)

5.306 OPEN ADOPTION AGREEMENTS

Simultaneously with, or prior to, the execution of a consent to adoptive placement, the parent and petitioner may execute an open adoption agreement that sets out post adoption visitation rights of the parent and/or other named members of the child's biological family. Upon accepting a consent conditioned on such agreement, the Court shall enter the open adoption agreement as a fully enforceable order of the Court. Provided, if the Court finds that such agreement would significantly threaten the safety of the child, the Court may refuse to accept the consent or enter the open adoption order. In such situations, an adoptive placement can only proceed following involuntary termination of parental rights under the provisions of the Child Welfare Code (WOTC 5.101 *et seq.*)

(Source: WOS 2000-09, July 23, 2000, Section VI)

5.307 PRE-ADOPTIVE PLACEMENT AND ASSESSMENT

A. After holding a hearing on the Petition, finding that the pre-placement assessment indicates the suitability of the Petitioner to adopt the child, accepting the consent of the parent, and, if applicable, entering an open adoption agreement order, the Court shall order a pre-adoptive placement of the child with Petitioner. During the pre-adoptive placement, Petitioner's rights to care for the child shall be equivalent to those of a legally appointed guardian. The parent and/or members of the child's biological extended family shall have no rights to visit the child unless specified in an agreement ordered by the Court under Section VI [WOTC 5.306].

B. Between 150-180 days from the commencement of the pre-adoptive placement, the Tribal Social Services Department shall prepare and file in the Court a pre-adoptive placement assessment to update the information contained in the pre-placement assessment and assess the functioning of the child while actually in the care and custody of petitioner. The assessment may be prepared by a social services agency of a different jurisdiction if approved by the Tribal Social Services Department.

(Source: WOS 2000-09, July 23, 2000, Section VII)

5.308 FINAL ADOPTION ORDER

A. No sooner than six months after the commencement of the pre-adoptive placement the Court shall hold a hearing to determine whether to enter a final order of adoption. If the pre-adoptive placement assessment finds petitioner suitable to adopt the child, and petitioner reaffirms his/her commitment to adopt the child thereby assuming full legal and moral responsibility for the parental care and upbringing of the child, the Court shall enter an order terminating the parental rights of the biological parent and a final order of adoption naming petitioner as the adoptive parent of the child. If the child is an enrolled member, or eligible to be an enrolled member in the Little Traverse Bay Bands of Odawa Indians, such final order shall contain a provision prohibiting the adoptive parent from disenrolling or failing to enroll the child.

B. Effect of Final Order of Adoption. Upon entry of the final order of adoption, the adoptive parent shall from that date forward have the same legal relationship with, authority over, and responsibility for, the adopted child as would a biological parent over a child. From that date forward the biological parent shall have no legal relationship to the child, and the parent and child's biological family shall have no legally enforceable right to visit the child except as stated in a Court ordered open adoption agreement under Section VI [5.306].

C. Tribal membership. Unless otherwise specified in Tribal law, membership rights are determined by the child's biological family, and are not affected by adoption of the child.

(Source: WOS 2000-09, July 23, 2000, Section VIII)

5.309 RETURN OF CHILD TO PARENT

If for any reason petitioner is unable or unwilling to carry through with the adoption, the Court shall order the child returned to the care and custody of the child's biological parent unless the child is also placed outside of parental care pursuant to an involuntary proceeding under the Child Welfare Code (WOTC 5.101 *et seq.*).

(Source: WOS 2000-09, July 23, 2000, Section IX)

5.310 ADOPTION RECORDS

Until the adoptee reaches the age of eighteen, records of adoption proceedings may only be accessed by the adoptive parent or subsequent legal guardian of the child for good cause, which shall include family related medical information, and by the Tribal Enrollment Department or enrollment departments of other Indian tribes, to the extent necessary to confirm eligibility for enrollment. Enrollment Departments shall keep such records strictly confidential. At any time after reaching the age of eighteen, the adoptee may review and/or copy any records in his/her adoption file.

(Source: WOS 2000-09, July 23, 2000, Section X)

TITLE VI. TRIBAL GOVERNMENT AND ADMINISTRATION

Chapter 1. Legislative Procedures

6.101 PURPOSE

By enactment of this statute, the Tribal Council of the Little Traverse Bay Bands of Odawa Indians establishes uniform terminology and procedures for the enactment, certification, naming, numbering and filing of legislation.

(Source: WOS 2002-01, February 17, 2002, Section I)

6.102 DEFINITIONS

A. "Tribal Council" or "Council" means the governing body of the Little Traverse Bay Bands of Odawa Indians.
B. "Legislative Agenda" means a list kept by the Tribal Council of all proposed legislation.

(Source: WOS 2002-01, February 17, 2002, Section II)

6.103 TERMINOLOGY

A. Terminology and Numbering. Legislative enactments of the Little Traverse Bay Bands of Odawa Indians shall be titled "Waganakising Odawak Statute" followed be a unique number. Statutes shall be identified by a seven (7) digit number. The first four (4) digits will be the year of the enactment. The last three (3) digits will specify the chronological order in which statutes are enacted in a given year. For example, the first statute passed in 1996 will be Waganakising Odawak Statute 1996001.

B. Retroactive Naming and Numbering. All legislative enactments of the Tribal Council of the Little Traverse Bay Bands of Odawa Indians since adoption of the Tribal Constitution and Bylaws on March 11, 1989 are hereby named and numbered according to the system set out in Section III A [WOTC 6.103(A)].

(Source: WOS 2002-01, February 17, 2002, Section III)

6.104 INTRODUCTION AND PASSAGE OF STATUTES

A. Introduction by Tribal Council.

1. Any member of the Tribal Council at any regular Council meeting may move to put a proposed statute, which may involve a revision of an existing statute or a new draft, on the Tribe's legislative agenda. Prior to formally placing the draft statute on the legislative agenda, Tribal Council may develop such draft at regular or special Council meetings and work sessions.

2. A proposed statute may also be prepared and presented by any Tribal member by providing their typed or computer generated proposed statute in a Tribal Council approved format to the Tribal Council Executive assistant. The Executive Assistant shall enter the name of the submitter, date of submission, and a unique number, at the top of the member's proposal. Each Tribal Council member will receive a copy of the draft. Consideration to place the proposal on the legislative agenda will occur within sixty days of submission. After consideration, Council may at its discretion adopt a motion placing the proposal on the legislative agenda. If such motion is not adopted within sixty days, the proposal will not be placed on the legislative agenda. Tribal Council shall maintain a list of submissions indicating the date considered, and action taken.

B. Notice to Tribal Members. When a proposed statute is placed on the legislative agenda under subsection A above, Tribal Council shall notify members by posting the proposed statute in Tribal governmental office buildings, and other readily available methods of publication, such as a tribal newsletter or website. The Tribal Council will consider passage of the posted statute no sooner than thirty days from its posting. Written comments must be received by the Tribal Council Executive Assistant within this thirty-day period. Verbal comments will be heard during any public comment period prior to passage of the legislation.

C. Passage. When the Council considers a proposed statute that has been placed on the legislative agenda, the Council may vote on the legislation as presented or hold a legislative mark-up session. Upon conclusion of discussion and/or mark-up, the Chairman shall request a motion and support to enact the statute as marked-up or as originally presented if no changes were made. If such motion is made and supported, the Chairman shall call for a vote. An affirmative vote of a majority of a quorum of the Council is required to enact a statute except as provided for in section IV D [WOTC 6.104(D)] of this statute. The enacted statute shall be provided to members through the tribal newsletter or other tribal publication.

D. Emergency Legislative Action. In the event that immediate legislative action is absolutely necessary to preserve or promote the rights or resources of the Tribe or its members, a statute may be enacted at the same meeting that it is introduced and placed on the legislative agenda, or at a special meeting called for that purpose. However, such emergency enactment shall require a unanimous vote of all sitting Tribal Council members.

E. Referendum. The procedure for carrying out the right of referendum by membership petition under Article IX of the Constitution and Bylaws is set out in the Election Statute, Waganakising Odawak Statute 2001-03, as may be amended. The Council shall submit any enacted or proposed statute to the Election Board for a referendum upon affirmative vote of the entire Tribal Council. After a referendum election, if the Election Board certifies passage, then Council shall record the statute as law, unless held unconstitutional by the Tribal Court, and assign it a number under Section VI [WOTC 6.106].
(Source: WOS 2002-01, February 17, 2002, Section IV)

6.105 CERTIFICATION

A. Certification. Proof of enactment of a Tribal Statute shall be by written certification signed by both the Tribal Chairman and the Tribal Secretary. The certification shall state at a minimum the date of enactment, that a quorum of the Council was present, or that a referendum election was properly conducted, and a roll call record of the vote.

B. Number of Copies. The Tribal Chairman and Secretary shall at a minimum execute certifications on four (4) duplicate copies of the statutes.

(Source: WOS 2002-01, February 17, 2002, Section V)

6.106 COMPILATION

A. All statutes of the Little Traverse Bay Bands of Odawa Indians, whether enacted by Council or through the referendum process, shall be compiled in chronological order in a book entitled "Waganakising Odawak Constitution and Statutes" which shall consist of as many volumes as necessary.

B. The Tribe shall maintain three identical copies of "Waganakising Odawak Constitution and Statutes." One shall be kept in the Tribal office. One shall be kept at the home of the Tribal Secretary. One shall be kept at the office of the Tribal attorney. As soon as possible after certification under Section V [WOTC 6.105], one of the original certified copies shall be placed at the end of each of the official copies of "Waganakising Odawak Constitution and Statutes." The fourth original certified copy shall be placed in the Tribal files.

C. Statutes that are amended or repealed by subsequent legislation shall not be removed from "Waganakising Odawak Constitution and Statutes." The Tribal Council shall direct the development of a separate Tribal Code to keep tribal laws organized and current.

(Source: WOS 2002-01, February 17, 2002, Section VI)

6.107 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source: WOS 2002-01, February 17, 2002, Section VII)

Chapter 2. Resolutions and Regulation Procedures

6.201 PURPOSE

This Resolutions and Regulations Procedures Statute is enacted to set standard procedures for the adoption, certification and compilation of Tribal Council Resolutions, and the promulgation, certification, and compilation of Regulations for Tribal Commissions and Agencies.

(Source: WOS 1996001, February 18, 1996, Section I)

6.202 RESOLUTIONS

A. Procedure for adoption. Resolutions are used to authorize specified activity by the Tribal Council or a person that the Council designates by resolution to act on its behalf, or to make an official pronouncement of the Council's position on a particular issue. A resolution may be offered by motion by any member of the Council. The Chairman shall call for support. If supported by another Council member, the Chairman shall call for discussion and a vote. Resolutions shall be adopted by a simple majority of a quorum of the Council present at a meeting. The Council may adopt a resolution as written, or verbally state a resolution by motion. A resolution offered verbally shall be reduced to writing and certified as described in this Section II. B [WOTC 6.202(B)].

B. Certification. Proof of adoption of a resolution of the Tribal Council shall be by written certification signed by both the Tribal Chairman and the Tribal Secretary. The certification shall state at a minimum the date of adoption, that a quorum of the Council was present, and a roll call record of the vote. In the case of a resolution acted upon before reduced to writing, it shall be the duty of the Tribal Chairman and Secretary to ensure that the written resolution accurately states the resolution verbally adopted by the Council.

C. Number of Copies. The Tribal Chairman and Secretary shall at a minimum execute certifications on four (4) duplicate original copies of the resolutions, and as many others as may be required for grant submissions or other purposes.

D. Compilation. All resolutions of the Little Traverse Bay Bands of Odawa Indians shall be compiled in chronological order in a book entitled "Resolutions of the Little Traverse Bay Bands of Odawa Indians" which shall consist of as many volumes as necessary. The Tribe shall maintain three identical copies of the resolutions book. One shall be kept in the Tribal office. One shall be kept at the home of the Tribal Secretary. One shall be kept at the office of the Tribal attorney. As soon as possible after certification under this Section II B [WOTC 6.202 (B)], one of the original certified copies shall be placed at the end of each of the official copies of the resolutions book. The fourth original certified copy shall be placed in the Tribal files.

E. Numbering. Resolutions of the Little Traverse Bay Bands of Odawa Indian shall be identified an eight (8) digit number. The first six (6) digits will be the date of adoption (mmddyy.). The last two (2) digits will specify the order in which resolutions are adopted on a given date. For example, the first resolution adopted on January 7, 1996 will be Resolution 01079601.

F. Tribal Seal. The Tribal Seal, once approved by the Tribal Council, shall be affixed to resolutions when certified.

(Source: WOS 1996001, February 18, 1996, Section II, Subsection B amended by WOS 2003-08, November 23, 2003)

6.203 REGULATIONS

A. General. Regulations are promulgated to set out rules and procedures for carrying on executive functions of government, such as regulation of fishing and hunting by the Natural Resources Commission, or regulation of security by the Gaming Regulatory Commission. The Tribal Council may decide by statute to: 1. Wholly delegate authority for promulgating regulations to a Tribal commission or agency to govern that agency's area of authority; 2. Delegate authority for promulgating regulations to a Tribal commission or agency but reserve approval power; or 3. Delegate to itself the duty to promulgate regulations for a certain subject matter.

B. Promulgation by a Tribal Commission or Agency. When a Tribal commission or agency is delegated the authority to promulgate its own regulations, whether or not Council approval is required, the following procedure shall be followed: At least thirty (30) days before the agency considers approving regulations, it shall make available the draft of the regulations to be considered available in the Tribal office for review by Tribal members. Notice of the date, time and place of a meeting where the regulations will be considered shall be posted in the Tribal office at least thirty (30) days prior to such meeting. The Tribal Council and Tribal Commissions shall develop reasonable methods and procedures to provide notice to Tribal members of pending actions. Before passing regulations the agency shall allow any members of the Tribe present at the meeting to comment on the proposed regulations. A Tribal commission may enact regulations by a simple majority of a quorum of the commissioners present at a meeting. If Tribal Council approval is required by statute, then the commission shall present the regulations to the Council at the first Council meeting following the commission's passage of the regulations. As soon as practicable after presented the Council, the Council shall vote to approve or disapprove the regulations. Regulations are approved by a simple majority of a quorum of the Council. If the Council does not act on the regulations by the fourth meeting after they are presented, the regulations are deemed approved.

C. Regulations adopted by Council. In cases where the Council has reserved for itself the authority to promulgate regulations, the regulations shall be introduced and adopted following the same procedures as statutes under the Legislative Procedures Statute.

D. Compilation. Regulations promulgated by the Council and Tribal commissions shall be compiled and kept current in a volume (s) entitled "Little Traverse Bay Bands Regulations." Identical copies of the Little Traverse Bay Bands Regulations shall be kept at the Tribal office, the home of the Tribal Secretary and the office of the Tribal attorney.

(Source: WOS 1996001, February 18, 1996, Section III)

Chapter 3. Budget Formulation Process

6.301 PURPOSE AND SHORT TITLE

The purpose of this statute is to mandate procedures and deadlines for the Tribal Council to follow in the formulation of the annual Tribal governmental budget. It may be cited as the "Budget Act." This Statute repeals and replaces Waganakising Odawak Statute 1998001.

(Source: WOS 2001-09, April 22, 2001, Section I)

6.302 FISCAL YEAR

The fiscal year shall be from January 1 to December 31.

(Source: WOS 2001-09, April 22, 2001, Section II)

6.303 STEPS IN PREPARATION OF ANNUAL BUDGET

A. **Department Proposals.** By March 1 of each year, each Tribal Department shall submit a proposed budget to the Tribal Accountant. The proposal shall include a budget, and a justification.

B. **Executive Draft.** By March 15 of each year, the Tribal Accountant in consultation with the Tribal Administrator shall prepare and present a proposed budget to the Tribal Council. A copy of the Executive Draft will be provided to the Tribal Council.

C. **Tribal Council Approval.** By April 15 of each year the Tribal Council shall hold a work session to review and modify the Executive Draft Budget for approval at a regularly scheduled council meeting.

D. **Tribal Membership Input.**

1. The Tribal Council shall provide copies of the approved Executive Draft Budget to LTBB members upon request. Members shall be given reasonable notice, such as an announcement in the newsletter, of the availability of the approved Executive Draft Budget.

2. Between April 15 and May 15 of each year the Tribal Council shall present its Executive Draft Budget to the membership at large at an open session of the Tribal Council. Members shall be given reasonable notice, such as an announcement in the newsletter of the date, time and location of such meeting. Each program budget will be presented and there will be time for comments from Tribal Council, Tribal Administration, and Tribal Membership.

E. **Reconciliation of Requests.** The Tribal Council will reconcile budget requests between May 15 and June 15.

F. **Final Approval of Budget by Tribal Council.** The final budget shall be approved and adopted by the Tribal Council during the month of June, and sent to Tribal members upon request.

(Source: WOS 2001-09, April 22, 2001, Section III)

6.304 AVAILABILITY AND SURPLUS FUNDS

A. Funding Availability. Programs and budgeted items shall be subject to funding availability.

B. Surplus Funds. Surplus funds remaining at the end of the fiscal year may be carried forward for reallocation by the Tribal Council in the next fiscal year if allowed by existing regulations. December 31 will be the cut-off date for processing program obligations.

(Source: WOS 2001-09, April 22, 2001, Section IV)

6.305 QUARTERLY REVIEW

The Tribal Council shall review the budget quarterly and reallocate funds as needed. The Tribal Council shall have the right to make emergency allocations or reallocations of funds as needed and to borrow money to cover such allocations or reallocations if necessary.

(Source: WOS 2001-09, April 22, 2001, Section V)

6.306 MODIFICATIONS

A. All program budget modifications must be approved by the Tribal Accountant and the Tribal Administrator.

B. Any change in the scope of a program or increase in the total budget must be approved by the Tribal Council.

(Source: WOS 2001-09, April 22, 2001, Section VI)

Chapter 4. Commissions, Boards and Committees Procedures

6.401 SHORT TITLE, DEFINITIONS AND PURPOSE

A. Short Title

This Statute shall be entitled "The Commissions, Boards and Committees Statute." It is a revision of Waganakising Odawak Statute 1998012 of September 28, 1998, which was repealed by Waganakising Odawak Statute 2000-08 of June 4, 2000. This Statute shall comply with all provisions of the Little Traverse Bay Bands of Odawa Indians Constitution.

B. Definitions

As used in this Statute:

1. "LTBB": The Little Traverse Bay Bands of Odawa Indians.

2. "Commissions" means commissions, boards and committees unless otherwise stated.

3. "Constitutional Commission": A tribal commission mandated in the LTBB Constitution.
4. "Council Commission": A commission created by the Tribal Council.

5. "Program Commission": A tribal commission mandated by various federal or state grants or contracts.

6. "Ad Hoc Committee": Committees authorized by Tribal Council for a special, singular purpose that dissolve upon completion of its assigned mission.

7. "Staff Members": LTBB Employees.

C. Purpose

The purpose of this Statute is to provide uniform provisions that apply to all Tribal Commissions. Except as specifically stated, this Statute shall not be construed to apply to the Tribal Council. This statute shall not override specific statutory provisions in Commission statutes unless explicitly noted.

D. Tribal Council authority. Commissions may be created by the Tribal Council pursuant to its powers and duties under the LTBB Constitution, and serve in an advisory capacity to the Tribal Council.

(Source: WOS 2002-05, September 8, 2002, Section I)

6.402 CREATION OF TRIBAL COMMISSIONS

A. All Commissions shall be created by Tribal Council action:

1. Constitutional commissions are those expressly mandated by language in the LTBB Constitution.

2. Council commissions shall be authorized by Tribal Council statute.

3. Program commissions shall be authorized by Tribal Council resolution.

4. Ad Hoc committees shall be authorized by Tribal Council resolution.

(Source: WOS 2002-05, September 8, 2002, Section II)

6.403 DURATION OF TRIBAL COMMISSIONS

A. Constitutional commissions shall be permanent in nature.

B. Council Commissions shall exist for the time specified by Tribal Council statute, or if no time is specified a Commission shall exist until extinguished by future statute.

C. Program commissions shall terminate upon expiration of the underlying program's grant or contract.

D. Ad Hoc committees shall terminate upon completion of their specific task, or a time certain, as detailed in the Tribal Council resolution creating the Ad Hoc committee.

(Source: WOS 2002-05, September 8, 2002, Section III)

6.404 AUTHORITY OF COMMISSIONS

A. Commissions are authorized to:

1. gather and/or disseminate information,
2. promulgate rules for the field for which the commission was created,
3. carry out the responsibilities with which a particular commission is charged,
4. issue, suspend or revoke licenses statutorily delegated to be under their authority, and
5. make recommendations to the Tribal Council to assist the Council in carrying out its Constitutional mandates.

B. Commissions are also authorized, subject to ratification by the Tribal Council, to:
1. retain by contract such independent contractors, professional services and whatever other services may be necessary to carry out the dictates of commission requirements, and
2. enter into contracts of all types with agencies of Federal, State, local or other Tribal governments, and with private parties, including individuals, partnerships, corporations or other enterprises.

(Source: WOS 2002-05, September 8, 2002, Section IV)

6.405 MEETINGS OF COMMISSIONS

A. Constitutional commissions shall meet according to the terms of the Constitution.

B. Council Commissions shall meet according to their authorizing statute.

C. Program Commissions shall meet as required by the program to assist the staff in carrying out its program mandate.

D. Ad Hoc committees shall meet as needed to achieve the goals and objectives as outlined in the Tribal Council resolution creating the Ad Hoc committee.
(Source: WOS 2002-05, September 8, 2002, Section V)

6.406 COMPOSITION OF TRIBAL COMMISSIONS

A. Constitutional Commissions and Council Commissions shall be composed of not less than three (3) or more than five (5) members unless the Tribal Council makes a special determination otherwise. This Section VI reduces the number of persons on the Enrollment Commission (Waganakising Odawak Statute 1999014), the Economic Development Commission (Waganakising Odawak Statute 1996007), the Housing Commission (Waganakising Odawak Statute1998009), and the Health Commission (Waganakising Odawak Statute 1997004), from seven (7) to five (5). Provided, all current commission members shall complete their terms unless they voluntarily resign earlier.

1. Members shall be appointed by the Tribal Council to a prescribed term or to fill the remaining time of a vacant prescribed term.

2. The Tribal Council and/or commission members may solicit members to serve on commissions, including postings in the LTBB newsletter and by posting in tribal buildings.

3. All appointed members shall take an oath of office administered by the Tribal Court

B. Program commissions shall be of a size prescribed in the program's grant or contract.

1. Members shall be appointed by the Tribal Council.

2. The Tribal Council will consider recommendations by the commission and/or program staff for appointees.

C. Ad Hoc committees shall be of a size that is needed to complete the purpose for which it was created.

D. It shall be the responsibility of all commission chairpersons to keep a record of commission members' terms: date appointed, time to recruit for vacancy, date appointment ends.

E. In making commission appointments after the effective date of this Statute, commissioners shall serve on no more than two commissions simultaneously.

F. Tribal Council members are ex-officio members of all Tribal Commissions and Committees, except the Election Board may exclude Council members when it deems appropriate because of addressing specific matters pertaining to upcoming elections, and the Child Welfare Commission may exclude Council members when addressing matters involving specific families or individuals.

(Source: WOS 2002-05, September 8, 2002, Section VI)

6.407 RULES OF PROCEDURES, NOTICE

A. Commissions shall adopt rules of procedures for the conduct of their business subject to the approval of the Tribal Council unless such rules are contained within the statute or resolution that created the commission.

B. Notice requirements for commission meetings shall comport with "notification of meeting" requirements of LTBB then in place.

C. Commissions shall submit at a minimum quarterly reports to the Tribal Council.

D. Unless otherwise specified in a commission's statute, a quorum shall consist of a simple majority of the number of commissioners notwithstanding vacancies. A meeting may not be called to order without a quorum present and no official business may be conducted absent a quorum.

(Source: WOS 2002-05, September 8, 2002, Section VII)

6.408 RECOMMENDATIONS, PROPOSED LEGISLATION

A. Proposed legislation shall originate with or be referred to the appropriate commission, which shall discuss the proposed legislation in open meeting.

B. The commission shall then make written recommendations to the Tribal Council. Any commission member who disagrees with the recommendations may make a written minority report to the Tribal Council, outlining their opposition to the commission's recommendations.

(Source: WOS 2002-05, September 8, 2002, Section VIII)

6.409 OPEN MEETINGS, COMMISSION RECORDS

A. Commission meetings shall be open to the membership except in cases involving Indian Child Welfare matters, matters of confidentiality as defined by Tribal statute, personnel matters, and legal matters.

B. Commission records shall be open to the membership except in cases involving Indian Child Welfare matters, matters of confidentiality as defined by Tribal statute, personnel matters, and legal matters.

(Source: WOS 2002-05, September 8, 2002, Section IX)

6.410 APPLICATION OF INDIAN CIVIL RIGHTS ACT OF 1968

Tribal commissions shall comply with the provisions of the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-1303.

(Source: WOS 2002-05, September 8, 2002, Section X)

6.411 COMPENSATION, STIPENDS

A. Commission members who attend any conference, training, meeting or hearing directly related to their duties or attend any event where their attendance is required may be compensated with Tribal Council approval.

B. Commission members, including Tribal Council members appointed to commissions, shall receive a stipend for attendance at commission meetings subject to the availability of funds per the commission's approved budget.

C. Program Commission staff members shall not receive stipends while serving on a commission directly related to their employment.

D. Ad Hoc Committee members may receive stipends if authorized by the Tribal Council resolution creating the Ad Hoc Committee.

E. Commission members must be in attendance for at least seventy-five percent (75%) of the meeting in order to receive a stipend unless forced to leave due to inclement weather or personal or family emergency. Any commissioner who attends a properly noticed meeting at which the agenda items are properly addressed shall be eligible for a stipend, mileage, and expenses, even if no official action can be taken due to lack of a quorum.

(Source: WOS 2002-05, September 8, 2002, Section XI)

6.412 STAFF PARTICIPATION

A. Staff members whose work is directly related to the work of a commission may be given release time to attend meetings during working hours, with the prior approval of the individual's supervisor.

B. Staff members whose attendance is required at commission meetings before or after work hours shall arrange for flex time with the prior approval of the individual's supervisor.

C. Staff members may serve on commissions and be compensated by stipend if that commission is not directly related to their employment, does not interfere with their work, and does not meet during scheduled work hours. If a commission meets during scheduled working hours and the staff member wishes to attend, the staff member must utilize vacation time upon prior approval of the individual's supervisor.
(Source: WOS 2002-05, September 8, 2002, Section XII)

6.413 TRIBAL PREFERENCE

In appointing commission members, preference shall be given first to tribal members; second to Native American Community members; third to Native Americans; fourth to other persons; unless otherwise mandated by the Tribal law or program regulations.

(Source: WOS 2002-05, September 8, 2002, Section XIII)

6.414 NEPOTISM

This Section XIV [WOTC 6.414] repeals and replaces Section III of Waganakising Odawak Statute 2000-10 of July 22, 2001.

A. Two or more members of the same immediate family shall not serve on the same commission at the same time. Further, when a commission is formed to address issues that pertain to a specific administrative department, a person shall not serve on such commission if the department director is an immediate family member. For purposes of this section immediate family means husband, wife, son, daughter, step-son, step-daughter, father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, child, step-child or a person whose relationship with the tribal member is similar to that of persons who are related by blood or marriage.

B. No commission member may participate in making any decision that involves a personal or financial interest of the commissioner or a member of his or her immediate family unless such interest is held in common with the Tribe and its members.

(Source: WOS 2002-05, September 8, 2002, Section XIV)

6.415 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source: WOS 2002-05, September 8, 2002, Section XV)

Chapter 5. Removal of Commissioners and Nepotism

6.501 SHORT TITLE AND PURPOSE

A. Short Title. This Statute may be cited as the "Commissioner Removal and Nepotism Act."

B. Purpose. This Act sets out standard procedures for the removal of members of commissions of the Tribe, and rules regarding nepotism. This Act shall apply to all commissions of the Tribe unless otherwise specified in a specific commission statute. This Statute repeals and replaces the Removal of Commissioners and Nepotism Statute enacted on April 20, 1997 (Waganakising Odawak Statute 1997005).
(Source: WOS 2001-10, July 22, 2001, Section I)

6.502 REMOVAL OF COMMISSIONERS

A. Hearing Board. Hearings held under this section shall be before a Hearing Board consisting of one member of the Tribal Judiciary to be selected by the Judiciary itself, and two Tribal members at large to be selected by the Tribal Judiciary. All members of the Hearing Board shall be subject to the same rules regarding recusal as would a judge hearing a Tribal Court case.

B. Removal or Discipline. Members of a commission appointed by the Tribal Council shall not be removed during their terms of office except for misconduct, neglect of duties, or defying legally issued directives of the Tribal Council. The procedure for removal shall be as follows:

1. The Chairman of the Little Traverse Bay Bands of Odawa Indians shall call a special meeting of the Tribal Council to deal with a request to remove the member or place the item on the agenda of the next regularly scheduled Council meeting in response to any one of the following:

a. The Tribal Council by majority vote determines that there is cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

b. The Tribal Council receives a petition signed by at least fifty (50) members of the Little Traverse Bay Bands of Odawa Indians alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

c. The Tribal Council receives a petition signed by a majority of the commissioners sitting on the commission at issue alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section.

2. In the event that the Tribal Council receives a petition under this section, or determines itself that there may be grounds for removal the Council shall:

a. Submit the petition to the Election Board for verification that the petition contains a sufficient number of valid signatures;

b. If the Election Board finds the petition to contain a sufficient number of valid signatures, the Tribal Council shall submit the petition to the Hearing Board to determine if the charges, if proven true, would constitute grounds for removal;

c. In the event that Council itself has determined that there is cause to suspect that a member may be subject to removal, Council shall submit its reasons in writing to the Hearing Board to determine if the charges, if proven true, would constitute grounds for removal.

d. If the Hearing Board determines that the charges, if proven true, would constitute grounds for removal of a commissioner from his or her appointed position, the Hearing Board shall set a date for hearing the charges on the petition and shall provide notice to the member whose removal is being sought.

3. Notice to the member whose removal is being sought shall be served no later than two (2) weeks prior to the date set for the hearing, shall include the date, time and location of the hearing, shall attach a full and complete copy of a statement of the Tribal Council or the petition seeking removal, and shall attach a copy of the rules to be followed during the hearing. Upon good cause shown, the Hearing Board may postpone the hearing to a later date. Notice shall also advise the recipient of his/her right to bring witnesses or documents to the hearing that the recipient deems necessary in order to attempt to defend against the charges contained in the petition, and the right of the commissioner to have one attorney or Tribal member advocate present to represent and assist the commissioner at the hearing.

4. The Hearing Board shall also provide copies of the notice to the other members of the commission from which removal is sought, to the member of the Little Traverse Bay Bands of Odawa Indians who presented the petition, and to the members of the Tribal Council advising each of them of the opportunity to appear and to present evidence, either in support of the charges against the member of the commissioner whose removal is sought or in support of the defense of such member.

5. The Hearing Board shall preside at the hearing of the charges contained in any such petition and shall allow as much time as necessary for the testimony of witnesses and presentation of evidence in support of the charges, as much time as necessary for the testimony of witnesses and presentation of evidence to refute the charges, and such time as the Hearing Board deems appropriate for summary statements and arguments. At any time, the Hearing Board may recess the hearing until a later time certain. At the request of the member whose removal is at issue, the hearing may be held in closed session. The Hearing Board also may elect to receive in closed session any evidence public disclosure of which might compromise the proprietary interests of the Tribe or any on-going law-enforcement investigation.

6. Upon the conclusion of the presentation of evidence and of summary statements and arguments, the Hearing Board shall deliberate in closed session and shall either dismiss the petition, remove the member charged in the petition from the commission, or take such other

disciplinary action as it deems appropriate short of removal, upon such findings of fact as may be appropriate. The decision of the Hearing Board shall be final, and no appeal to any other tribunal shall be available.

7. Upon conclusion of the hearing, any information disclosing possible criminal activity shall be promptly reported to Tribal Law Enforcement.

(Source: WOS 2001-10, July 22, 2001, Section II)

6.503 NEPOTISM AND CONFLICT OF INTEREST

(WOS 2001-10 Section III was repealed and replaced by WOS 2002-05, section XIV [WOTC 6.414]

6.504 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section 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 phrase, provision, paragraph, subsection or section 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.

(Source: WOS 2001-10, July 22, 2001, Section IV)

Chapter 6. Service of Commissioners

6.601 CONTINUED SERVICE OF COMMISSIONERS

Members of the Tribal Commissions created pursuant to a Waganakising Odawak Statute will serve beyond the expiration of their terms until their successors are appointed and sworn in. This Statute repeals and replaces Waganakising Odawak Statute 1997002, which was enacted on February 16, 1997.

(Source: WOS 2001-08, April 22, 2001, Section I)

Chapter 7. Indian Preference In Tribal Employment

6.701 PURPOSE

This Statute rescinds and replaces Waganakising Odawak Statute 1998015. This Tribal Employment Statute is hereby enacted to mandate the preferential employment, promotion and training of tribal members and other persons by the Tribe and its business enterprises, as permitted and promoted under federal law based on the unique political relationship between Indian tribes and the United States.

(Source: WOS 2002-04, July 7,2002, Section I)

6.702 DEFINITIONS

A. "Tribal Business Enterprise" means any business owned, operated or licensed by the Little Traverse Bay Bands of Odawa Indians.

B. "Employment Preference" means a preference given to a job applicant or employee in hiring, promotion and training decisions when choosing qualified applicants or employees.

C. "Qualified applicant" means a person who meets minimum qualifications, experience, background, abilities or education.

(Source: WOS 2002-04, July 7, 2002, Section II)

6.703 EMPLOYMENT PRACTICES

A. Indian preference. The Tribe and Tribal Business Enterprises shall grant an Employment Preference for hiring, promotion and training to the following persons in the following order:

1. Members of the Little Traverse Bay Bands of Odawa Indians,

2. Other federally recognized members of North American Indians Tribes.

B. General. Except for the Indian preference stated in Section III (A) [WOTC 6.703], employment, promotion and training opportunities within the Tribe and Tribal Business Enterprises will be offered to qualified individuals without regard to race, religion, color, ancestry, gender, age or national origin.

C. Contractors and Subcontractors. The Tribe and its business enterprises may require adherence to this Statute when negotiating contracts.

(Source: WOS 2002-04, July 7,2002, Section III)

6.704 EFFECTIVE DATE

UPON ENACTMENT [July 7, 2002]

(Source: WOS 2002-04, July 7,2002, Section IV)

Chapter 8. Tribal Sovereignty Day

6.801 Declaration of Tribal Sovereignty Day

The Little Traverse Bay Bands of Odawa Indians Tribal Council designates September 21, 1995, and September 21 of each subsequent year to be Waganakising Odawa Tribal Sovereignty Day. The Little Traverse Bay Bands of Odawa Indians Tribal Council declares this date to be a Tribal holiday to be observed by all Tribal employees.

(Source: WOS 1995012, August 27, 1995)

Chapter 9. Odawa Property Managers

6.901 REPEAL

The Odawa Property Managers Act, being Waganakising Odawak Statute 1999004, is hereby repealed.

(Source: WOS 2000-10, September 24, 2000, Section I)

Chapter 10. Open Meetings

6.1001 PURPOSE

The purpose of this Statute is to implement the open meeting provisions of Bylaw Article I of the interim Constitution and Bylaws [WOTC 1.112], and to set standards and procedures for executive sessions when necessary to protect the interests of the Tribe and allow the Tribal Council to effectively perform its duties under Article VII of the interim Constitution and Bylaws [WOTC 1.108].

(Source: WOS 2000-14, October 22, 2000, Section I)

6.1002 REGULAR AND SPECIAL MEETINGS, EMERGENCY ACTION

A. With the exception of emergency action described in subsection (B), all official action of the Tribal Council must take place at regular and special meetings properly called under Bylaw Article I of the interim Constitution and Bylaws.

B. In situations where vital interests of the Tribe require immediate emergency action prior to a regular or special meeting, such action can be taken by phone poll or teleconference call for the limited purpose of addressing a matter for which the Tribe will suffer severe damage. In such situations, the Tribal Secretary or designee must certify that more than one attempt was made to contact each Tribal Council member by any practical means including telephone, fax, e-mail or in person. The action taken must be ratified at the next regular meeting of the Tribal Council, and the minutes must state the reason such emergency action was necessary.

(Source: WOS 2000-14, October 22, 2000, Section II)

6.1003 OPEN MEETINGS; EXECUTIVE SESSIONS

A. Pursuant to Bylaw Article I, Section 3 of the interim Constitution and Bylaws [WOTC 1.112], all regular and special meetings are open to all LTBB members. The Tribal Council may by motion exclude non-LTBB members from all or part of a regular or special meeting.

B. When necessary to protect the interests of the Tribe and fulfill its responsibilities under Article VII of the interim Constitution and Bylaws the Tribal Council may, by motion and majority vote of a quorum, go into executive session during a regular or special meeting. Such motion shall state the reason for going into executive session, which can only include one or more of the following:

1. Pending litigation, negotiation, and other legal matters for which the interests of the Tribe could be damaged if publicly discussed;

2. Land purchases and other sensitive economic matters for which the interests of the Tribe could be damaged if publicly discussed;

3. Matters that involve questioned and sensitive activity of specific individual employees, commissioners, or Council members. General personnel policy issues are not to be the subject of executive sessions.

C. The Tribal Council shall not discuss anything in executive session beyond the scope of the matters under subsections (B)(1),(2) or (3) for which the executive session was called. Tribal Council shall return to open session immediately upon completion of executive session discussions. Any action considered in executive session that can be taken in open session without harming Tribal interests shall be taken after the Tribal Council returns to open session.

(Source: WOS 2000-14, October 22, 2000, Section III)

6.1004 EFFECTIVE DATE

This Statute takes effect immediately upon enactment.

(Source: WOS 2000-14, October 22, 2000, Section IV)

6.1005 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of or governing the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, paragraph, subsection or section 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.

(Source: WOS 2000-14, October 22, 2000, Section V)

Chapter 11. Whistle Blower Protection

6.1101 PURPOSE

The purpose of this Statute is to protect the interests of Tribal employees and the Tribe by prohibiting retaliatory action against employees who report violations of the law.

(Source: WOS 2000-15, November 5, 2000, Section I)

6.1102 DEFINITIONS

A. "Employee" means any person employed on a full or part time, salaried or hourly basis, by the Tribal Governmental administration of the Little Traverse Bay Bands of Odawa Indians or by any Tribally owned economic enterprise.

(Source: WOS 2000-15, November 5, 2000, Section II)

6.1103 RETALIATION PROHIBITED

A. No employee shall be terminated, demoted, penalized or disciplined in any way as a direct result of the employee's reporting of activity, over which the employee has actual knowledge and which the employee reasonably believes to be in violation of any applicable law, to a supervisor, tribal law enforcement official, or the Tribal Council.

B. Cause of action. Any employee who is subject to retaliatory action based on good faith and reasonable reporting as described in subsection (A) shall have standing to bring a cause of action in Tribal Court against his/her individual supervisor or other individual alleged to have acted in violation of subsection (A). If the Court finds the employee to have acted in a good faith and reasonable fashion in reporting possibly illegal activity, and to have been subject to negative action as a result of such reporting, the Court shall order reinstatement of the employee's position and back pay if appropriate. The Court may also order a party that it finds to have taken such retaliatory action to pay the employee's Court costs and attorney's fees.

C. False Reporting. An employee who knowingly or recklessly makes a false report to a supervisor, law enforcement official or to the Tribal Council may be subject to disciplinary action as appropriate under the applicable personnel policies.

(Source: WOS 2000-15, November 5, 2000, Section III)

Chapter 12. Tribal Council Compensation

6.1201 PURPOSE

This Tribal Council Compensation Statute is hereby enacted to establish a standard method of increasing compensation for the Tribal Chair and the Tribal Councilors.

(Source: WOS 2003-05, May 18, 2003, Section I)

6.1202 DEFINITIONS

A. The "Tribe shall mean the Little Traverse Bay Bands of Odawa Indians.

B. Compensation shall mean any form of salary, pay stipend, fringe benefit, discount not given to all Tribal Members, or other monetary benefit.

(Source: WOS 2003-05, May 18, 2003, Section II)

6.1203 COMPENSATION

A. The Tribal Council shall be authorized to set their own compensation.

B. Tribal Council is prohibited from increasing the level of compensation provided them within the current electoral period (any enacted increase in compensation will not take effect until after the next Tribal Council Election).

C. Tribal Council is prohibited from increasing the level of compensation provided the Tribal Chair within the current electoral period (any enacted raise in compensation will not take effect until after the next election for Tribal Chair).

(Source: WOS 2003-05, May 18, 2003, Section III)

6.1204 EFFECTIVE DATE

Effective upon enactment.

(Source: WOS 2003-05, May 18, 2003, Section IV)

TITLE VII. ECONOMIC DEVELOPMENT

Chapter 1. A Plan for the Use of the Little Traverse Bay Bands of Odawa Indians Judgment Fund Distribution.

7.101 PURPOSE

This Plan has been developed as a result of the Indian Claims commission dockets numbered 18-E, 58, 364 and the passage of Public Law 105-143, signed into law on December 15, 1997, and provides for the disbursal of judgment funds to the Little Traverse Bay Bands of Odawa Indians of Michigan.

Pursuant to this law, the Little Traverse Bay Bands of Odawa Indians must submit a plan for the use of the funds to the Secretary of Interior. The Secretary shall review the plan and discuss any problems with the Tribe. After this review, the plan shall be submitted to Congress prior to the distribution of any of these funds to the Tribe.

The Plan was developed by the Tribe to use monies wisely for the Tribe's current and future well being, and to preserve its culture and history. This plan also meets all of the criteria for the Secretary and Congressional approval, including:

(a) the needs and desires of any groups or individuals who are in a minority position, but who are also entitled to receive such funds, have been fully ascertained and considered;

(b) the interests of minors and other legally incompetent persons who are entitled to receive any portion of such funds.

(c) any provision, including enrollment provisions, of the constitution, bylaws, rules, and procedures of such tribe, which may affect the distribution, or other use of such funds are in full accord with the principles of fairness and equity.

(Source: 1998007, March 13, 1998, Section I)

7.102 SOVEREIGN IMMUNITY

Nothing in this plan shall provide, or be interpreted to provide, a waiver of the sovereign immunity from suit of the Little Traverse Bay Bands of Odawa Indians or any of its governmental officers and/or agents.

Nothing in this plan shall create a duty of financial obligation on the part of the Little Traverse Bay Bands of Odawa Indians or any of its officers and/or agents to provide judgment fund distribution shares to an individual who alleges that he/she did not receive a per capita distribution share; provided, however, that the Little Traverse Bay Bands of Odawa Indians must show:

(1) The individual's name does not appear on any of the rolls authorized under the Tribal enrollment requirements and time requirements of this plan; or

(2) The individual's name: (A) appeared on one of the rolls authorized under Tribal enrollment requirements and time requirements of this plan; and, (B) a copy of the per capita share documentation is returned by the Tribal Administration as proof of distribution to the last known address of the individual entitled to a per capita share.

(Source: 1998007, March 13, 1998, Section 2)

7.103 DESCRIPTION OF TRUST FUNDS

A. LAND CLAIMS DISTRIBUTION TRUST FUND.

The share of the Little Traverse Bay Bands of Odawa Indians of Michigan (hereafter in this section referred to as the ‘‘Bands’’), as determined pursuant to subsections (a)(4) and (b)(4) of section 104 of Public Law 105-143, shall be deposited by the Secretary in a trust fund to be established by the Tribal Council of the Bands to be known as the ‘‘Land Claims Distribution Trust Fund’’ (hereafter in this section referred to as the ‘‘Trust Fund’’).

The principal of the Trust Fund shall consist of:

1. the funds deposited into the Trust Fund by the Secretary pursuant to this subsection;

2. such annual earnings of the Trust Fund that shall be retained, and added to the principal;

3. such other funds as may be added to the Trust Fund by action of the Tribal Council of the Bands.

B. MANAGEMENT OF THE TRUST FUND.

The Tribal Council of the Little Traverse Bay Bands of Odawa Indians will enact a statute creating a Trust Fund Board.

1. The Trust Fund Board (hereafter in this section referred to as the “Board”) will be appointed by Tribal Council in accordance with the procedures established in the statute. The Board shall be the trustee of the Trust Fund and shall administer the Fund in accordance with this section. In carrying out this responsibility, the Board may retain or hire a professional trust manager and may pay the prevailing market rate for such services. Such payment for services shall be made from the current income accounts of the Trust Fund and charged against the earnings of the fiscal year in which the payment becomes due.

2. The Trust Fund shall be maintained as a separate account, which shall be audited at least once during each fiscal year by an independent certified public accountant that shall prepare a report on the results of such audit. Such report shall be reasonably available for inspection by the members of the Bands.

3. The Board will create Share Certificates. The face value of each Share Certificate shall be calculated by the following two steps:

a. By dividing 80 % of the total dollar amount of the distribution from the United States on the date of such distribution by the number of Tribal members who are eligible to participate in the distribution under section 3(g) [WOTC 7.103(G)] of this Plan, and

b. This amount will then be divided by two to determine the amount of each Share Certificate. The estimated value of each Share Certificate is $2,000 but the exact amount will depend on the exact amount of the distribution and number of members eligible to participate in the distribution. Each eligible member will receive two Share Certificates, which added together will be worth approximately $4,000. Each eligible member will have the option of immediately redeeming one or both of their Share Certificates, or leaving one or both of their Share Certificates in the Trust Fund. Share Certificates are redeemable at no more than face value unless they are left in the Trust Fund for ten years or until the Trust Fund reaches the value of the total amount of the original distribution from the United States, at which point each unredeemed Share Certificate will be worth $500 more than its original face value.

C. MINOR, LEGAL INCOMPETENT AND INCARCERATED PERSON'S TRUST FUND.

1. Tribal Council shall establish a separate trust fund with segregated amounts equal to each minor, incarcerated member, or incompetent's share. The investment policy of this trust will preserve the trust corpus while obtaining the highest interest rates current money markets can safely provide. Maturity dates of investments cannot exceed the period of the trust and only the following types of investment shall be made: United States Treasury bills; Bankers' acceptance, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Certificates of deposit, provided the assets for the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Commercial paper, provided it is rated prime-2 by Moody's or A-2 by Standard and Poor's or is an obligation of a company with outstanding unsecured debt rated Aa by Standard and Poor's.

2. Minors who will have reached the age of 18 years within six months after the establishment of the Minor, Incarcerated Members and Incompetents Trust shall have their funds retained at interest in individual Indian money accounts and paid to them upon attaining their majority.

3. Upon reaching 18 years of age minor beneficiaries of the trust may make application to the Board to have their share plus interest transferred to them.

4. Release of funds regarding legal incompetents---Upon the petition of the legal guardian of the beneficiary, trust assets shall be distributed to the beneficiary as deemed appropriate by Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

5. Incompetent qualified Tribal member---To be deemed incompetent under this Plan, a qualified tribal member must be declared incompetent by a court of competent jurisdiction prior to any disbursement of monies to any individuals. His/her guardian must inform the Board, with sufficient written evidence, that he/she is the incompetent's legal guardian along with the guardian and incompetent's current address(es) prior to the aforementioned disbursement. If the Board does not receive such notification, then the Board may release his/her share to the individual at his/her last known address and neither the Board nor Tribe will bear any further responsibility for the individual's funds.

6. Incarcerated qualified Tribal member---To place an incarcerated member's share in trust under section 3 (c)(1) [WOTC 7.103(C)(1)] the Board must have actual knowledge of the individual's incarceration. Incarcerated individuals should inform the Board in writing of their incarceration before any distribution of monies under this plan. If the Board does not have actual knowledge of an individual's incarceration, then the Board may release his/her share to the individual at his/her last known address and neither the Board nor Tribe will bear any further responsibility for the individual's funds, including subsequent recoupment or attachment of the individual's share by any governmental entity or creditor. The Board will disburse the individual's share from the trust account to the individual upon his/her release from incarceration. Prior to release from incarceration, the individual's share can only be disbursed by order of the Tribal Court. The Tribal Court may issue such order, in its discretion, upon petition by the incarcerated member through a guardian or Power of Attorney.

7. In the event that a minor, incompetent or incarcerated person dies while his/her money is in trust, that money shall be distributed to the member's heirs at law.

D. LAND CLAIMS DISTRIBUTION TRUST FUND INTEREST DISTRIBUTION.

1. Except for the administration costs allowed under Section 3 (b)(1) [WOTC 7.103(B)(1)], interest earnings of the Trust Fund investment shall be utilized only as outlined in this subsection (D) of this plan.

2. The earnings of the Trust Fund shall be utilized to increase the principle until it reaches the amount of the original distribution to the tribe from the United States, plus an amount adequate to fund the redemption of all outstanding shares at that time, pursuant to this subsection. The Board shall have the authority to invest the principal of the Trust Fund on market risk principles that will ensure adequate increases in the principle, while at the same time protecting the principle.

E. NEW TRUST FUND

1. Upon the accumulation of the original principle pursuant to subsection (D)[WOTC 7.103(D)], the Land Claims Distribution Trust Fund will become the Odawa Perpetuation Trust Fund, to be managed by the Trust Fund Board. Not more than 85% of the interest from the investment of the Trust Fund shall be distributed according to the specific formula described herein, while no more than 5% of the interest each year shall be spent on administration of the Trust Fund, and at least 10% of the interest each year shall be re-invested in the Trust Fund:

2. Children born to members after the date of Secretarial approval of this plan who are themselves enrolled members in the Bands shall receive a one time per capita payment of an amount equal to the originally distributed two shares, upon reaching the age of eighteen.

3. Of the funds remaining, 40% of the interest each year shall be spent on programs designed to benefit Elders, 20% of the interest each year shall be spent on programs designed to benefit Youth, 20% of the interest each year shall spent on programs for general tribal benefit, and 20% shall be spent on land acquisition or defense of treaty rights or both.

4. The Odawa Perpetuation Trust Fund shall be audited at least once during each fiscal year by an independent certified public accountant who shall prepare a report on the results of such audit. Such report shall be reasonably available for inspection by the members of the Bands.

F. NO SECRETARIAL RESPONSIBILITIES FOR TRUST FUND.

The Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the Land Claims Distribution Trust Fund or the Odawa Perpetuation Trust Fund.

G. GENERAL PROVISIONS.

1. In the event that a tribal member eligible for a payment under this section shall die after preparation of the distribution roll, but prior to the distribution date, such payment shall be paid to the estate of such member.

2. To receive a per capita share, persons must be enrolled members of the Bands by midnight at the end of the date of approval of this plan by the Secretary. In addition, the estate of any deceased member who was living and enrolled on the date of enactment of the Michigan Indian Land Claims Settlement Act (Public Law 105-143), December 15, 1997, and the estate of any deceased member enrolled between December 15, 1997 and midnight at the end of the date of approval of this plan by the Secretary, shall also receive per capita shares.

(Source: 1998007, March 13, 1998, Section 3, as amended by WOS 1998008, April 19, 1998; WOS 1998010, July 12, 1998; and WOS 1998011, September 13, 1998)

Chapter 1a. Non-Attachment of Judgment Fund Per Capita Payments

7.1a01 SHORT TITLE

This Statute may be cited as the "Non-Attachment of Judgment Funds Per Capita Payments Act."

(Source: WOS 1999003, May 2, 1999, Section I)

7.1a02 NON-ATTACHMENT OF JUDGEMENT FUND PER CAPITA PAYMENTS

None of the funds which are distributed per capita at any time to Tribal members through redemption of share certificates or otherwise pursuant to the Plan for the Use of the Little Traverse Bay Bands of Odawa Indians Judgment Fund Distribution, approved by the Secretary of the Interior on December 16, 1998, shall be subject to attachment to satisfy any lien, judgment or any other debt.

(Source: WOS 1999003, May 2, 1999, Section II)

Chapter 1b. Distribution of Judgment Funds to Estates

7.1b01 PURPOSE

Under A Plan for the Use of the Little Traverse Bay Bands of Odawa Indians Judgment Fund Distribution (Plan), the estates of certain deceased Tribal members shall receive payments. This Statute describes how such payment shall be made to such estates.

(Source: WOS 1999006, May 23, 1999, Section I)

7.1b02 DISTRIBUTION

A. In the event that a Tribal member who is eligible to receive a payment under the Plan should die before the funds are distributed, that individual's payment shall be distributed to his/her heirs at law. The Trust Fund Board may request a copy of the individual's death certificate or other proof of the date of death to verify the individual's eligibility for his/her shares.

B. If such individual had a will at the time of his/her death, such individual's heirs and the share each heir is entitled to, shall be determined under that will.

C. If no will was present at the time of his/her death, the shares shall be distributed to any surviving spouse, or, in the absence of a surviving spouse, shall be distributed equally to any surviving children, or, in the absence of any surviving children, shall be distributed to surviving parents, or, in the absence of surviving spouse, children, or parents, in equal shares to surviving siblings, or, in the absence of surviving spouse, children, parents, or siblings, shall revert to the Tribe. In all cases, an individual's heirs shall be determined by a court of competent jurisdiction.

(Source: WOS 1999006, May 23, 1999, Section II)

Chapter 2. Trust Fund Board

7.201 SHORT TITLE, DEFINITIONS AND PURPOSE

A. Short Title. This Statute may by cited as the "Trust Fund Board Act." This Statute repeals and replaces Waganakising Odawak Statute 1998013.

B. Definitions.

1. "Plan" means the Plan for the Use of the Little Traverse Bay Bands of Odawa Indians Judgment Fund Distribution, being Waganakising Statute 1998007, as amended.

2. "Trust Funds" means the Land Claims Distribution Trust Fund and the Minor, Legal Incompetent and Incarcerated Person's Trust Fund, and their successor funds created under the Plan. Initially, the Minor Legal Incompetent and Incarcerated Person's Trust Fund will consist of nineteen (19) segregated accounts, one of which will be closed annually as provided for in this Statute.

3. "Board" means the Trust Fund Board created under this Statute.

4. "Tribal Government Trust Fund Non-expendable" means a Tribal trust fund to be administered by the Board, from which principal may not be spent, created exclusively from funds separate and apart from those received by the Tribe under the Michigan Indian Lands Claims Settlement Act, Public Law 105-143.

5. "Tribal Government Trust Fund Expendable" means a Tribal trust fund to be administered by the Board, from which principal may be spent, created exclusively from funds separate and apart from those received by the Tribe under the Michigan Indian Lands Claims Settlement Act, Public Law 105-143.

6. "Secretary" means the Secretary of the United States Department of the Interior.

C. Purpose. The "Plan for the Use of the Little Traverse Bay Bands of Odawa Indians Judgment Fund Distribution" mandates the creation of the Trust Fund Board to maintain and manage the Trust Funds created under the Plan, and issue the Share Certificates described in the Plan. This Statute creates the Board and defines its composition, terms, duties and functions.

(Source: WOS 1999011, August 22, 1999, Section I**)**

7.202 CREATION OF TRUST FUND BOARD

A. **Creation of Trust Fund Board**. The Tribal Council hereby creates the Trust Fund Board, which shall consist of five (5) Tribal members at least eighteen (18) years of age appointed by the Tribal Council. No member of the Tribal Council shall serve on the Trust Fund Board.

B. Qualifications. No person can be appointed to the Board who has been convicted of a felony in tribal, state, or federal court within seven (7) years prior to the date of appointment. The Tribal Council shall require background checks of potential appointees prior to finalizing appointments.

C. Term and compensation. Members of the Board shall be appointed to serve for four (4) year terms. Members may be reappointed for additional terms without limitation. To stagger terms, when the Tribal Council makes initial appointments, two people shall be appointed to two (2) year terms, and three people shall be appointed to four (4) year terms. All appointments thereafter shall be for four (4) year terms. One of the Board members shall be elected by the Board to serve as Chairperson for a one (1)

year term. There shall be no limit on re-election as long as the Chairperson remains on the Board. The Tribal Council may authorize compensation to be paid to members of the Board. This compensation shall be considered a cost to be charged against the current earnings of the Trust Funds.

D. Oath of Office. Upon appointment, the Tribal Court shall administer the oath of office to the members of the Board, which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and fiduciary responsibilities set forth in this Statute.

E. Vacancies. In the event a vacancy occurs in the Board, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office.

F. Removal. Board members may be removed for the reasons, and following the procedures set out in the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 1997005), or such successor statute as the Tribal Council may enact.

G. Application of Commissions Statute. All provisions of the Commissions, Boards and Committees Procedures Statute (Waganakising Odawak Statute 1998012) not inconsistent with this Statute apply to the Board.

(Source: WOS 1999011, August 22, 1999, Section II; WOS 1998012 referenced in subsection G was repealed by WOS 2000-08, June 4, 2000; the revised Commissions, Boards and Committees Statute was enacted on September 8, 2002 as WOS 2002-05)

7.203 DUTIES OF THE TRUST FUND BOARD

The Trust Fund Board shall have the following powers, duties, and functions:

A. The Board shall devise and draft rules and regulations governing the Board, including, but not limited to, investment, certificate creation, bearer responsibility, redemption and disbursement. The Board shall submit these drafts and any subsequent amendments to the Tribal Council for review and approval.

B. The Board shall administer the Trust Funds created under the Plan, which shall consist solely of funds distributed to the Tribe pursuant to the Michigan Indian Land Claims Settlement Act, Public Law 105-143 and the Plan prepared and approved under the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. §1403(b)) and interest and other investment income earned thereon. The Trust Funds shall be audited at least once during each calendar year by an independent certified public accountant that shall prepare a report on the results of such audit. The full report shall be reasonably available for inspection by the members of LTBB, and a financial statement shall be mailed annually to each adult member at their last known address. Payment for audit services shall be made from the current income accounts of the Trust Funds and charged against the earnings of the fiscal year in which the payment becomes due. Provided, that any contracts for professional services shall provide that payment shall only be made out of income from the Trust Funds, and not from principal.

C. The Board may retain or hire a professional trust manager or company and may pay the prevailing market rate for such services. Such payment for services shall be made from the current income accounts of the Trust Funds and charged against the earnings of the fiscal year in which the payment becomes due. Provided, that any contracts for professional services shall provide that payment shall only be made out of income from the Trust Funds, and not from principal. The Trust Fund Board shall obtain written qualifications of the potential trust fund manager or company before retention. The Trust Fund Board shall conduct such research and require such background checks, as it deems necessary to assess the qualifications and suitability of the potential trust fund manager or company.

D. Investment Strategy.

1. The Trust Fund Board shall develop an overall prudent investment policy to provide for consistent long-term growth of capital without undue exposure to risk.

2. Allowable funds must be legal investments, which may include, but not be limited to:

a. Bonds, bills, or notes of the United States; obligations, the principal and interest of which are fully guaranteed by the United States, or obligations of States or Tribes.

b. Certificates of deposit issued by a tribal, state, or national bank organized and authorized to operate as a bank.

c. Commercial paper rated prime at the time of purchase.

d. Publicly traded stock and or bonds as well as other federally regulated marketable securities.

3. The Trust Fund Board is authorized to designate depositories for the Trust Funds and any successor funds and to determine that the funds are invested appropriately.

4. The Trust Fund Board is prohibited from using or allowing the Trust Funds and their successor fund investments to be used as collateral or guaranty against any form of debt secured in the name of the Tribe or Tribal entities. Furthermore, the Tribal Council or any other Tribal governmental entity is prohibited from using the Trust Funds and their successor fund investments as collateral or guaranty against any form of debt secured in the name of the Tribe or Tribal entities.

5. No person or entity can borrow funds from the Trust Funds and their successor fund investments, be it the Trust Fund Board, other Tribal entity, or a non-Tribal entity.

E. Initial Tribal Investment. The initial Tribal investment will consist of twenty per cent (20%) of the total amount of the distribution from the Federal Government. Up to one hundred thousand dollars ($100,000.00) of this amount is authorized to be spent to pay costs associated with the initial Share Certificate issuance and redemption for a one-year period. After the first year, all costs of maintaining and redeeming Share Certificates shall be considered costs charged against the earning of the Trust Funds.

F. Share Certificates.

1. The Board will create Share Certificates. The face value of each Share Certificate shall be calculated by the following two steps:

a. By dividing 80 % of the total dollar amount of the distribution from the United States on the date of such distribution by the number of Tribal members who are eligible to participate in the distribution under section 3(g) [WOTC 7.103(G)] of the Plan, and

b. This amount will then be divided by two to determine the amount of each Share Certificate. The estimated value of each Share Certificate is $2,000 but the exact amount will depend on the exact amount of the distribution and number of members eligible to participate in the distribution. Each eligible member will receive two Share Certificates, which added together will be worth approximately $4,000.

2. Each eligible member will have the option of immediately redeeming one or both of their Share Certificates, or leaving one or both of their Share Certificates in the Trust Fund. Share Certificates are redeemable at no more than face value unless they are left in the Trust Fund for ten years or until the Trust Fund reaches the value of the total amount of the original distribution from the United States, at which point each unredeemed Share Certificate will be worth $500 more than its original face value.

3. The Board will take all necessary technological and other measures to ensure the integrity of the Share Certificates so they cannot be duplicated, copied, altered, or forged.

G. Tribal Government Trust Fund. The Board shall administer two additional trusts funds, the Tribal Government Trust Fund Non-Expendable, and the Tribal Governmental Trust Fund Expendable, the principal of which shall be derived from Tribal gaming and other economic enterprises, grants, donations and bequests. No portion of the principal of these funds shall ever be derived from monies received by the Tribe under the Michigan Indian Lands Claims Settlement Act, Public Law 105-143, or any income generated therefrom. The Trust Fund Board or its financial advisor shall consult with the Tribal Council to determine the amounts to be invested, as determined by the Tribal Council, in each of the Tribal Government Trust Funds. The investment strategy shall be the same as set out in Section III (D) [WOTC 7.203(D)].

1. Tribal Government Trust Fund Non-expendable. Each year up to 5% of the interest may be spent on administration of the Fund. At least 10% of the interest shall be re-invested.

2. Tribal Government Trust Fund Expendable. Each year up to 5% of the interest may be spent on administration of the Fund. Any interest not distributed shall be re-invested in the Fund.

3. The remaining interest from both funds shall be distributed as follows:

a. Up to 50% may be spent on programs for the general Tribal benefit, including land acquisition or defense of treaty rights.

b. Up to 50% may be distributed through in house grants for the benefit of elders and youth programs. In the event that funding shortages threaten basic government operation and services the allowable expenditures may first be used to cover such shortfalls.

H. Minor and Incarcerated Person's Trust Fund

1. The Board shall establish a separate Trust Fund with segregated amounts equal to each minor and incarcerated share. The following types of investment are permitted: Bonds, Bills or notes of the United States, Bankers acceptance, Commercial Paper that is rated prime at the time of purchase, Certificates of Deposit that are issued by a bank with assets greater than one billion dollars.

2. Each year one of the 19 segregated accounts of the Minor and Incarcerated Trust Fund shall be closed. This amount shall be transferred to the Land Claims Distribution Trust Fund. Starting January 1, 2002, eligible recipients who turn eighteen may redeem their share certificates based on the face value of the share certificates plus interest accruing until the date of their eighteenth birthday. Starting January 1, 2002, eligible recipients who are released from incarceration may redeem their share certificates based on the face value of the share certificates plus interest accruing until the date of their release. Eligible recipients who turn eighteen or are released from incarceration may also elect to leave one or both of their share certificates invested in the Land Claims Distribution Trust Fund in accordance with section III (F)(2) of this Statute.

I. New Trust Fund

1. Upon the accumulation of the original principal pursuant to subsection (d) of the Plan [WOTC 7.103(D)], the Land Claims Distribution Fund shall become the Odawa Perpetuation Fund, to be managed by the Board. Not more than 85% of the interest form the investment of the Trust Fund shall be distributed according to the specific formula described herein, while no more than 5% of the interest each year shall be spent on the administration of the Trust Fund. At least 10% of the interest each year shall be re-invested in the Trust Fund.

2. Children born to members after the date of Secretarial approval of the Plan who are themselves enrolled members in the Tribe shall receive a one time per capita payment of an amount equal to the original distributed two shares upon reaching the age of eighteen. Due to the effects of inflation, the Board may request that the Tribal Council increase this amount.

J. No Secretarial Responsibility for Trust Fund

The Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the Lands Claims Distribution Trust Fund of the Odawa Perpetuation Fund.

(Source: WOS 1999011, August 22, 1999, Section III; section H(2) amended by WOS 2001-07, April 22, 2001)

7.204 MEETINGS, QUORUM, VOTING AND CONFLICT OF INTEREST

A. Meetings. The Board shall meet at least quarterly and as often as necessary to properly carry out its duties and functions. All Board meetings shall be open to the Tribal membership and any other persons that the Tribal Council may designate to attend.

B. Voting and Quorum. Actions of the Board shall be decided by a majority vote of those present at the meeting. The Chairperson is entitled to vote on all matters before the Board. A quorum shall consist of three (3) members including the Chairperson. Provided, an action may be ratified by non-attending members. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax, and all ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Board meeting.

C. Conflict of Interest. Board members shall not participate in any decisions in which they have a direct financial interest, other than interests that they share in common with the Tribal membership.

D. Bonding. Each Board member shall be bonded and carry errors and omissions insurance in amounts adequate to safeguard the financial interests of LTBB and its members in the Trust Funds and their earnings. The costs of obtaining such bonds and insurance shall be considered costs charged against the earnings of the Trust Funds.

(Source: WOS 1999011, August 22, 1999, Section IV)

7.205 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of or governing the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, paragraph, subsection or section 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.
(Source: WOS 1999011, August 22, 1999, Section V)

7.206 EFFECTIVE DATE

This Statute shall take effect immediately upon enactment [August 22, 1999].

(Source: WOS 1999011, August 22, 1999, Section VI)

Chapter 3. Economic Development Commission

7.301 SHORT TITLE AND PURPOSE

A. **Short Title**. This Statute may be cited as the "Economic Development Commission Act."

B. **Purpose**. The purpose of this Statute is to set up an economic development commission that will promote the development and management of Tribal non-gaming economic enterprises. Such enterprises will aid the Tribe in achieving economic independence to promote the health, education and welfare of its members.

(Source: WOS 1996007, November 17, 1996, Section I)

7.302 CREATION OF ECONOMIC DEVELOPMENT COMMISSION

A. **Creation of Commission**. The Tribal Council hereby creates the Economic Development Commission, which shall consist of seven (7) Tribal members at least eighteen years of age appointed by the Tribal Council. At least one (1) and no more than two (2) Tribal Council members shall be appointed to the Commission.

B. **Term and compensation**. Members of the Economic Development Commission shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, three (3) people shall be appointed to two (2) year terms, and four (4) people shall be appointed to three (3) year terms. All appointments thereafter shall be for three (3) year terms. One of the Commission members shall be appointed by the Commission to serve as Chairperson for a one-year term. There shall be no limit on reappointment as long as the chairperson remains on the Commission. The Tribal Council may determine and authorize compensation to be paid to members of the Commission based upon the time required to be expended upon Commission duties and the qualifications of the appointed Commissioners.

C. **Oath of Office**. As soon as practical after appointment, the Tribal Court shall administer the oath of office to the members of the Economic Development Commission which oath of office shall include a commitment to uphold the Constitution and Laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this Statute.

D. **Vacancies**. In the event a vacancy occurs in the Economic Development Commission, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office in consultation with the Commission.

E. **Removal**. Commissioners may only be removed in accordance with the Tribal statute governing such removal.

(Source: WOS 1996007, November 17, 1996, Section II; subsection C amended by WOS 2000-12, October 22, 2000)

7.303 DUTIES OF THE ECONOMIC DEVELOPMENT COMMISSION

The Economic Development Commission shall have the following duties excluding any matters directly relating to gaming:

A. Assess economic development proposals brought to the Tribe from outside parties or entities, and from Tribal members and entities, and present such assessments to the Tribal Council.

B. Develop proposals for Tribal enterprises and activities that will enhance the Tribal economy, or provide needed services, employment or training to Tribal members, and present such proposals to the Tribal Council.

C. Coordinate its activities with the Tribal Planning Department.

D. Engage in further activities as directed by the Tribal Council.

(Source: WOS 1996007, November 17, 1996, Section III)

7.304 STAFFING

Tribal Council may direct the Tribal Administrator to assign or hire staff to assist the Commission.

(Source: WOS 1996007, November 17, 1996, Section IV)

7.305 MEETINGS, VOTING, CONFLICTS OF INTEREST, CONFIDENTIAL RECORDS

A. Meetings. The Economic Development Commission shall meet at least one time per month. Provided, the Commission may on its own decide to convene as often as necessary to carry out its duties. The Economic Development Commission may meet in closed session when considering potential contracts, business ventures, or land acquisitions when it deems that general public knowledge of its discussions at a certain time could hinder the potential of the projects being considered.

B. Voting. Actions of the Economic Development Commission shall be decided by a majority vote of those present at the meeting. The Chair is entitled to vote on all matters before the Commission. A quorum shall consist of a simple majority of the number of commissioners notwithstanding vacancies. A meeting may not be called to order without a quorum present and no official business may be conducted absent a quorum.

C. Conflicts of Interest. Commission members who have a direct financial interest in, or have immediate family members with a direct financial interest in, a potential economic venture shall not vote on any action relating to such potential venture.

D. Confidential Records. All records of the Commission involving specific economic development matters shall be kept strictly confidential until directed by the Tribal Council.

(Source: WOS 1996007, November 17, 1996, Section V)

7.306 SAVINGS CLAUSE

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

(Source: WOS 1996007, November 17, 1996, Section VI; subsection B modified by WOS 2003-03, April 27, 2003)

Chapter 4. Gaming Regulation

[The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* requires approval of tribal Gaming Regulatory Statutes (in IGRA called "Gaming Ordinance") by the National Indian Gaming Commission. The following Waganakising Odawak Statute 2001-02, enacted February 18, 2001, was approved by the NIGC on May 18, 2001]

7.401 PURPOSE

The Tribal Council of the Little Traverse Bay Bands of Odawa Indians, enacts this Statute pursuant to the Tribal Constitution, Article VII sections m and n [WOTC 1.108 (A)(13) and (14)] which authorizes and directs the Tribal Council "To manage any and all economic affairs and enterprises of the Bands and to engage in any business not contrary to federal law . . ." and "To establish and delegate to subordinate boards, organizations, cooperative associations, Bands officers, committees, delegates, or other Bands groups, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power or to cancel any delegation." The Tribal Council hereby ordains and establishes this Ordinance for the purpose of authorizing and comprehensively and preemptively regulating the terms and conditions under which Class II and Class III gaming may be conducted on the lands of the Tribe. This Ordinance rescinds and replaces the Gaming Regulatory Ordinance enacted on March 3, 1996, as amended, being Waganakising Odawak Statute 1996003.

(Source: WOS 2001-02, February 18, 2001, Section I)

7.402 DEFINITIONS

A. "Gaming Regulatory Commission" or "Commission" means the entity created under Section X [WOTC 7.410] of this Statute.

C. "Key employee" means

(a) A person who performs one or more of the following functions:
(1) Bingo Caller;

(2) Counting Room Supervisor
(3) Chief of Security
(4) Custodian of gaming supplies or cash;
(5) Floor Manager
(6) Pit Boss
(7) Dealer
(8) Croupier
(9) Approver of Credit; or
(10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

C. "Primary management official" means

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or
(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

D. The terms "Statute" and "Ordinance" are synonymous when used herein.

E. "Tribal Council" means the elected governing body of the Little Traverse Bay Bands of Odawa Indians called the Board of Directors in the Tribe's Constitution and Bylaws.

G. "Tribe" means the Little Traverse Bay Bands of Odawa Indians membership and collective federally recognized tribal entity.

(Source: WOS 2001-02, February 18, 2001, Section II)

7.403 GAMING AUTHORIZED

A. Class II gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703(7)(A) ("IGRA") and by regulations lawfully promulgated by the National Indian Gaming Commission ("NIGC") that now or hereafter may be in effect is hereby authorized.

B. Class III gaming as defined in IGRA, 25 U.S.C. Section 2703(8) and by regulations promulgated by the NIGC that now or hereafter may be in effect is hereby authorized, provided such gaming is also authorized by and consistent with a Tribal-State Compact that has been approved by the Secretary of the Interior and is in effect, or otherwise has been authorized by the Secretary of the Interior or federal law.

(Source: WOS 2001-02, February 18, 2001, Section III)

7.404 OWNERSHIP OF GAMING FACILITIES AND/OR ENTERPRISES

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming facilities and/or enterprise(s) authorized by this ordinance.

(Source: WOS 2001-02, February 18, 2001, Section IV)

7.405 USE OF GAMING REVENUE

A. Except as specifically authorized pursuant to Subsection B of this Section, net revenues from Class II and Class III gaming shall be used only for the following purposes:

1) to fund Tribal government operations and programs;
2) provide for the general welfare of the Tribe and its members;
3) promote Tribal economic development;
4) donate to charitable organizations; or
5) help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to Tribal members, it shall authorize such payments only in conformity with a plan submitted to and approved by the Secretary of the Interior pursuant to applicable law.

(Source: WOS 2001-02, February 18, 2001, Section V)

7.406 AUDIT

A. The Tribal Council, through official action or appropriate delegation, shall cause to be conducted at least annually an independent audit of all gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission, and to such other agencies as may be required by the terms and conditions of any Class III compact or other document authorizing Class III gaming.

B. All gaming-related contracts that result in the purchase of supplies, services, or concessions in excess of $25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in Subsection A above.

(Source: WOS 2001-02, February 18, 2001, Section VI)

7.407 PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

Class II and Class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

(Source: WOS 2001-02, February 18, 2001, Section VII)

7.408 LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

The Gaming Regulatory Commission shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class II and/or Class III gaming enterprise. The Gaming Regulatory Commission has the authority to determine additional job classifications and/or positions as ones, which will require licensure. The Gaming Regulatory Commission has to demonstrate, subject to the review and approval of the Tribal Council, that such additional determination is reasonable and prudent and in the best interest of the Tribal membership.

A. Application Forms

1. The following notice shall be placed on the application form of a key employee or a primary management official before that form is filled out by an applicant:

> In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions, or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.
>
> The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

2. Existing key employees and primary management officials shall be notified in writing that they shall either:

   a. Complete a new application form that contains a Privacy Act notice; or

   b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

3. The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant:

> A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (18 U.S.C. §1001).

4. Existing key employees and primary management officials shall be notified that they shall either:

a. Complete a new application form that contains a notice regarding false statements; or

b. Sign a statement that contains the notice regarding false statements.

B. Background Investigations

1. The Gaming Regulatory Commission shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in 25 C.F.R. parts 556 and 558.

2. The Gaming Regulatory Commission shall conduct an investigation sufficient to make a determination under Subsection C. below. In conducting a background investigation, the Gaming Regulatory Commission or its agent(s) shall promise to keep confidential the identity of each person interviewed in the course of the investigation. The Commission shall utilize the Tribe's Law Enforcement Department to take fingerprints and conduct criminal history checks utilizing the Law Enforcement Information Network. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

C. Eligibility Determination

The Gaming Regulatory Commission shall review an applicant's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Gaming Regulatory Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the gaming operation shall not employ that person in a key employee or primary management official position.

D. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

1. When a key employee or primary management official begins work at a gaming operation authorized by this Ordinance, the Gaming Regulatory Commission shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in Subsection C of this Section.

2. The Gaming Regulatory Commission shall forward the report referred to in Subsection E of this Section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this Ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who after 90 days does not have a license pursuant to section VIII F [WOTC 7.409(F)] . of this Ordinance.

E. Report to the National Indian Gaming Commission

1. Pursuant to the procedures set out in Subsection D of this Section, the Gaming Regulatory Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

a. Steps taken in conducting the background investigation;

b. Results obtained;

c. Conclusions reached; and

d. The bases for those conclusions.

2. The Gaming Regulatory Commission shall submit, with the report, a copy of the eligibility determination made under Subsection C of this Section.

3. If a license is not issued to an applicant, the Gaming Regulatory Commission:

a. Shall notify the National Indian Gaming Commission; and

b. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

4. With respect to key employees and primary management officials, the Gaming Regulatory Commission shall retain applications for employment and reports (if any) of background

investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination or denial of employment.

F. Granting a Gaming License

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Gaming Regulatory Commission that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Gaming Regulatory Commission has provided an application and investigative report to the National Indian Gaming Commission, the Gaming Regulatory Commission may issue a license to such applicant.

2. The Gaming Regulatory Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under Subsection G.1. of this Section until the Chairman of the National Indian Gaming Commission receives the additional information.

3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Gaming Regulatory Commission with a statement itemizing its objection(s) to the issuance of a license to a key employee or to a primary management official for whom the Gaming Regulatory Commission has provided an application and investigative report to the National Indian Gaming Commission, the Gaming Regulatory Commission shall reconsider the application, taking into account the objection(s) itemized by the National Indian Gaming Commission. The Gaming Regulatory Commission shall make the final decision whether to issue a license to such applicant.

4. If the NIGC provides no response within the thirty (30) day period described above, the Gaming Regulatory Commission may issue a license based on its own findings on a temporary basis contingent on the contents of a final report from the NIGC.

G. License Suspension

1. If, after the issuance of a gaming license, the Gaming Regulatory Commission receives from the National Indian Gaming Commission, or from its own sources, reliable information indicating that a key employee or a primary management official is not eligible for employment under Subsection C above, the Gaming Regulatory Commission shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

2. The Gaming Regulatory Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

3. After a revocation hearing, the Gaming Regulatory Commission shall decide whether to revoke or to reinstate a gaming license. The Gaming Regulatory Commission shall notify the National Indian Gaming Commission of its decision.

(Source: WOS 2001-02, February 18, 2001, Section VIII)

7.409 LICENSING OF GAMING PLACES, FACILITIES AND LOCATIONS

A separate license shall be required for each place, facility, or location on Indian lands where Class II and/or Class III gaming is to be conducted.

(Source: WOS 2001-02, February 18, 2001, Section IX)

7.410 CREATION OF GAMING REGULATORY COMMISSION

A. There is hereby created the Gaming Regulatory Commission, which shall consist of three Tribal members who would themselves qualify for licensing under this Ordinance.

B. The members of the Gaming Regulatory Commission shall be appointed by the Tribal Council as follows:

1. Initial appointment. Immediately upon passage of this ordinance, the Tribal Council may publicize, to the extent reasonable and practical, that it will be appointing a three (3) member Gaming Regulatory Commission seeking both applicants for appointment and nominations of individuals to be appointed. At the next regularly scheduled meeting, or as soon thereafter as the Tribal Council identifies qualified Tribal members willing to serve on the Gaming Regulatory Commission, the Tribal Council shall appoint three (3) members to the Gaming Regulatory Commission.

2. Term and compensation. Members of the Gaming Regulatory Commission shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, one person shall be appointed to a one (1) year term, one person shall be appointed to a two (2) year term, and one person shall be appointed to a three (3) year term. All appointments thereafter shall be for three (3) year terms. There shall be a Chairperson of the Gaming Regulatory Commission, who shall be selected by the members of the Commission from the Commission members for a one-year term.

3. Subject to the availability of funding and a budget approved by the Tribal Council, members of the Gaming Regulatory Commission may receive a stipend, mileage and expense reimbursement for attendance at properly called meetings at which a quorum is present.

4. Future Appointments. At least two (2) weeks prior to any meeting during which appointments to the Gaming Regulatory Commission will be made, the Tribal Council shall publicize that it will be making such appointments and shall seek applicants for appointment and nominations of individuals to be appointed.

5. Oath of Office. As soon as possible after appointment, the Tribal Court, by any member of the Judiciary or the Court Administrator, shall administer the oath of office to the members of the Gaming Regulatory Commission which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this ordinance.

6. In the event a vacancy occurs in the Gaming Regulatory Commission, by virtue of death, resignation or removal, the vacancy shall be filled in the following manner:

a. If one year or less remains of the term of office which has become vacant, the Tribal Council shall appoint a qualified member of the Little Traverse Bay Bands of Odawa Indians to fill the remaining term of office without seeking applications or nominations therefore.

b. If more than one year remains of the term of office, which has become vacant, the Tribal Council shall comply with the requirements of Section X(B)(3) [WOTC 7.410(B)(3)] prior to appointing a qualified member of the Little Traverse Bay Bands of Odawa Indians to fill the remaining term of office.

c. To ensure that the Commission remains functional, the Tribal Council may make emergency temporary appointments for 60-day increments. Council members who would themselves qualify for licensing under this Ordinance may be appointed to such emergency interim positions.

7. Removal or Discipline. Members of the Gaming Regulatory Commission shall not be removed during their terms of office except for misconduct, neglect of duties or other acts that would render such persons unqualified for licensure hereunder. The procedure for removal shall be as follows:

a. The Chairman of the Little Traverse Bay Bands of Odawa Indians shall call a special meeting of the Tribal Council to deal with a request to remove the member or place the item on the agenda of the next regularly scheduled Council meeting in response to any one of the following:

1. The Tribal Council by majority vote determines that there is cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

2. The Tribal Council receives a petition signed by at least fifty (50) members of the Little Traverse Bay Bands of Odawa Indians alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

3. The Tribal Council receives a petition signed by two members of the Gaming Regulatory Commission alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section.

b. In the event that the Tribal Council receives a petition under this section, or determines itself that there may be grounds for removal the Council shall:

1. Submit the petition to the Election Board for verification that the petition contains a sufficient number of valid signatures;

2. If the Election Board finds the petition to contain a sufficient number of valid signatures, the Tribal Council shall submit the petition to the Tribal Court to determine if the charges, if proven true, would constitute grounds for removal;

3. In the event that Council itself has determined that there is cause to suspect that a member may be subject to removal, Council shall submit its reasons in writing to the Tribal Court to determine if the charges, if proven true, would constitute grounds for removal.

4. If the Tribal Court determines that the charges, if proven true, would constitute grounds for removal of a Commissioner from his or her appointed position, the Tribal Council shall set a date for hearing the charges on the petition and shall provide notice to the member of the Gaming Regulatory Commission whose removal is being sought.

c. Notice to the member whose removal is being sought shall be served no later than two (2) weeks prior to the date set for the hearing, shall include the date, time and location of the hearing, shall attach a full and complete copy of a statement of the Tribal Council or the petition seeking removal, and shall attach a copy of the rules to be followed during the hearing. Upon good cause shown, the Tribal Council may postpone the hearing to a later date. Notice shall also advise the recipient of the availability of Tribal Council power to require the presence of any witness or the production of any document which the recipient deems necessary in order to attempt to defend against the charges contained in the petition, and the right of the commissioner to have one attorney or Tribal member advocate present to represent and assist the commissioner at the hearing.

d. The Tribal Council shall also provide copies of the notice to the other members of the Gaming Regulatory Commission, and to the member of the Little Traverse Bay Bands of Odawa Indians who presented the petition, advising each of them of the opportunity to appear and to present evidence, either in support of the charges against the member of the Gaming Regulatory Commission whose removal is sought or in support of the defense of such member. The presenter of the petition or a person who signed the petition designated by the presenter shall have the ability to request the Tribal Council to require the presence of witnesses or production of documents deemed necessary to support the charges contained in the petition.

e. The Tribal Council shall preside at the hearing of the charges contained in any such petition and shall allow as much time as necessary for the testimony of witnesses and presentation of evidence in support of the charges, as much time as necessary for the testimony of witnesses and presentation of evidence to refute the charges, and such time as the Tribal Council deems appropriate for summary statements and arguments. At any time, the Tribal Council may recess the hearing until a later time certain. At the request of the member whose removal is at issue, the hearing may be held in executive session. The Tribal Council also may elect to receive in executive session any evidence public disclosure of which might compromise the proprietary interests of the Tribe or any on-going law-enforcement investigation.

f. Upon the conclusion of the presentation of evidence and of summary statements and arguments, the Tribal Council shall deliberate in executive session and shall either dismiss the petition, remove the member charged in the petition from the Gaming Regulatory Commission, or take such other disciplinary action as it deems appropriate short of removal, upon such findings of fact as may be appropriate. The decision of the Tribal Council shall be final, and no appeal to any other tribunal shall be available.

g. Upon conclusion of the hearing, any information disclosing possible criminal activity shall be promptly reported to Tribal Law Enforcement.

C. The Gaming Regulatory Commission shall be authorized and hereby is directed to promulgate detailed and comprehensive regulations for the implementation and enforcement of this Ordinance. Provided, the Tribal Council retains the right to approve and/or modify such regulations. Said regulations shall describe and establish the rules for each specific Class II and Class III gaming activity to be authorized to be conducted, and no form of such gaming may be conducted without prior approval by the Gaming Regulatory Commission. The regulations may contain an appellate procedure whereby appeals of licensing decisions are taken to the Tribal Court or such other appellate body as established therein.

D. Subject to the ultimate authority of the Tribal Council under Article VII, sections (m) and (n) [WOTC 1.108 (A)(13) and (14)] of the Constitution, the Tribal Council delegates to the Gaming Regulatory Commission authority to monitor compliance with this Ordinance and its Regulations, and to investigate and act to prevent any violation(s) thereof. Any investigation disclosing criminal violations shall be promptly reported to Tribal Law Enforcement.

E. Subject to the approval by Tribal Council action and the appropriation of funds therefore, the Gaming Regulatory Commission shall be authorized to employ such staff and/or consultants as reasonably may be required to fulfill its responsibilities under this Ordinance. Compensation of Commission employees shall be limited to that which is comparable to compensation paid to persons performing similar duties in other Tribal governmental departments. Such employees are not employees of the Enterprise, but of the Tribal Government.

F. Subject to the approval by Tribal Council action, the Gaming Regulatory Commission hereby is authorized to establish and impose upon gaming facilities, permittees, applicants and licensees such application, permit and license fees as may be necessary to fully reimburse the Tribe for its actual costs of operating the Gaming Regulatory Commission, enforcing this Ordinance and Gaming Regulatory Commission regulations, processing of licensing and permit applications, and otherwise fulfilling its regulatory responsibilities under IGRA. All such fees shall be collected by the Gaming Regulatory Commission and hereby are continuously appropriated solely for the purposes enumerated in this Subsection.

G. Failure to timely pay any gaming-related fee imposed by the Tribal Council or the Gaming Regulatory Commission, or failure to comply with any Commission regulation or order, or any other violation of this Ordinance or the terms of any Class III gaming compact to which the Tribe is a party authorizing and regulating gaming, shall be grounds for suspension or revocation of any license or permit issued pursuant to this Ordinance, exclusion of any non-member of the Tribe from the Tribe's

Gaming Enterprise, and imposition of such other sanctions as the Gaming Regulatory Commission may deem appropriate.

(Source: WOS 2001-02, February 18, 2001, Section X)

7.411 RESOLUTION OF DISPUTES BETWEEN THE GAMING PUBLIC AND TRIBE OR MANAGEMENT OFFICIAL

Disputes between the gaming public and Tribe or management official shall be resolved in accordance with procedures adopted by the Gaming Regulatory Commission. Such procedures shall at a minimum include: 1. The aggrieved member of the gaming public shall first bring his/her complaint either verbally or in writing to staff of the gaming facility. 2. If not satisfied with staff response, the complaining party may file a written complaint with the Gaming Regulatory Commission, which shall take appropriate action on the complaint within thirty (30) days of submission.

(Source: WOS 2001-02, February 18, 2001, Section XI)

7.412 SAVINGS CLAUSE

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

(Source: WOS 2001-02, February 18, 2001, Section XII)

7.413 EFFECTIVE DATE

This Statute takes effect upon approval of the Chairman of the National Indian Gaming Commission [May 18, 2001], or when considered approved by operation of applicable Federal law and/or regulation.

(Source: WOS 2001-02, February 18, 2001, Section XIII)

Chapter 5. Gaming Board of Directors

7.501 PREAMBLE

A. Purpose

1. The Little Traverse Bay Bands of Odawa Indians (LTBB) seeks to promote the health and welfare of its members in a way that respects, preserves and protects Tribal traditions, values and culture. Economic development is necessary to promote the well being of the Tribe and its members. This Statute establishes a Gaming Board of Directors to develop policies and procedures for the orderly and efficient operation of the Tribe's Gaming Enterprises and to oversee their operation. The Board of Directors is charged with maximizing the economic efficiency of the Gaming Enterprises while respecting Tribal traditions, values and culture.

2. This Statute repeals and replaces Waganakising Odawak Statute 2000-02, as amended by Waganakising Statutes 2001-12. The Gaming Board of Directors appointed under this Statute shall assume all legal obligations, including contracts, leases and subleases of the Gaming Administration serving under Waganakising Odawak Statute 2000-02.

(Source: WOS 2004-08, November 21, 2004, Section I)

7.502 DEFINITIONS

A. General Provisions

When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

B. Enterprises

"Enterprises" means the commercial enterprises of the Tribe authorized to engage in Gaming, and all ancillary commercial activities within the building(s) and other improvements purchased or constructed for the conduct of Gaming.

C. Gaming

"Gaming" means any game classified as "Class II" or "Class III" under the Indian Gaming Regulatory Act of October 17, 1988.

D. Gaming Operations

"Gaming Operations" means all business operations directly related to the conduct of Gaming.

E. Independent Auditor

"Independent Auditor" is the person or entity required under the LTBB Gaming Regulatory Statute, as amended.

F. Tribal Council

"Tribal Council" means the governing body of the Little Traverse Bay Bands of Odawa Indians.

G. Chief Financial Officer

"Chief Financial Officer" means the person employed by the Tribal Council to oversee all financial affairs of the Tribe.

(Source: WOS 2004-08, November 21, 2004, Section II)

7.503 COMPOSITION AND APPOINTMENT OF THE GAMING BOARD OF DIRECTORS

A. Composition and Function

The Gaming Board of Directors shall function as a Tribal Council entity with responsibility for carrying out the duties set out in this Statute. The Gaming Board of Directors shall consist of five (5) persons appointed by the Tribal Council who meet the eligibility requirements set out in subsection (B) of this section. The terms of the members of the Gaming Administration serving under Waganakising Odawak Statute 2000-02 shall expire upon appointment and swearing in of the Gaming Board of Directors under this Statute pursuant to subsection C of this section.

B. Eligibility

To serve on the Gaming Board of Directors a person must meet all of the following criteria:

1. A person must be an enrolled member of the Tribe at least twenty-one (21) years of age;

2. The appointee must be a person, who would qualify for licensing under the Tribe's Gaming Regulatory Ordinance;

3. No person can serve on the Gaming Board of Directors who is employed in Gaming operations of LTBB; another federally recognized Indian tribe, or any other facility or enterprise conducting Gaming;

4. No person can serve on the Gaming Board of Directors, who has been convicted of a felony in tribal, state or federal court within seven (7) years prior to the date of the appointment;

5. No person can serve on the Gaming Board of Directors who is employed by the LTBB Tribal government or is an elected official of LTBB.

C. Appointment and Term

The Gaming Board of Directors is appointed by and serves at the pleasure of the Tribal Council. Appointments are done by a simple majority of a quorum. Removing a member of the Board of Directors within six years (6) of appointment requires an affirmative vote of at least five (5) of the seven (7) members of Tribal Council, or seven (7) of nine (9) in the event the Tribal Council increases in size under a new constitution.

(Source: WOS 2004-08, November 21, 2004, Section III)

7.504 POWERS, DUTIES AND FUNCTIONS OF GAMING BOARD OF DIRECTORS

A. Powers

The Gaming Board of Directors shall have the following powers in connection with the development, financing and oversight of the Enterprises:

1. To lease real property and structures, make improvements, and conduct maintenance, for the development and operation of the Enterprises;

2. To acquire, directly or by lease, all equipment, furnishings, fixtures, machinery, hardware, software, supplies and other personal property as may be necessary for the development and operation of the Enterprises;

3. To borrow funds for improvements, for the construction and/or renovation of such improvements or for the acquisition of such personal property as may be necessary for the development and operation of the Enterprises and to repay such funds, including to execute appropriate notes, leasehold or other mortgages, security agreements or other financing agreements as may be necessary to evidence the intent to repay such funds;

4. To employ a general manager of the Enterprises;

5. To employ an executive assistant;

6. When entering into contracts for up to $750,000 pursuant to the powers enumerated in this section, the Gaming Board of Directors is authorized to waive its common law immunity to suit in the Tribal Court of the Little Traverse Bay Bands of Odawa Indians, including the enforcement of Arbitration, to the specific limited extent specified in the contracts it negotiates that are essential to the operation of the Enterprises.

B. Duties

The Gaming Board of Directors shall have the authority and responsibility for developing, reviewing and approving policies and procedures for the orderly and efficient operation, management and maintenance of the Enterprises, including, but not limited to, the following:

1. Human resources and personnel management;

2. Bingo and other Class II Gaming operations;

3. Class III Gaming operations;

4. Preparation of annual budgeting and operating plan in conjunction with the General Manager and the Tribe's Chief Financial Officer;

5. Food and beverage service;

6. Marketing;

7. Security;

8. Entertainment;

9. Cash Management, which includes an annual plan for profit distributions to the Tribal government;

10. Maintenance; and

11. Transportation.

C. Functions

1. Standards. In developing, reviewing and approving general policies and procedures for the operation, management and maintenance of the Enterprises, the Gaming Board of Directors shall ensure that such policies and procedures are in accordance with the LTBB Constitution, Generally Accepted Accounting Principles, generally accepted business principles, minimum internal control standards, and are commercially reasonable while respecting Tribal traditions, values and culture.

2. Implementation. The policies and procedures developed by the Gaming Board of Directors will be implemented through the general manager employed by the Board of Directors. The Gaming Board of Directors will not be involved in the day-to-day management and supervision of the Enterprises but will review and evaluate the performance of the general manager and the overall performance of the Enterprises.

3. Reporting

a. The Gaming Board of Directors shall prepare, at a minimum, a quarterly management, discussion and analysis report for the Tribal Council, which shall include, but not be limited to, the quarterly financial report as prepared by the accounting department, along with a management discussion and analysis of the financial information. The operational plan shall be updated each quarter. The financial report shall include projected net revenues for not less than six (6) months in advance based on management's operational plan. The report should also include information regarding the

number of employees, employee turn over, number of members employed, number of members employed in management, requests for new development and or capital projects and any other information the Gaming Board of Directors feels is appropriate. These quarterly reports must be submitted to the Tribal Council within thirty (30) days after the end of each quarter.

b. The Tribal Council shall appoint the Independent Auditor to perform the annual independent financial audit and internal control audit required by the LTBB Gaming Regulatory Statute, the expense of which will be billed to the Enterprise. The Independent Auditor will present the audit report to the Tribal Council, the Gaming Board of Directors and the Gaming Regulatory Commission.

4. **Bank Accounts.** Upon notification of the Tribe's Chief Financial Officer the Gaming Board of Directors shall have the authority, by adopting resolution, to establish and maintain such bank accounts as may be necessary or convenient for the operation of the Enterprises.

5. **Budget.** Each year the Gaming Board of Directors in consultation with the Tribe's Chief Financial Officer, the gaming accounting department and the general manager shall adopt an annual budget and operating plan. The budget and operating plan will be provided to the Tribal Council. All expenses of the Gaming Board of Directors shall be kept in a separate budget approved by the Tribal Council.

6. The Tribe's Chief Financial Officer shall oversee and manage the accounting, finance, cage, credit and cash management of the casino through the casino controller and other directors and managers as appropriate. The cost of these departments shall be covered within the Enterprise budget and operating plans.

(Source: WOS 2004-08, November 21, 2004, Section IV)

7.505 MEETINGS AND PROCEDURES

A. Meetings

The Gaming Board of Directors shall meet at least monthly and as often as circumstances warrant. The Gaming Board of Directors shall make an annual report available to Tribal members at the annual Tribal Community meeting. The Gaming Board of Directors may meet in executive session as necessary to protect proprietary and other business related information. Notice of Gaming Board of Directors meetings shall be by forty-eight (48) hours written notice in advance to all Gaming Board of Directors members. Provided, in the event of an emergency, business may be conducted by telephone conference call and any action taken on such call shall be recorded in the minutes of the next regularly scheduled Board of Directors meeting. Diligent efforts shall be made to notify each Board of Directors member of the planned teleconference.

B. Quorum

A quorum of the Gaming Board of Directors shall consist of a majority of the sitting members.

(Source: WOS 2004-08, November 21, 2004, Section V)

7.506 TRIBAL COUNCIL OVERSIGHT OF GAMING BOARD OF DIRECTORS

A. The Tribal Council may review all action taken by the Gaming Board of Directors and may revoke or amend any such action.

B. In the absence of appropriate and timely action of the Gaming Board of Directors, the Tribal Council may adopt appropriate policies and procedures and take any other action necessary to promote the effective operation of the Tribe's Gaming Enterprises.

C. Tribal Council shall set the level of compensation for the Gaming Board of Directors.

(Source: WOS 2004-08, November 21, 2004, Section VI)

7.507 EMPLOYMENT WITH TRIBAL GAMING ENTERPRISES

A member of the Gaming Board of Directors shall not be employed in any position with the Tribal Gaming Enterprises for a period of forty-five (45) days, after leaving the Board of Directors.

(Source: WOS 2004-08, November 21, 2004, Section VII)

7.508 NEPOTISM

A. Two (2) or more members of the same immediate family shall not serve on the Gaming Board of Directors at the same time. Further, a person shall not serve on the Board of Directors if the general manager is an immediate family member. For purposes of this section immediate family means husband, wife, son, daughter, step-son, step-daughter, father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, child, step-child or a person whose relationship with the tribal member is similar to that of persons who are related by blood or marriage.

B. No Gaming Board of Directors member may participate in making any decision that involves a personal or financial interest of the Board member or a member of his or her immediate family unless such interest is held in common with the Tribe and its members.

(Source: WOS 2004-08, November 21, 2004, Section VIII)

7.509 SAVINGS CLAUSE

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

(Source: WOS 2004-08, November 21, 2004, Section IX)

7.510 EFFECTIVE DATE

This Statute shall take effect thirty days (30) from the date of enactment [November 21, 2004].

(Source: WOS 2004-08, November 21, 2004, Section X)

Chapter 6. Investment Policy

7.601 PURPOSE

It is the policy of the Little Traverse Bay Bands of Odawa Indians to invest its funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow needs of the Tribe and comply with any applicable federal laws or regulations regarding federal program monies received and administered by the Tribe.

(Source: WOS 2000-13, October 22, 2000, Section I)

7.602 DESIGNATION TO CARRY OUT POLICY

As soon as practicable after enactment of this Statute, and thereafter at the last regular Tribal Council meeting of each calendar year, the Council will designate either a properly qualified employee or outside firm to carry out the directives of this Policy.

(Source: WOS 2000-13, October 22, 2000, Section II)

7.603 FUNDS TO WHICH THIS POLICY APPLIES

This policy applies to all financial assets of LTBB including, but not limited to, funds derived through federally funded contracts and programs, such as Public Law 93-638 contract monies and Native American Housing Assistance Self Determination Act grants, and funds derived from LTBB's gaming enterprise. These assets are accounted for in the various bank accounts of LTBB, which currently include primary checking, discretionary checking and several checking accounts held at 1st Community Bank.

(Source: WOS 2000-13, October 22, 2000, Section III)

7.604 INVESTMENTS

A. **General Guidelines.** Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the

probable safety of their capital as well as the probable income to be derived. Any fees incurred in making investments shall be paid with income from such investments.

B. **Investment of Contract and grant monies and prohibition on co-mingling.** When making and administering investments under the authority of this Statute, funds received under a specific federal contract or grant, or from any other governmental or private funding source for specific purposes, must be individually invested and accounted for, and shall not be co-mingled with any other funds. Such funds must be invested in a manner that ensures their availability for expenditure as set out in the contract or grant documents or as determined by LTBB Tribal Administration. Short term guaranteed preservation of principal is essential for such funds. These funds will be invested in a manner that maximizes return within the absolute safety and time constraints, such as in money market accounts and certificates of deposit.

C. **Funds derived from the Enterprise and any other businesses or discretionary sources of Tribal income.** Discretionary funds of LTBB, including those derived from the Gaming Enterprise and any other sources of discretionary funding, shall be invested in a diversified manner designed to meet both the short and long-term financial needs of LTBB. The employee or outside firm designated under Section II of this Statute shall review the annual budget prepared by the Tribal Council and consult with the Tribal Chairman, Tribal Treasurer, Tribal Administrator and Senior Tribal Accountant as necessary to determine the time frames in which LTBB will need to access such funds and prepare an appropriate portfolio to meet cash flow needs and provide for long-term growth.

D. **Investment guidelines.** The employee or outside firm designated under Section II of this Statute shall only invest LTBB funds in the following:

1. FDIC or FSLIC insured savings accounts, money market accounts and certificates of deposit with major depositories possessing capital and surplus of $2 billion or more, or one of the top 200 banks.

2. Commercial paper having a rating of A2/P1.

3. Fixed income securities that are classified as investment grade by Standard & Poor's (BBB or better) and Moody's (BAA or better).

4. Publicly traded stocks, bonds and mutual funds that are properly registered with the Securities and Exchange Commission, and given the highest ratings by Moody's, Standard and Poors or the Wall Street Journal.

E. **Prohibited Investments.** The employee or firm designated under Section III shall not invest any LTBB funds in commodities, private placements, letter stock and real estate or engage in short sales or margin transactions.

(Source: WOS 2000-13, October 22, 2000, Section IV)

7.605 REPORTING

A. The employee or firm designated under Section III shall meet with the Tribal Council annually at such time as requested by the Tribal Council to review past investment performance, evaluate the current investment outlook, discuss investment strategy, and, if the Investment Manager is an outside firm, report on any significant changes in management, research, personnel or ownership within such firm.

B. LTBB shall provide the employee or firm designated under Section III the annual budget, any amendments thereto, any pertinent information regarding accumulation of discretionary funds, any amendments to this statute, and any other information necessary for the Investment Manager to effectively carry out its responsibilities under this Statute.

(Source: WOS 2000-13, October 22, 2000, Section V)

Chapter 7. Hotel Room Tax

7.701 PURPOSE

The purpose of this Statute is to raise revenues for the Little Traverse Bay Bands of Odawa Indians through the imposition of a LTBB use tax on rooms rented to non-LTBB members at Tribally owned facilities.

(Source: WOS 2003-04, May 18, 2003, Section I)

7.702 DEFINITION

For purpose of this Statute "Hotel" means any facility wholly owned by the Little Traverse Bay Bands of Odawa Indians that offers rental lodging to members of the public and is exempt from imposition of Michigan sales or use tax on rooms under the Tax Agreement executed on December 20, 2002, or any successor agreement.

(Source: WOS 2003-04, May 18, 2003, Section II)

7.703 ROOM TAX

The Little Traverse Bay Bands of Odawa Indians imposes a 6% use tax on the price of Hotel rooms rented to non-LTBB members. This tax shall be separately itemized and accounted for in the total charge to such patrons, and placed in such accounts as directed by the LTBB Tribal Council.

(Source: WOS 2003-04, May 18, 2003, Section III)

7.704 USE OF FUNDS

The funds collected under the authority of this Statute shall be used by the Tribal Government for discretionary use as determined by Tribal Council.

(Source: WOS 2003-04, May 18, 2003, Section IV)

7.705 EFFECTIVE DATE

This Statute takes effect immediately and in the event any Hotels have collected a sales tax after March 1, 2003, all such tax shall be disbursed to the Tribe in accordance with this Statute.

(Source: WOS 2003-04, May 18, 2003, Section V)

TITLE VIII. HOUSING

Chapter 1. Housing Commission

8.101 SHORT TITLE, PURPOSE, AND REPEAL OF PRIOR STATUTE

A. Short Title. This Statute may be cited as the "Housing Commission Act."

B. Purpose. The purpose of this Statute is to set up a Housing Commission that will act in an advisory capacity to the Tribal Council in the research, funding, development and monitoring of Tribal housing.

C. Repeal of Prior Statute. The Little Traverse Bay Bands of Odawa Indians Odawa Housing Council Ordinance (Waganakising Odawak Statute 1997003), and all amendments thereto, are hereby repealed as of the effective date of this Statute.

(Source: WOS 1998009, June 21, 1998, Section I)

8.102 CREATION OF HOUSING COMMISSION

A. Creation of Commission. The Tribal Council hereby creates the Housing Commission, which shall consist of seven (7) LTBB Tribal members at least eighteen years of age appointed by the Tribal Council. Members of the Tribal Council may be appointed to the Commission.

B. Term and compensation. Members of the Housing Commission shall be appointed to serve for four (4) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, three people shall be appointed to three (3) year terms, and four people shall be appointed to four (4) year terms. All appointments thereafter shall be for four (4) year terms. The Commission shall appoint separate individuals from

within the Commission to serve as chairperson, vice-chairperson, and secretary for terms of (2) years. There shall be no limit on reappointment. The Tribal Council may determine and authorize compensation to be paid to members of the Commission based upon the Tribal Council's determination of the time required to be expended upon Commission duties and the qualifications of the appointed Commissioners. The term of office shall extend until a person's replacement is sworn in or the person is reappointed.

C. Oath of Office. Upon appointment, the Tribal Court shall administer the oath of office to the members of the Housing Commission which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this Statute.

D. Vacancies. In the event a vacancy occurs in the Housing Commission, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office.

E. Removal. Commission members may be removed for the reasons, and following the procedures set out in the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 1997005), or such successor statute as the Tribal Council may enact and make applicable to the Commission.

F. Continuation of Current Housing Council Appointees. The members of the Board of the Odawa Housing Council who are serving under Waganakising Odawak Statute 1997003 on the effective date of this Statute are deemed members of the Housing Commission to serve until the date that their terms would have expired under Waganakising Odawak Statute 1997003 or until a successor is sworn in to replace them.

(Source: WOS 1998009, June 21, 1998, Section II)

8.103 DUTIES OF THE HOUSING COMMISSION

The Housing Commission shall have the following duties:

A. Develop proposed plans and policies for the development of Tribal housing that will provide for diverse, aesthetically pleasing, healthy and environmentally sound residential communities for Tribal members of all income levels, and recommend such proposals and plans to the Tribal Council for approval.

B. The Commission will be responsible for preparation of all proposals and documents that must be submitted to the United States Department of Housing and Urban Development for the Tribe to receive funds under the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4101 *et. seq.*, and shall present such proposals and documents to the Tribal Council for review and submission by the Tribal Council on behalf of the Tribe.

C. The Commission shall attempt to find additional sources of funding for Tribal housing, shall prepare all proposals and documents that must be submitted to apply for and receive such funding and shall present such proposals and documents to the Tribal Council for review and submission by the Tribal Council on behalf of the Tribe.

D. The Commission shall develop proposed rules and regulations for the administration and maintenance of Tribal housing including eligibility, rent, eviction, and repairs, and present such proposals to the Tribal Council.

E. The Housing Commission is authorized to enter into and hold leases of parcels of property leased from the Tribe to the Housing Commission. When authorized by Tribal Council resolution, the Housing Commission may grant leasehold mortgages to lending institutions and/or enter into such other security agreements as necessary to secure loans. When authorized by Tribal Council resolution, the Housing Commission may enter into sublease agreements. Any instruments requiring Bureau of Indian Affairs approval under applicable law or regulation shall only be effective upon such approval.

(Source: WOS 1998009, June 21, 1998, Section III; subsection E added by WOS 2001-01, February 4, 2001)

8.104 STAFFING

The Commission shall work in conjunction with the Tribal housing director and housing staff in carrying out its duties.

(Source: WOS 1998009, June 21, 1998, Section IV)

8.105 MEETINGS, VOTING

A. Meetings. The Housing Commission may meet as often as they deem necessary but must meet at least once each quarter.

B. Voting. Actions of the Housing Commission shall be decided by a majority vote of those present at the meeting. The Chairperson is entitled to vote on all matters before the Commission. A quorum shall consist of four (4) members including the Chairperson. Provided, an action may be ratified by non-attending members. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax, and all ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

(Source: WOS 1998009, June 21, 1998, Section V)

8.106 EFFECTIVE DATE

This Statute shall take effect on July 1, 1998.

(Source: WOS 1998009, June 21, 1998, Section VI)

8.107 SAVINGS CLAUSE

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

(Source: WOS 1998009, June 21, 1998, Section VII)

Chapter 2. Foreclosure

8.201 JURISDICTION/LIMITED WAIVER OF SOVEREIGN IMMUNITY/LIMITATIONS

A. Jurisdiction

The Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all foreclosure actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property within the Reservation containing housing owned or financed by LTBB.

B. Limited Waiver of Sovereign Immunity

The LTBB Tribe hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claims derived in this section that may arise out of the LTBB Tribe under a mortgage assumption pursuant to Sections II (F)(2) or Section II(L) of this Code [WOTC 8.202(F)(2); 8.202(L)]. In connection with such limited waiver, the LTBB Tribe consents solely to the jurisdiction of the LTBB Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of the LTBB Tribe's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive the LTBB Tribe's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this section, or (c) to extend to the benefit of any person other than the parties to the Documents or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of the LTBB Tribe to any claim for damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and the LTBB Tribe shall have the right to defend any of such claim fully on the merits.

(Source: WOS 2000-03, April 16, 2000, Section I)

8.202 MORTGAGING OF TRUST OR RESTRICTED LAND

A. Purpose

The purpose of this Code is to assist Tribal members in obtaining mortgage financing for the purchase of residences and businesses on Trust Lands or Restricted Lands within the jurisdiction of the LTBB Tribe, by prescribing procedures relating to recordation and foreclosure in connection with Mortgages given to secure loans made by Mortgagees.

B. Definitions

1. "**Lease**" shall mean a ground lease or other agreement for use of Trust Land or Restricted Land on which a Mortgage has or will be given.

2. "**Leasehold Estate**" shall mean a leasehold estate established pursuant to a Lease between the Tribe, as Lessor and a member of the Tribe as Tenant.

3. "**Lessor**" shall mean the Tribe or a Tribal member who leases an interest in property within the Reservation to a lessee. The Tribe shall be the beneficial or equitable owner of certain Trust land or restricted Land underlying a Leasehold Estate on Which a Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.

4. "**Mortgage**" shall mean the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by a Mortgagee.

5. "**Mortgagee**" shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

6. "**Mortgage Foreclosure Proceeding**" shall mean a proceeding in the LTBB Tribal Court: (i) to foreclose the interest of the Mortgagor(s) and each person or entity claiming through the Mortgagors in Trust Land or Restricted Land on which a mortgage has been made by a Mortgagee; and/or (ii) to assign such interest of the Mortgagor to the Mortgagee or the Mortgagee's successors or assigns.

7. "**Mortgagor**" shall mean the Tribe or any eligible tribal member or entity borrower who has executed a mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s) or assign(s) of such borrower.

8. "**LTBB" or "Tribe**" shall mean the Little Traverse Bay Bands of Odawa Indians, a Federally recognized Indian tribe as reaffirmed under Public Law 103-324, 25 U.S.C. § 1300k.

9. "**Restricted Land**" shall mean land within the jurisdiction of the LTBB Tribe that is subject to restrictions against alienation imposed by Federal Treaty, Statute, Executive Order, or to the LTBB Tribe.

10. **"Reservation"** shall mean all lands within the boundaries of the reservations for Little Traverse 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 reservation by the Department of the Interior.

11. "**Subordinate Lienholder**" shall mean the holder of any lien, including a mortgage perfected subsequent to the recording of a Mortgage under this Code; provided however, such definition shall not include the LTBB Tribe with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

12. "**Tenant**" shall mean any person who occupies Trust land or Restricted Land, as lessee, under a Leasehold Estate with the Lessor.

13. "**Tribal Court**" shall mean: (i) the LTBB Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of the LTBB Tribe to exercise the powers and functions of a court of law.

14. "**Tribal Member**" shall mean any person recognized as being an LTBB member by the LTBB Tribal Council.

15. "**Tribal Realty Officer**" shall mean the person designated by the LTBB Tribe to perform the recording functions required by this document or any deputy or designee of such person.

16. "**Tribe**" refers to the Little Traverse Bay Bands of Odawa Indians Tribe.

17. "**Trust Land**" shall mean land within the jurisdiction of the LTBB Tribe, title to which is held by the United States for the benefit of the Tribe or an individual member of the LTBB Tribe.

C. Mortgage of Leasehold Estate

Any Tribal member who is a tenant as defined in this Code may, with approval of the Lessor, mortgage the leasehold estate for the purpose of obtaining home or business financing on said land.

D. Priority

A Mortgage recorded in accordance with the recording procedures set forth in this Code shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against property subject to the Mortgage).

E. Recording

1. The recording of Mortgages and Leases on Trust land or Restricted land shall be at the Bureau of Indian Affairs Area land Titles and Records Office.

2. Where a Mortgagee requires that a Lease or Mortgage on Trust land or Restricted Land also be recorded in the county recorder's office in the state in which the Mortgaged properties are located, the lease or mortgage shall also be recorded at such county recorder's office.

3. The Tribal Realty Officer shall maintain in the Tribal Court, or other designated office, a system for the recording of Mortgages and such other documents as the LTBB Tribe may designate by law or resolution including, without limitation, any Lease.

4. The Tribal Realty Officer shall endorse upon any Lease and/or Mortgage or other document received for recording the following:

a. The date and time or receipt of the Lease and/or Mortgage or other document:

b. The filing number, to be assigned by the Tribal Realty Officer, which shall be a unique number for each Lease and/or Mortgage or other document received: and

c. The name of the Tribal Realty Officer receiving the Lease and/or Mortgage or other document.

5. Upon completion of the above endorsements, the Tribal Realty Officer shall make true and correct copies of the Lease and/or Mortgage or other security instrument and shall certify each copy as follows:

LTBB Tribe) ss.
I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____
(SEAL)

_____
Signature

_____
Title

6. The Tribal Realty Officer shall maintain such copies in the records of the recording system and shall return the original Lease and/or Mortgage or other document to the person or entity that presented the same for recording.

7. The Tribal Realty Officer shall also maintain a log of each Lease and/or Mortgage or other document recorded in which there shall be entered the following:

a. The name(s) of the Mortgagor(s) of each Mortgage, identified as such;

b. The name(s) of the Mortgagee(s) of each Mortgage, identified as such;

c. The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents including any Lease;

d. The date and time of receipt;

e. The filing numbers assigned by the Tribal Realty Officer; and
f. The name of the Tribal Realty Officer receiving any Lease, Mortgage or other document.

8. The certified copies of any Leases, Mortgages and other documents and the log maintained by the Tribal Realty Officer shall be made available for public inspection and copying.

F. Pre-Foreclosure Notice

1. Upon the default of the Mortgagor(s) and at least ten (10) days prior to instituting foreclosure proceedings, the Mortgagee shall notify the LTBB's Designated Housing Department or Entity in writing of its intention to pursue foreclosure. Such notice must be hand-delivered or sent by certified mail to the Executive Director of the LTBB's Designated Housing Department or Entity.

2. Upon such notice, and upon the expiration of an applicable cure period provided Lessee under a mortgage or security instrument, the Lessor or its Designated Housing Department or Entity shall have the right of first refusal to acquire the Leasehold Estate (subject to all valid liens and encumbrances) prior to the commencement of foreclosure proceedings.

3. The right of first refusal shall be exercised within twenty (20) days from receipt of the Lender's written notice.

G. Mortgage Foreclosure Proceedings

1. Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods under a Mortgage and expiration of the Lessor's first right of refusal in the preceding section, the Mortgagee, or its successors and assigns, may commence a Mortgage foreclosure proceeding in the Tribal Court as follows:

a. By filing a verified complaint:

i. Citing authority for jurisdiction of the Tribal Court;
ii. Naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lienholder (except the LTBB tribe with respect to a claim for a Tribal tax on the Mortgaged property), as a defendant;
iii. Describing the property subject to the Mortgage;
iv. Stating the facts concerning: (1) the execution of any Lease and/or the Mortgage; (2) the recording of the Mortgage; and (3) the alleged default(s) of the Mortgagor(s) and any other facts as may be necessary to constitute a cause of action;

v. Having appended as exhibits true and correct copies of each promissory note, Lease, if any, Mortgage, and if applicable, assignment thereof relating to such Mortgaged property; and

vi. Including an allegation that all relevant requirements and conditions prescribed in the Mortgage and the Lease, if any, have been complied with by the Mortgagee or its successors or assigns.

b. By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor as defendants to appear for a trial upon the complaint on a date and time specified in the summons, and filing a copy of such summons with the Tribal Court.

H. Service of Process and Procedures

The laws of the LTBB Tribe governing services of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Mortgage Foreclosure Proceeding pursuant to this Code.

I. Dismissal of Foreclosure upon Payment by Mortgagor

1. The foreclosure proceeding shall be dismissed if the borrower, before judgment, tenders to the Mortgagee, or its successors or assigns, payment of the total amount required to be tendered, including costs of the filing of a civil action.

2. Notice of Tender. To invoke this section, the Mortgagor must tender payment to the Mortgagee or its successors or assigns and file with the Court a notice of tender, indicating that the Mortgagor is tendering the amount described below.

3. Amount required to be tendered. The amount tendered shall consist of the following:

a. Arrearage. The arrearage amount shall be the sum of the monthly payments missed up to and including the date of the tender.

b. Costs and fees. Reasonable costs and fees, including attorney's fees, determined by the Court, but in no event shall they exceed costs actually incurred.

c. Acceleration clauses prohibited. Under no circumstances may the amount required to be tendered include any amounts due pursuant to an acceleration clause. This shall not prohibit the Mortgagee from charging late fees.

4. Disputes regarding cost. Where the Mortgagor and Mortgagee or its successors and assigns are unable to agree on reasonable costs and fees, the Mortgagor shall nonetheless file its notice of tender and tender payment of costs and fees to the Court, indicating that the amount is disputed. The Mortgagee shall file a fee petition with the Court within five (5) business days of the filing of the notice of tender. The Court shall stay the proceedings for no longer than twenty (20) days pending resolution of the dispute.

5. Dismissal of stay. Where the court's determination of reasonable costs and fees exceeds the amount tendered, the stay shall be lifted if the Mortgagor fails to file a revised notice of tender.

J. Cure of Default by Subordinate Lienholder

Prior to the entry of a judgment of foreclosure of a Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Mortgage. Any subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

K. Power of the Tribal Court

If the alleged default(s) have not been cured, judgment shall be entered:

Foreclosing the Mortgagor's interest in the Mortgaged property, and each other defendant named in the complaint upon whom proper and timely service has been made, including each Subordinate Lienholder; and
Assigning such Mortgaged property to the Mortgagee or the Mortgagee's successor or assignee and order sale of the residential property, or of a subset of the property that will suffice to satisfy the judgment. The Mortgagee must ensure that the price for which the property is sold is commercially reasonable. If the sales price is greater than the amount of the judgment, then the Mortgagee shall provide the difference to the Mortgagor within ten (10) days of the Mortgagee's receipt of the money.

L. Right of First Refusal During Foreclosure

1. The LTBB Tribe or its Designated Housing Department or Entity shall have the right of first refusal regarding all property to be sold pursuant to these foreclosure proceedings.

2. Notice to the LTBB Tribe. Upon commencement of judicial foreclosure proceedings, the Mortgagee or its successors or assigns shall give written notice by certified mail, or these proceedings to the LTBB Tribe.

3. Right to conduct an appraisal. The LTBB Tribe may conduct an appraisal of the property during or immediately after the foreclosure process. If the property in question is occupied the LTBB Tribe will make all reasonable efforts to respect the privacy of the homeowner, but the homeowner may not unreasonably interfere with the LTBB Tribe's right to conduct the appraisal.

4. Exercising the right to purchase after foreclosure. Upon entry of an order of foreclosure, a copy of the court order shall be served on the Office of the Chairperson or Housing Department or Entity, or on another agent designated by the LTBB Tribal Council to receive such notice. Within twenty (20) working days of the service of the order, the LTBB Tribe may provide

written notice to the Mortgagee or its successors or assigns that the LTBB Tribe elects to purchase the residential property for the amount of the judgment, or for some other amount agreed upon by the LTBB Tribe and the Mortgagee. At the same time the LTBB Tribe provides such notice to the Mortgagee, or at some other time agreed upon by the LTBB Tribe and the Mortgagee, the LTBB Tribe must tender payment. If the amount paid is less than the commercially reasonable price of the house, the LTBB Tribe will pay the difference to the Mortgagor. If the LTBB Tribe does not exercise its right to purchase the property within twenty (20) days of the date of service of the court order, the LTBB Tribe will be deemed to have waived its right of first refusal.

(Source: WOS 2000-03, April 16, 2000, Section II)

Chapter 3. Evictions

8.301 JURISDICTION/LIMITED WAIVER OF SOVEREIGN IMMUNITY/LIMITATIONS

A. Jurisdiction

The Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all eviction actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property within the Reservation containing housing owned or financed by LTBB.

B. Limited Waiver of Sovereign Immunity

LTBB hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claims described in this section that may arise out of or relate to LTBB's obligation under a mortgage or lease entered into by LTBB under a mortgage assumption pursuant to Sections II (F)(2) or Section II(L) [WOTC 8.202(F)(2); 8.202(L) of the Foreclosure Code of the LTBB. In connection with such limited waiver, LTBB consents solely to the jurisdiction of LTBB Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of LTBB's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waiver LTBB's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this section, or (c) to extend to the benefit of any person other than the parties to the documents or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of LTBB as to any claim for damages or as an agreement or willingness to pay any amount as damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and LTBB shall have the right to defend any of such claim fully on the merits.

(Source: WOS 2000-04, April 16, 2000, Section I)

8.302 EVICTION PROCEDURES

A. Purpose

The purpose of this Code is to prescribe procedures relating to evictions in connection with leases, subleases or other land assignments or interests made by LTBB, LTBB's Designated Housing Department or Entity or any owner of land or leasehold interest.

B. Definitions

1. **"Lease**" shall mean a ground lease or other agreement for use of Land or other real property.

2. "**Leasehold Estate**" shall mean a leasehold estate established pursuant to a Lease between an owner of land or land interest as Lessor, and a third party as Tenant.

3. "**Lessor**" shall mean the owner of land or land interest, including the Tribe. The Tribe shall be the beneficial or equitable owner of certain Trust Land or Restricted Land underlying a Leasehold Estate on which a Mortgage has been given, The Lessor shall include the successor(s) or assign(s) of such Lessor.

4. "**Mortgage**" shall mean the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by a Mortgagee.

5. "**Mortgagee**" shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or other wise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

6. "**Mortgagor**" shall mean any eligible tribal member or entity borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted land, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.

7. "**Nuisance**" shall mean maintenance on the Mortgaged property of a condition which:

a. Unreasonably threatens the health or safety of the public or neighboring land users; or

b. Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

8. "**LTBB" or "Tribe**" shall mean the Little Traverse Bay Bands of Odawa Indians, a Federally recognized Indian tribe as reaffirmed under Public Law 103-324, 25 U.S.C. § 1300k.

9. **"Reservation"** shall mean all lands within the boundaries of the reservations for Little Traverse 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 reservation by the Department of the Interior.

10. "**Restricted Land**" shall mean land within the jurisdiction of LTBB that is subject to restrictions against alienation imposed by Federal Treaty, Statute, Executive Order, or LTBB.

11. "**Subordinate Lienholder**" shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a mortgage under this Code; provided, however, such definition shall not include the Little Traverse Bay Bands of Odawa Indians with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

12. "**Tenant**" shall mean any person who occupies Trust land or Restricted Land, as Lessee, under a Leasehold Estate with the Lessor.

13. "**Tribal Court**" shall mean: (i) the LTBB Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of LTBB to exercise the powers and functions of a court of law.

14. "**Trust Land**" shall mean land within the jurisdiction of LTBB, title to which is held by the United States for the benefit of the Tribe or an individual member of LTBB.

15. "**Unlawful Detainer Action**" shall be a suit brought before the Tribal Court to terminate a Mortgagor's or Tenant's interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such a property.

16. "**Waste**" shall mean spoil or destruction of land, buildings, gardens, trees or other improvements on the Mortgaged property which result in substantial injury to such property.

17. "**Writ of Restitution**" is an order of the Tribal Court Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of Trust Land or Restricted Land subject to a Mortgage; and Evicting a Tenant or other occupant from such property.

B. Unlawful Detainer

A Tenant or other occupier of a beneficial interest in Trust Land or Restricted Land subject to a Mortgage or Lease shall be guilty of unlawful detainer if such person shall continue in occupancy of such property under any of the following situations:

1. Without the requirement of any notice by LTBB or Lessor:

a. After the expiration of the term of any Lease or Sublease;

b. If such person has entered onto or remains on the real property or another without the permission of the owner and without having any substantial claim under a Lease or title to such property;

c. After the Lessor has terminated such person's tenancy pursuant to the Lessor's procedures; or

d. After a Mortgagor's interest in Trust land or Restricted land has been foreclosed in a Mortgage foreclosure Proceeding in the Tribal Court.

2. After having received at least seven (7) days notice of termination and notice to vacate the premises, the Tenant or occupier remains in possession of such property contrary to the terms of the notice as follows:

a. When such person has received notice: (i) that he or she is in default in the payment of ground or unit rent; and (ii) requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the time period provided in such notice;

b. When such person shall continue to fail to keep or perform any condition or covenant of any Lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or

c. When such person continues to commit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property; or

d. When such person violates a material covenant of any Lease designed to protect the health and safety of persons.

C. Procedures for Service of Notice

Notices required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures or policies of LTBB's Designated Housing Department or Entity. In the absence of such rules and procedures, notices shall be given in writing by either:

1. Delivering a copy personally to the Tenant or occupier or to any adult members of his or her family residing on the Leased or Mortgaged property; or

2. Posting said notice in a conspicuous place near the entrance to said property, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

3. Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

D. Complaint and Summons

1. The Lessor of the Mortgagee (including its successors or assigns) shall commence an action for eviction by filing with the Tribal Court, in writing, the following documents:

a. A complaint, signed by the Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:

i. Citing authority for jurisdiction of the Tribal Court;

ii. If the property is mortgaged, naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lien holder (except LTBB with respect to a claim for a Tribal tax on the property subject to the Mortgage), as a defendant;

iii. Describing the property subject to the Mortgage or Lease;

iv. Stating the facts concerning (1) the execution of any Lease and/or the Mortgage; (2) the recording of any Mortgage; and (3) the facts upon which he or she seeks to recover; and

v. Stating any claim for damages or compensation due from the persons to be evicted.

b. A copy of the summons, issued in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less that six (6) nor more than twenty (20) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

E. Service of Summons and Complaint

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two methods provided in Article II, Section 3 [WOTC 8.302(C)] above.

F. Power of the Tribal Court

1. The only issue on an action for eviction shall be the right of actual possession. A lender who has foreclosed on a leasehold estate shall be deemed to have the right to actual possession. The merits of ownership of land interest shall be an issue to be determined by the laws and custom of LTBB. An action for eviction may not be brought in connection with any other action, nor may it be made the subject of any set off or counter claim.

2. The Tribal Court shall enter a Writ of Restitution if:

a. Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and

b. The Tribal Court:

i. finds that the occupier of the property subject to the Mortgage or Lease is guilty of an act of unlawful detainer; or

ii. determines that the Tenant failed to respond to the complaint.

3. Upon issuance of a Writ of Restitution the Tribal Court shall have the authority to enter against the defendants a judgment for the following: (1) back rent, unpaid utilities, and any charges due the Lessor under any lease or occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); (3) damages caused by the defendants to the property other than ordinary wear and tear; and (4) costs and reasonable attorney's fees incurred in bringing suit.

4. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he/she does not vacate the premises voluntarily by the effective date, he/she will be subject to forcible eviction, and his/her property will be subject to storage, sale and disposal as set forth in Section I below.

G. Enforcement

Upon issuance of a Writ of Restitution, Tribal law enforcement officers shall within five (5) days enforce the Writ of Restitution by removing the defendants and their personal property from the property, which is unlawfully occupied, and levy damages and costs incurred by the Police Department in such removal. In cases involving a Mortgagee (or its successors or assigns), the Writ or Restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to Section 8 [H] below.

H. Continuance in Cases Involving the Mortgagee

Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced not later than sixty (60) days from the date of service of the summons and complaint.

I. Storage of Property

Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the Lessor or owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay

the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the Lessor or owner is authorized to sell the property in order to recover these costs. The Lessor or owner shall provide the evicted occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the Lessor or owner.

(Source: WOS 2000-04, April 16, 2000, Section II)

Chapter 4. Lease Inheritance

8.401 SHORT TITLE AND PURPOSE

A. **Short Title.** This Statute may be cited as the "Lease Inheritance Act."

B. **Purpose.** The Little Traverse Bay Bands of Odawa Indians, coordinated through its Housing Department, intends to enter into residential leases with Tribal members under the provisions of 25 CFR part 162 using BIA form 5 - 5461 or such other format that complies with applicable Tribal and Federal law and regulation. This Statute governs the transfer of a Tribal member/lessee's interest by will or intestate succession.

(Source: WOS 2000-07, June 4, 2000, Section I)

8.402 INHERITANCE BY WRITTEN WILL

A. A Tribal member/lessee may by written will leave the remaining term of his/her residential lease to a Tribal member spouse, Tribal member children and/or Tribal member parent. Provided, the Tribal member spouse, Tribal member children and/or Tribal member parent who inherit the remaining term of the lease must actually have resided on the leased premises as their primary residence at the time of lessee's death and continue to reside on the leased premises as their primary residence or the lease will terminate.

B. A Tribal member/lessee may by written will leave a two year term of his/her residential lease to a non-member spouse, non-member children, and/or non-member parent. Provided, the non-member spouse, non-member children, and/or non-member parent who inherit a two year term of the lease must have actually resided on the leased premises as their primary residence at the time of lessee's death and continue to reside on the leased premises as their primary residence or the lease will terminate.

(Source: WOS 2000-07, June 4, 2000, Section II)

8.403 INTESTATE INHERITANCE

A. If a Tribal member/lessee dies intestate his/her Tribal member spouse, Tribal member children, and/or Tribal member parent who occupied the tract as a home at the time of decedent's death may remain

in such home for the remainder of the term of the lease. Provided, the Tribal member spouse, Tribal member children and/or Tribal member parent who inherit the remaining term of the lease must actually continue to reside on the leased premises as their primary residence or the lease will terminate.

B. If a Tribal member/lessee dies intestate his/her non-member spouse, non-member children, and/or non-member parent who occupied the tract as a home at the time of decedent's death may remain in such home for a two year period after the death of lessee. Provided, the non-member spouse, non-member children, and/or non-member parent who inherit a two year term of the lease must actually continue to reside on the leased premises as their primary residence or the lease will terminate.

(Source: WOS 2000-07, June 4, 2000, Section III)

8.404 EARLY TERMINATION OF LEASES

If a Tribal member/lessee dies during the term of his/her lease, and the lease is not continued under Section II or III [WOTC 8.402;8.403] of this Statute, the lease shall terminate upon such death and all interest in the leased tract shall revert to the Tribe.

(Source: WOS 2000-07, June 4, 2000, Section IV)

8.405 DUTIES OF HOUSING DEPARTMENT AND TRIBAL COURT

A. The LTBB Housing Department shall develop forms consistent with this Statute, which it shall provide to potential lessees.

B. Situations that arise that are not directly addressed in this Statute shall be resolved by the Tribal Court in accordance with the statutory and common law of LTBB.

(Source: WOS 2000-07, June 4, 2000, Section V)

8.406 EFFECTIVE DATE

This Statute takes effect immediately upon enactment.

(Source: WOS 2000-07, June 4, 2000, Section VI)

8.407 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of or governing the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, paragraph, subsection or section 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.

(Source: WOS 2000-07, June 4, 2000, Section VII)

TITLE IX. CRIMINAL LAWS; LIQUOR CONTROL

Chapter 1. Criminal Code

9.101 JURISDICTION

A. Definition. The criminal jurisdiction of the Little Traverse Bay Bands of Odawa Indians (also referred to in this Code as “Bands” and/or "LTBB") is its power to prohibit certain conduct, as a matter of public policy, within its territory.

B. Power Implemented. That power is exercised by enacting this Code and by punishing people who violate its laws.

C. Territorial Extent. The criminal jurisdiction of the Little Traverse Bay Bands of Odawa Indians shall extend to:

1. all lands and waters described in Article 1 Third and Article 1 Fourth of the Treaty of Detroit of July 31, 1855, 11 Stat. 621;

2. all trust land held now or in the future by the United States for the benefit of the Little Traverse Bay Bands of Odawa Indians;

3. the activities of Band members when exercising treaty hunting and fishing rights wherever such activity occurs.

D. Persons Under LTBB Criminal Jurisdiction. The criminal jurisdiction of LTBB shall extend to:

1. all members of LTBB and

2. all other Indians present within the areas described in Section I (C)[WOTC 9.101(C)] of this Code.

3. the criminal jurisdiction of LTBB shall only extend to adults. However, upon motion of the tribal prosecutor, the judge may, in his/her discretion, try a minor as an adult.

(Source: WOS 1997014, June 22, 1997, Section I)

9.102 DEFINITIONS

For purposes of this Criminal Code:

A. Indian. "Indian" means any person who is either:

1. a member of the Little Traverse Bay Bands of Odawa Indians;

2. a member of any federally-recognized Indian tribe, band, or group; or

3. any person of Indian blood who is generally considered to be an American Indian by the Little Traverse Bay Bands of Odawa Indians community.

B. Mental State: Malice. A person acts "maliciously" or "with malice" when that person consciously formulates a plan to injure the person or property of another and takes steps to carry out such plan.

C. Mental State: Intent.

1. A person acts "intentionally" or "with intent" with respect to conduct when it is that person's conscious desire to engage in certain conduct.

2. A person acts "intentionally" with respect to a result when it is that person's conscious desire that the conduct cause such result.

D. Mental State: Knowledge. A person acts "knowingly" or "with knowledge" when that person is aware of his/her actions and the probable consequences of such actions.

E. Mental State: Wanton or Reckless. A person acts "wantonly" or "recklessly" when that person is aware, or should be aware, that certain conduct will endanger the health, safety, or property of others but persists in engaging in the conduct despite the risks.

F. Mental State: Negligent. A person acts "negligently" or "with neglect" when that person acts in a manner that endangers the safety or property of others without exercising the care that a reasonably prudent person would exercise under the same or similar circumstances.

G. Minor. A minor is any person under eighteen (18) years of age.

H. Adult. For purposes of criminal jurisdiction an adult is any person eighteen (18) years of age or older.

I. Motor vehicle. Motor vehicle means any car, truck, motorcycle, or other motor-operated vehicle.

(Source: WOS 1997014, June 22, 1997, Section II)

9.103 REQUIREMENTS FOR CONVICTION

A. Culpability. A person shall not be guilty of an offense unless that person acted intentionally, maliciously, knowingly, recklessly or negligently as the law requires with respect to each material element of the offense; provided that any material element of an offense that does not require a mental state may be established by proving that the person participated in the prohibited conduct regardless of his/her state of mind.

B. Proof. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.

C. Intoxication.

1. Intoxication is not a defense unless it negates an element of the offense.

2. Self-induced intoxication cannot negate the element of recklessness.

D. Statute of Limitations. No person shall be prosecuted, tried or punished for any criminal offense unless the prosecution is initiated within one (1) year after both of the following conditions have been met:

1. discovery that an offense has been committed, and

2. discovery of the identity of the person who allegedly committed the offense.

E. Multiple Counts. When the conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted for each such offense, unless:

1. one offense consists only of an attempt to commit the other;

2. inconsistent findings of fact are required to establish commission of the offenses; or

3. the offenses differ only in that one prohibits a designated kind of conduct generally, and the other prohibits a specific instance of such conduct.

(Source: WOS 1997014, June 22, 1997, Section III)

9.104 AFFIRMATIVE DEFENSES AND ALIBI

A. Duress. It is an affirmative defense that the defendant, engaged in the conduct charged to constitute an offense, was coerced against his/her will by the use of, or threatened use of, unlawful force against his/her person or the person of another. The coercion must be such that a person of reasonable firmness would be unable to resist.

B. Protection of Self, Property, or Other Person. The use of reasonable force toward another person is justified and is an affirmative defense, if and only if:

1. the force is directed toward one who is using unlawful force, and

2. the person using such force reasonably believes the use of force is necessary for his/her protection or that of a third person.

3. The use of reasonable force toward another person is justified and is an affirmative defense if used to prevent the unlawful entry into the dwelling of the person asserting the defense or into the dwelling of another or to prevent the unlawful carrying away of personal property.

C. Alibi. The defense of alibi, that the accused was somewhere else when the crime was committed, shall be treated procedurally as an affirmative defense.

D. Procedures for raising affirmative defense. The procedures for raising and pleading affirmative defenses shall be specified by Court Rule.

(Source: WOS 1997014, June 22, 1997, Section IV)

COMMENTS

An affirmative defense does not negate an element of the crime, but raises additional circumstances that provide justification for the actions, relieving the defendant of culpability, so that he/she in not held criminally liable. For instance, if a person raises an affirmative defense of duress when being accused of battery, that person does not deny that he/she intentionally struck another. But that person may state, for example, that he/she was coerced into doing so by threats of a third person.

Similarly, if a person raises the defense of protection of self, property, or other person, to a charge of battery, that person is not denying that he/she intentionally struck another. However, that person is stating that his/her actions were necessary to protect himself/herself or another, and therefore such actions are justified.

9.105 COUNSEL

A. Right to Counsel. Any person accused of an offense under this Code may represent himself before the Tribal Court, or may be represented, at his/her own expense, by a person duly licensed to practice before the Tribal Court.

B. Persons Licensed to Practice in LTBB Courts. An Attorney admitted to practice law in any state may be licensed to practice in LTBB Courts upon:

1. payment of an annual fee, as specified by Court Rule; provided that the fee may be waived if the attorney is providing pro bono services;

2. certification to the Tribal Court that he/she has read the Court Rules; and

3. taking of an oath to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians, maintaining due respect for the Tribal Court, and employing, in his/her conduct and duties, the highest degree of ethical and moral standards with which the legal profession is charged. The Tribal Court Rules may also set out a procedure for licensing non-attorney tribal members to practice before the Tribal Court.

(Source: WOS 1997014, June 22, 1997, Section V)

9.106 SENTENCING

A. Types of Sentences. The Court may suspend the imposition of sentence of a person who has been convicted of a crime, may order any appropriate rehabilitative treatment, may order the offender to be committed in lieu of sentence to a hospital or other institution for medical, psychiatric, or other rehabilitative treatment, or may sentence him/her as follows:

1. to perform community service work;

2. to pay restitution or provide services of restitution to the injured parties;

3. to be placed on probation;

4. to imprisonment for a definite period up to the term authorized only if imprisonment is allowed by pre-trial motion pursuant to VI (G) below; and/or

5. to fine and probation, or fine and imprisonment.

B. Delayed Sentencing. The judge may delay final sentencing for a period of up to one (1) year, and order community service and/or rehabilitative services during that time. At the end of the specified time, the judge may, if appropriate, dismiss the charges and expunge them from the Court Record.

C. Taking Jurisdiction Over Family or Household. When an offense has been committed against the family under Section VII (H) [WOTC 9.107(K)] of this Code, the Court may take jurisdiction over the family or household, make child victims wards of the Court, and issue such orders as are necessary to ensure the safety and welfare of family members.

D. Probation. The Court shall have the discretion in any case except where prohibited by this Code or by tribal statute, to suspend all or any part of an offender's sentence and release the defendant on probation. The offender shall sign a probationary pledge, the conditions and limitations of which shall be clearly set forth by the Court.

E. Victim's Impact Statement. Prior to sentencing, the Court shall inform the victim(s) of their right to submit a written statement to the Court detailing the physical, material, and emotional damages

that they suffered as a result of the offender's actions. The judge, in his/her discretion, may allow oral testimony to be taken regarding such damages, in addition to, or in lieu of, the written statement.

F. Sentencing considerations. Before imposing sentence, the court shall take into consideration the offender's prior record, family circumstances, employment status, and any other circumstance which will aid in imposing a just and fair sentence, paying particular attention to the victim's impact statement described above. Restitution and community service work should generally be preferred over incarceration.

G. Motion to Impose a Penalty of Imprisonment. Upon motion of either party, or upon motion by the Court, before commencement of trial, the Court may, in its discretion, consider imprisonment for the amount of time specified as a possible punishment in the event that the accused is convicted. The procedure for making and hearing such motion shall be specified by Court Rule. A person convicted of a crime cannot be sentenced to imprisonment absent such pre-trial motion and determination by the Court. In the event the motion is granted, the defendant shall be advised of his/her right to a trial by jury.

(Source: WOS 1997014, June 22, 1997, Section VI)

COMMENTS

The Tribal Court Judge has considerable discretion in fashioning an appropriate sentence for a person convicted of an offense. However, as was noted above, the maximum jail term and fine that a Tribal Judge may sentence a criminal to is one year or $5,000 or both.

Keeping someone in jail is very expensive, and thus drains tribal resources. Incarceration has not been proven to have significant rehabilitative value. Therefore, it is recommended that other forms of punishment, such as community service work, which will benefit the Tribe, or restitution to help the victim recover from his/her injuries, be preferred over incarceration. It is suggested that incarceration be utilized when the circumstances, such as violent propensity of the offender, make it the only viable alternative.

The ICRA gives the accused a right to a jury trial any time imprisonment is a possibility. Section VI (G) [WOTC 9.106(G)] allows the Court, prior to trial, to rule that imprisonment will be considered in the case. In all other cases, imprisonment will not be a potential punishment and thus the accused will not have the right to a jury trial.

9.107 OFFENSES

A. Contempt of Court and Perjury.

1. Contempt of Court.

a. Offense. Intentional and unjustifiable behavior by any person, which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding of the Court, or which obstructs, or interferes with the administration of justice by the Court, including disobedience or resistance to, or interference with, any lawful summons, subpoena, process, order, rule, term of probation, sentence, decree, or command of the Court, including failure to appear for a court date, shall constitute contempt of court.

b. Contempt committed in the presence of the Court. When contempt of court is committed in the presence of the Court it may be punished summarily by the Court. In such case, an order shall be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment.

c. Contempt committed out of the presence of the Court. When it appears to the Court that a contempt has been committed out of the presence of the Court, the Court may issue a summons to the person so charged directing him/her to appear at a time and place designated for a hearing on the matter.

d. Sentence. A person found guilty of contempt of court may be sentenced to a jail term not to exceed thirty (30) days, or to a fine not to exceed one thousand dollars ($1,000.00), or to both. In addition, if a person is charged with contempt for jumping bail, the Court may order forfeiture of the person's bail.

2. Perjury.

a. Offense. A person who knowingly gives false testimony when under oath in a proceeding before the Tribal Court shall be guilty of perjury.
b. Sentence. A person convicted of perjury may be sentenced to a jail term not to exceed six (6) months or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

B. Scheming and Planning Offenses.

1. Solicitation.

a. Offense. A person commits solicitation if, with intent that another person engage in illegal conduct, he/she code, entreats, induces or otherwise endeavors to persuade such person to engage in illegal conduct.

b. Affirmative defense. It is an affirmative to a charge of solicitation that the defendant completely renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the solicited conduct.

c. Sentence. A person convicted of solicitation shall be subject to the same punishment as that specified in this Code for the completed offense.

2. Conspiracy.

a. Offense. A person commits conspiracy if that person agrees with one or more persons, with intent to promote or facilitate the commission of an offense, which at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.

b. Affirmative defense. It is an affirmative defense to a charge of conspiracy that the defendant completely and voluntarily renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the illegal action.

c. Sentence. A person convicted of conspiracy shall be subject to the same punishment as that specified in this Code for the completed offense.

3. Attempt.

a. Offense. A person commits an attempt, with respect to any of the enumerated offenses in this Code, if that person, acting with the intent to commit the offense, takes a substantial step toward the commission of the crime, and does not retract his/her action, but is foiled by circumstances beyond his/her control.

b. Sentence. A person convicted of an attempt shall be subject to the same punishment as that specified in this Code for the completed offense.

4. Contributing to the delinquency of a minor.

a. Offense. Any person who aids, abets, or encourages any minor to commit an act that would be an offense under this Code, if committed by an adult, shall be guilty of contributing to the delinquency of a minor.

b. Sentence. A person convicted of contributing to the delinquency of a minor may be sentenced to a jail term not to exceed sixty (60) days, or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

5. Aiding and Abetting.

a. Offense. A person commits an offense if he/she knowingly aids or abets another person in the commission or furtherance of a crime.

b. Sentence. A person found guilty of aiding and abetting will be subject to the same sentence as provided for the underlying crime.

COMMENTS

A person cannot be found guilty of aiding and abetting if the principal offender is found not guilty of the underlying crime.

C. Offenses Against the Person.

1. Assault.

a. Offense. A person commits assault if that person, by any unlawful act, threat, or menacing conduct, causes another person to reasonably believe that the other person is in immediate danger of physical harm.

b. Sentence. A person convicted of assault may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed one thousand ($1,000.00) or to both.

2. Assault with a weapon.

a. Offense. A person commits assault with a weapon if that person, through the use, or threatened use, of a weapon, causes another person to reasonably believe that he/she is in immediate danger of physical harm.

b. Sentence. A person convicted of assault with a weapon may be sentenced to a jail term not to exceed one (1) year, or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

3. Battery.

a. Offense. A person who intentionally strikes or offensively touches the person of another commits the offense of battery.

b. Sentence. A person convicted of battery may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

4. Sexual assault.

a. Offense. A person commits sexual assault if that person intentionally or knowingly engages in sexual penetration or sexual contact with any person without the consent of that person. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

b. Sentence. Any person found guilty of sexual assault may be sentenced to a jail term not to exceed one (1) year or to fine not to exceed five thousand dollars ($5,000.00) or to both.

5. Sexual assault of a child.

a. Offense. A person commits sexual assault of a child if he/she intentionally or knowingly engages in sexual penetration or sexual contact with any person aged 16 years or younger, regardless of whether he/she has the consent of that person. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

b. Sentence. Any person found guilty of sexual assault of a child may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00) or both.

6. Child Sexual Abuse.

a. Offense. A person commits child sexual abuse if that person engages a child in sexual activity that the child does not developmentally understand, to which he or she cannot give informed consent, or that violates the social taboos of the community. Child Sexual Abuse includes but is not limited to; all forms of intercourse, oral genital contact, fondling, exhibitionism, and child pornography.

b. Sentence. Any person found guilty of Child Sexual Abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

7. Unlawful imprisonment.

a. Offense. A person commits unlawful imprisonment if, without lawful authority, that person intentionally removes, detains, restrains, or confines the person of another without his/her consent.

b. Sentence. A person convicted of unlawful imprisonment may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

8. Harassment.

a. Offense. A person who verbally harasses another, including obscene or threatening phone calls, with the intent of causing that person physical or emotional harm, shall be guilty of an offense.

b. Sentence. A person convicted of harassment may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

COMMENTS

The maximum allowable sentence is prescribed for unlawful imprisonment because very serious transgressions, such as kidnapping, would fall under this offense.

D. Weapons and Explosives.

1. Carrying of a deadly weapon without a license.

a. Offense. A person who carries a deadly weapon without being licensed to do so by LTBB or by the State of Michigan commits an offense.

b. Sentence. A person convicted of unlawful carrying of a deadly weapon without a license may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both. The judge may also order that the weapon be impounded.

2. Unlawful use of a weapon.

a. Offense. A person commits unlawful use of a weapon if that person:

i. discharges a firearm in the proximity of a building or vehicle so as to knowingly or recklessly endanger a person or property;

ii. carries a firearm while intoxicated;

iii. handles or uses a firearm or other weapon so as to knowingly or recklessly endanger the safety of another; or

iv. carries a firearm or other weapon with unlawful intent.

b. Sentence. A person convicted of unlawful use of a weapon may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed two thousand dollars ($2,000.00) or to both. The judge may also order that the weapon be impounded.

3. Dangerous use of explosives.

a. Offense. A person commits dangerous use of explosives if, with intent to injure, intimidate or terrify another, or to damage another's property, that person maliciously explodes, attempts to explode or places any explosive anywhere within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians.

b. **Sentence.** A person convicted of dangerous use of explosives may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

c. In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.

4. Negligent use of explosives.

a. **Offense.** A person commits negligent use of explosives if that person negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action that increases the probability of such injury.

b. **Sentence.** A person convicted of negligent use of explosives may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed three thousand dollars ($3,000.00) or to both.

c. In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.

E. Theft and Related Crimes.

1. Theft of Property.

a. **Offense.** A person commits theft of property if, without lawful authority, that person intentionally or knowingly:

i. controls property of another with the intent to permanently deprive the owner, or person in lawful possession, of such property;

ii. obtains property of another by means of any material misrepresentation with intent to permanently deprive the owner, or person in lawful possession, of such property, or

iii. comes into control of lost, mislaid or incorrectly delivered property under circumstances providing means of inquiry as to the true owner and appropriates such property to himself/herself without making reasonable efforts to notify the true owner.

b. **Sentence.** A person convicted of theft of property may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

c. **Return of property.** When a person is convicted of a theft, the Court shall confiscate the stolen property and return it to its rightful owner. If the property has been lost or destroyed, the Court may require the offender to compensate the rightful owner for the value of the stolen property in addition to, or in lieu of, the sentence set out above.

2. Robbery.

a. **Offense.** A person commits robbery if that person threatens another with bodily harm, through the use of force or a weapon, in order to obtain property that is in the lawful custody of the person being threatened.

b. **Sentence.** A person convicted of robbery may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

3. Theft of services.

a. **Offense.** A person commits theft of services if, without lawful authority, that person obtains services which are available only for compensation with the intent of avoiding payment for such services.

b. **Sentence.** A person convicted of theft of services may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars ($2,000.00) or to both.

c. **Payment for services.** The Court may require the offender to compensate the victim for the services wrongfully obtained in addition to, or in lieu of, the sentence set out above.

4. Unauthorized Use of a Vehicle.

a. **Offense.** A person commits an offense if that person intentionally or knowingly operates, or tampers with, another's automobile, motorcycle, motorboat or other motor-operated vehicle, without the consent of the owner.

b. **Sentence.** A person convicted of unauthorized use of a vehicle may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

5. Receiving Stolen Property.

a. **Offense.** A person commits an offense if that person purchases, receives, conceals, or aids in concealing any property of another knowing, or having reason to know, that such property was obtained by theft or any other means declared by law to be unlawful.

b. **Sentence.** A person convicted of receiving stolen property may be sentenced to a jail term not to exceed one hundred eighty (180) days or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

F. Burglary and Arson.

1. Burglary.

a. **Offense.** A person commits burglary if that person enters into a building, boat, or motor vehicle belonging to another with the intent of committing an offense therein.

b. **Sentence.** A person convicted of burglary may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

2. Arson.

a. **Offense.** A person commits arson if that person knowingly sets fire to the building or property of another, or sets fire to his/her own property with the intent of collecting insurance benefits, or with the intent of negatively impacting a family member or any person who has a rightful interest in the property.

b. **Sentence.** A person convicted of arson may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

G. Forgery and Related Crimes.

1. Forgery.

a. **Offense.** A person commits forgery if, with intent to defraud, that person:

i. falsely makes, completes, or alters a written instrument; or

ii. offers or presents a forged instrument knowing such instrument to be forged.

b. **Sentence.** A person who is convicted of forgery may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

2. Obtaining a Signature by Deception.

a. Offense. A person commits an offense if, with intent to defraud, that person obtains the signature of another person on a written instrument by knowingly misrepresenting or omitting any material fact relevant to the instrument or transaction.

b. Sentence. A person who is convicted of obtaining a signature by deception may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars ($4,000.00) or to both.

3. Criminal Impersonation.

a. Offense. A person commits criminal impersonation if that person:

i. assumes a false identity with the intent to defraud another, or

ii. pretends to be a representative of some person or organization with the intent to defraud.

b. Sentence. A person who is convicted of criminal impersonation may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

H. Bribery and Related Crimes.

1. Bribery of Officials.

a. Offense. A person commits the offense of bribery if that person:

i. offers, confers, or agrees to confer any benefit upon a tribal official, judge or employee with the intention of influencing such person's vote, opinion, judgment, exercise of discretion or other action in his/her official capacity, or

ii. as a tribal official, judge, or employee solicits, accepts, or agrees to accept any benefit upon an agreement or understanding that his/her official actions may be thereby influenced.

b. Sentence. A person convicted of bribery may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

2. Improper Influence of Official.

a. **Offense.** A person commits improper influence of an official if that person threatens harm to any tribal official, judge or employee with the intent of influencing such person's official actions.

b. **Sentence.** A person convicted of improper influence of an official may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

3. Abuse of office.

a. **Offense.** A person commits abuse of office if that person acts or purports to act in an official capacity and:

i. subjects another to arrest, detention, search or seizure without just and lawful cause, or

ii. maliciously denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

b. **Sentence.** A person convicted of abuse of office may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed three thousand dollars ($3,000.00) or to both.

I. Obstruction of Tribal Administration.

1. Resisting or obstructing an officer of the Little Traverse Bay Bands of Odawa Indians or any other law enforcement officer.

a. **Offense.** A person commits an offense if that person intentionally or knowingly obstructs, impairs or hinders:

i. any officer of the Little Traverse Bay Bands of Odawa Indians in the lawful exercise of his/her duties;

ii. any duly authorized person serving or attempting to serve or execute process or any rule or order of the courts of the Little Traverse Bay Bands of Odawa Indians;

iii. any judge or other court personnel of the Little Traverse Bay Bands of Odawa Indians, in the lawful exercise of his/her duties; or

iv. any other law enforcement official in the lawful exercise of his/her duties.

b. **Sentence.** A person convicted of obstruction of tribal administration may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

2. Escape from lawful custody.

a. **Offense.** A person commits the offense of escape from lawful custody if that person escapes or attempts to escape from lawful custody or confinement.

b. **Sentence.** A person convicted of escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

3. Helping a person to escape from lawful custody.

a. **Offense.** A person commits an offense if that person helps or attempts to help a person escape from lawful custody or confinement.

b. **Sentence.** A person convicted of helping a person to escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or a fine not to exceed five thousand dollars ($5,000.00) or to both.

4. Tampering with a public record.

a. **Offense.** A person commits tampering with a public record if that person intentionally or knowingly and without proper authority:

i. makes or completes a written instrument which purports to be a public record or true copy thereof or alters a written instrument which is a public record or true copy thereof;

ii. presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed, or altered, with intent that it be taken as genuine;

iii. offers for recording, registration or filing in a tribal office or agency a written statement knowing that it has been falsely made, completed or altered or that it contains a false statement or information; or

iv. knowingly destroys, conceals, removes or otherwise impairs the availability of any public record.

b. Public records mean all official books, papers, written instruments or records created, issued, received or kept by any tribal office, branch or division.

c. **Sentence.** A person convicted of tampering with a public record may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

5. Malicious Criminal Prosecution.

a. **Offense.** A person commits malicious criminal prosecution if that person maliciously causes or attempts to cause a criminal charge to be prosecuted against an innocent person, knowing such person to be innocent.

b. **Sentence.** A person convicted of malicious criminal prosecution may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

6. Interfering with an Election.

a. **Offense.** A person commits an offense if that person, during the course of election held by the Little Traverse Bay Bands of Odawa Indians, knowingly:

i. attempts to influence the vote of any person or prevent a person from voting through the use or threatened use of force or violence; or

ii. attempts to cast more than one (1) vote in an election, or in any way interferes with the collection and counting of ballots.

b. **Sentence.** A person convicted of interfering with an election may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

J. Criminal Damage to Property and Trespass.

1. Vandalism.

a. **Offense.** A person commits the offense of vandalism if that person intentionally or recklessly:

i. defaces or damages the personal or real property of another person; or

ii. defaces or damages the real property of the Little Traverse Bay Bands of Odawa Indians.

b. **Sentence.** A person convicted of vandalism may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

c. **Restitution.** The judge may, in addition to, or-in lieu of, the punishments set out above, order the offender to pay the owner the repair or replacement costs of the damaged property or to perform work for the owner equal to the value of the damaged property.

2. Littering.

a. **Offense.** A person commits the offense of littering if that person throws, places, drops or disposes of any litter in a place which is not a lawful waste disposal site or receptacle for the disposal of litter.

b. **Sentence.** A person convicted of littering may be sentenced to a jail term not to exceed thirty (30) days or a fine not to exceed five hundred dollars ($500.00) or to both.

c. The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to pick up litter within tribal land, as community service, for a time not to exceed eighty (80) hours.

3. Dumping of hazardous material.

a. **Offense.** A person commits an offense if that person throws, places, drops or disposes of any hazardous material in a place, which is not a lawful disposal site for such materials.

b. **Sentence.** A person convicted of dumping hazardous materials may be sentenced to a jail term not to exceed one (1) year or a fine not to exceed five thousand dollars ($5,000.00) or to both. In addition, the Court may order the person to remove the materials that have been dumped or to pay for the cost of such removal.

4. Trespass.

a. **Offense.** A person commits the offense of trespass if that person knowingly enters the property or dwelling of another with reason to know that the owner would not permit him/her to do so, or refuses to depart when requested to do so, or enters upon Tribal properties and refuses to depart when requested to do so by an officer or employee of the Little Traverse Bay Bands of Odawa Indians.

b. **Sentence.** A person convicted of trespass may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars ($2,000.00) or to both.

K. Offenses Against the Family.

1. Court's jurisdiction expanded.

The court, in its discretion, may order the victim(s) or others touched by any of the offenses enumerated in this Section to undergo appropriate treatments or participate in appropriate rehabilitative program(s).

a. The Court, to protect children who are victims of crimes against the family or who are affected by crimes against the family, may:

i. find probable cause to believe that the children are minors-in-need-of-care and begin appropriate proceedings by entering a protective warrant pursuant to the Children's Code; or

ii. schedule an adjudicatory hearing, pursuant to the Children's Code, to determine whether the children are minors-in-need-of-care.

b. In cases of abuse, the Tribal Court shall have the option of ordering the abuser(s) to vacate the residence and allowing the children to remain in the residence, under the supervision of the Court or its designee.

2. Abandonment of a Child.

a. Offense. A parent, guardian or other person having legal custody of a child commits abandonment of a child if he/she intentionally or knowingly abandons a child less than seventeen (17) years of age.

b. Sentence. A person convicted of abandonment of child may be sentenced to a jail term not to exceed one hundred eighty (180) days or to pay a fine not to exceed three thousand dollars ($3,000.00) or to both.

c. The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of, or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.

3. Failure to support a dependent.

a. Offense. A person commits an offense if that person knowingly and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care, which he/she is capable of providing to his/her child or other dependent.

b. Sentence. A person convicted of failure to support a dependent may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

c. The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of or in addition to, the sentence set out above, if it appears from the

totality of the circumstances that rehabilitative services could help the offender become a responsible parent.

4. Sexual conduct with a foster child or stepchild.

a. Offense. A person commits an offense if that person knowingly engages in sexual penetration or contact with his/her foster child or stepchild who is under seventeen (17) years of age. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

b. Sentence. A person convicted of sexual conduct with a foster child or stepchild may be sentenced. to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

5. Incest.

a. Offense. A person commits incest if that person knowingly engages in sexual penetration or contact with another who is a member of such person's immediate family. Sexual contact means any fondling or manipulating of any part of the genitals, anus or female breast. For purposes of this Section immediate family means mother, father, son, daughter, brother or sister.

b. Sentence. A person who commits incest may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

6. Child abuse.

a. Offense. A person commits the offense of child abuse if that person intentionally, knowingly or recklessly causes physical injury to a child in his/her care or custody.

b. Sentence. A person who commits child abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

7. Spouse abuse.

a. Offense. A person commits an offense if that person intentionally, knowingly or recklessly causes physical injury to his/her spouse.

b. The term spouse for this offense shall include:

i. a husband or wife,

ii. either member of a couple living together, and

iii. either parent of a child.

c. Sentence. A person who commits spouse abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

COMMENTS

In keeping with Section III (E) [WOTC 9.103(E)] a person should not be prosecuted for both an offense under this Section and for sexual assault, VII (C) (4) [WOTC 9.107(C)(4)], because sexual conduct with a foster child or stepchild and incest are specific types of sexual assaults.

Also, a person should not be prosecuted for both child abuse and battery, or spouse abuse and battery, because these are specific types of battery. A person who abuses a child, not in his/her care or custody, should be prosecuted for battery.

L. Riot and Related Offenses.

1. Riot.

a. Offense. A person commits riot if, with five or more other persons acting together, that person intentionally, knowingly or recklessly uses force or violence, or threatens to use force or violence, which disturbs the public peace.

b. Sentence. A person convicted of riot may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars ($4,000.00) or to both.

2. Disorderly conduct.

a. Offense. A person commits disorderly conduct if that person intentionally, knowingly or recklessly:

i. engages in fighting, or provokes a fight;

ii. makes any protracted commotion, which prevents the transaction of the business of a lawful meeting, gathering or procession;

iii. makes loud and unreasonable noise; or

iv. engages in the consumption of alcohol out of doors with two or more persons without a tribal permit.

b. **Sentence.** A person convicted of disorderly conduct may be sentenced to a jail term not to sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

3. Obstructing a highway or other public thoroughfare.

a. **Offense.** A person commits an offense if that person intentionally, knowingly or recklessly interferes, having no legal privilege to do so, with the use of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

b. **Sentence.** A person who is convicted of obstructing a highway or other public thoroughfare may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

4. Creating false alarm.

a. **Offense.** A person commits an offense if that person reports a bombing, f ire, crime or other emergency knowing such report to be false or baseless and knowing that:

i. it will cause action by an official or voluntary agency organized to deal with emergencies;

ii. it will place a person in fear or imminent serious bodily injury; or

iii. it will prevent or interrupt the occupation of any building, room, place of assembly or other public place.

b. **Sentence.** A person convicted of creating false alarm may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars ($2,000.00) or to both.

5. Public Intoxication.

a. **Offense.** A person commits public intoxication if that person appears in public in an inebriated state to the degree that he/she is unable to care for his/her own safety or is creating a public nuisance.

b. **Sentence.** A person convicted of public intoxication may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars ($500.00) or to both.

c. The judge may, in addition to or in lieu of; the punishments set out above, orders the offender to participate in an alcohol treatment program.

6. Curfew.

a. Offense. All minors must adhere to a curfew of 11:00 p.m. It shall be unlawful for any minor to appear in public after curfew. Furthermore, it shall be unlawful for anyone to allow a minor to violate the tribal curfew.

b. Sentence. A person who is found guilty of a curfew violation may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars ($500.00) or to both.

7. Truancy.

a. Offense. It shall be unlawful for any minor under the age of sixteen (16) to be absent from school without proper permission or excuse. Furthermore, it shall be unlawful for any person to allow any minor under the age of sixteen (16) to be absent from school without proper permission or excuse.

b. Sentence. Any person found guilty of truancy may be sentenced in the Court's discretion to ensure regular school attendance.

M. Traffic Offenses.

1. Reckless driving.

a. Offense. A person commits reckless driving if that person operates a motor vehicle in a manner that he/she knows or should know, endangers the safety or property of others, including, but not limited to, driving on the wrong side of the street, weaving, or driving at a speed in excess of that which is prudent under the conditions.

b. Sentence. A person convicted of reckless driving may be sentenced to a jail term not to exceed ninety (90) days or a fine not to exceed two thousand dollars ($2,000.00) or to both.

2. Driving while under the influence of intoxicating liquor or other drug.

a. Offense. A person commits an offense if that person operates a motor vehicle within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians while under the influence of alcohol or other drugs.

b. Sentence. A person convicted of driving while under the influence of intoxicating liquor or other drugs may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars ($5,000.00) or to both.

c. **Order for treatment.** The judge may, in addition to, or in lieu of the punishments set out above, orders the offender to participate in an alcohol or substance abuse treatment program.

3. Driving with an open alcohol container.

a. **Offense.** A person commits an offense if that person operates a motor vehicle while an open container containing an alcoholic beverage is present anywhere in the passenger compartment of the vehicle.

b. **Sentence.** A person convicted of driving with an open alcohol container may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars ($1000.00) or to both.

4. Driving with a loaded firearm.

a. **Offense.** A person commits an offense if that person operates a motor vehicle with a loaded firearm present in the vehicle.

b. **Sentence.** A person convicted of driving with a loaded firearm may be sentenced to a jail term not to exceed ninety (90) days or to a fine not to exceed two thousand dollars ($2,000.00) or to both.

5. Operation of motor vehicle without proof of insurance.

a. **Offense.** A person commits an offense if that person operates a motor vehicle without proof of insurance on his/her person or present in the vehicle.

b. **Sentence.** A person convicted of operation of a motor vehicle without proof of insurance may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00). The uninsured vehicle may be impounded by LTBB until it is properly insured.

N. Criminal Homicide.

1. **Offense.** A person commits the offense of criminal homicide if:

a. that person intentionally causes the death of another person;

b. with intent to cause bodily injury to a person, that person causes the death of the intended victim or any other person;

c. that person voluntarily commits or participates in: the commission of, or attempts to commit, arson, robbery, burglary, kidnapping, assault, or sexual assault, and in the

course of, or in furtherance of the crime that is being committed or attempted, or during flight from the scene of the crime, the death of a person is caused;

d. that person recklessly or by gross negligence causes the death of another person, including the reckless operation of a motor vehicle; or

e. that person, through the negligent operation of a motor vehicle, causes the death of another person.

2. Sentence. A person convicted of criminal homicide may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars ($5,000.00), or to both, or to the maximum penalty allowable under federal law.

COMMENTS

An discussed above, under the Indian Civil Rights Act, a tribal court may only sentence an offender to a maximum of one (1) year in jail and/or a fine of five thousand dollars ($5,000.00). Every effort should be made to obtain a federal prosecution in cases of criminal homicide, in addition to the tribal court prosecution. An offender can be prosecuted in both tribal and federal court without violating the United States Constitutional prohibition against double jeopardy because the tribal and federal governments are separate sovereign entities. United States v Wheeler, 435 US 313 (1978).

O. Alcohol-Related Offenses.

1. Possession or consumption of alcohol by a person under 21 years of age.

a. Offense. A person commits an offense if that person is under twenty-one (21) years of age and knowingly possesses or consumes any alcoholic beverage.

b. Sentence. A person convicted of possession or consumption of alcohol by a person under 21 years of age may be compelled to perform an amount of community service work and/or undergo rehabilitative treatment as deemed appropriate by the tribal judge.

c. In addition, the Court may sentence the person who commits this offense to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

2. Furnishing alcohol to a person less than 21 years of age.

a. Offense. A person commits an offense if that person knowingly furnishes, purchases, provides or in any way procures, any alcoholic beverage for the possession or consumption by a person less than twenty-one (21) years of age.

b. Sentence. A person convicted of furnishing alcohol to a person less than twenty-one (21) years of age may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

3. Allowing a person less than 21 years of age to consume alcohol.

a. Offense. A person commits an offense if that person knowingly allows a person less than twenty-one (21) years of age to consume alcohol in his/her residence, vehicle, or presence.

b. Sentence. A person convicted of allowing a person less than twenty-one (21) years of age to consume alcohol may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

P. Controlled Substances.

1. Possession, Use, Sale, Manufacture and/or Distribution.

a. Offense. It shall be unlawful for any person to possess, use, sell, manufacture and/or distribute any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as updated, without prior authorization.

b. Sentence. Any person convicted of this offense may be sentenced to a jail term not to exceed one-year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

2. Youth and tobacco.

a. Offense. It shall be unlawful for any minor to possess, use or purchase any tobacco or tobacco products. Furthermore, it shall be unlawful for any person to allow the possession, use or sale of tobacco or tobacco products to any minor.

b. Sentence. Any person found guilty of this offense may be sentenced to a jail term not to exceed ninety (90) days or to pay a fine not to exceed two thousand dollars ($2,000.00) or to both.

c. Affirmative Defense. It shall be an affirmative defense to this offense when the alleged violation occurred in the furtherance of a recognized tribal and/or religious purpose.

Q. Animal Control.

1. Failure to have a dog properly licensed.

a. **Offense.** Any person who owns a dog must have the dog properly licensed under the County Animal Control Enforcement Ordinance or by the Little Traverse Bay Bands of Odawa Indians if LTBB sets up its own animal licensing system. A person commits an offense if that person fails to have his/her dog so licensed.

b. **Sentence.** A person who commits an offense may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars ($500.00) or to both.

2. Allowing a dog to be a public nuisance.

a. **Offense.** Any person who owns, possesses or maintains a dog is responsible for such dog. A person, whose dog barks outside to an extent that a person of reasonable sensibility is disturbed by such barking, or whose dog is vicious or has propensity to be vicious, commits its an offense.

b. **Sentence.** Any person convicted of allowing a dog to be a public nuisance may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars ($500.00) or to both.

c. In addition, the Court may order the destruction of the dog if necessary to protect the public.

3. Allowing a dog to run at large.

a. **Offense.** It shall be unlawful for any dog to run at large; provided that a dog engaged in hunting need not be leashed when under reasonable control of its owner, or possessor. The owner of a dog running at large commits an offense.

b. **Sentence.** Any person convicted of allowing a dog to run at large may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed one thousand dollars ($1,000.00) or to both.

4. Animal abuse.

a. **Offense.** A person commits an offense if that person intentionally beats, cruelly treats, torments, overloads or otherwise abuses any dog, livestock or poultry, or instigated any dog fight, cock fight, bull fight or other combat between animals or between animals and humans.

b. **Sentence.** A person convicted of animal abuse may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars ($1,000.00) or to both.

R. Violation of a Tribal Ordinance.

1. Offense. In addition to the offenses specified above, a person commits an offense under this Code if that person violates any criminal statute or ordinance duly enacted by the Tribal Council.

2. Sentence. A person convicted of violation of a tribal ordinance may be subject to whatever punishment is specified in the ordinance that was violated.

S. Habitual offender.

1. Offense. Any person who is convicted under tribal law, who has previous convictions under tribal law, may be charged as a habitual offender.

2. Sentence. A person convicted of being a habitual offender may be sentenced as follows:

a. 2nd Offense: One and one half (1 ½) times the maximum for the underlying offense not to exceed a jail term of one year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

b. 3rd Offense: Two (2) times the maximum for the underlying offense not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

c. 4th or more offense: Not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars ($5,000.00) or to both.

(Source: WOS 1997014, June 22, 1997, Section VII)

9.108 EFFECTIVE DATE

This statute shall remain in full force and effect until super-ceded by subsequent legislative action of the Tribal Council.

(Source: WOS 1998014, October 8, 1998)

Chapter 2. Liquor Control

[As required by Federal law, (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. 1161), the Liquor Control Statute, WOS 1999008, was published by the Department of the Interior, Bureau of Indian Affairs, in the Federal Register on December 14, 1999 (64 FR 69780).]

9.201 TITLE

This Statute shall be known as the “Liquor Control Statute.” This Statute repeals and replaces the Liquor Control Statute enacted on October 26, 1997 (Waganakising Odawak Statute No. 1997021).

(Source: WOS 1999008, June 27, 1999, Section I)

9.202 AUTHORITY

This statute is enacted pursuant to the Act of August 15, 1953. (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. § 1161) and Article VII, Section 1 (g) and (m) of the Constitution and Bylaws of the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 1999008, June 27, 1999, Section II)

9.203 PURPOSE

This statute regulates the consumption, delivery and/or sale of alcoholic beverages within the Indian country lands of the Little Traverse Bay Bands of Odawa Indians, for the purpose of protecting the health, safety and welfare of the Tribe and its members as well as the general public.

(Source: WOS 1999008, June 27, 1999, Section III)

9.204 INTERPRETATION

This statute shall be deemed an exercise of the police and regulatory powers of the Little Traverse Bay Bands of Odawa Indians to promote tribal self-determination and to protect the public welfare, and all provisions of this statute shall be liberally construed for the accomplishment of these purposes.

(Source: WOS 1999008, June 27, 1999, Section IV)

9.205 DEFINITIONS

The following definitions apply in this statute, unless the context otherwise requires:

A. "Alcoholic beverage" means any spirituous, vinous, malt or fermented liquor, liquors and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent (½ of 1%) or more alcohol by volume, which are fit for use for beverage purposes.

B. "Liquor" means any alcoholic drink.

C. "Person" means a natural person, firm, association, corporation or other legal entity.

D. "Tribe or Bands" means the Little Traverse Bay Bands of Odawa Indians.

E. "Tribal Council" means the governing body of the Little Traverse Bay Bands of Odawa Indians, which body is also referred to as the Board of Directors in the Tribe's Constitution and Bylaws.

F. "Secretary" means the Secretary of the United States Department of the Interior.

G. "Indian Country of the Tribe" means, for purposes of this Statute, all lands within Emmet and Charlevoix Counties, Michigan, which are now or hereafter owned by the Bands or held in trust for the Bands by the United States

H. "State" means the State of Michigan.

I. "Tribal representatives" means the Tribal administrator, a program director or manager of a subsidiary or commercial enterprise of the Tribe.

J. "Tribal license" means an official action by the Tribal Council, which authorizes the sale of alcoholic beverages for consumption either on the premises and/or away from the premises.

K. "Premises" means specified locations within the Indian Country of the Tribe, as described in a license issued by the Tribal Council.

(Source: WOS 1999008, June 27, 1999, Section V)

9.206 GENERAL PROVISIONS

A. Policy. It is the policy of the Tribe that only the Tribe and its subsidiary enterprises may engage in the sale of alcoholic beverages within the Indian Country of the Tribe. Therefore, no person other than the tribal government or its subsidiary enterprises may deliver for profit, sell or trade for profit any alcoholic beverages within the Indian Country of the Tribe.

B. **On-premises consumption.** No person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage, nor any other substance whatsoever capable of producing alcoholic intoxication, intended for consumption on the premises, nor aid nor abet any Indian or non-Indian person in any of the foregoing, except in compliance with the terms and conditions of this Statute as well as applicable federal Indian liquor laws, and applicable provisions of the laws of the State of Michigan and regulations administered by its Liquor Control Commission.

C. Off-premises consumption. No person shall sell, trade, transport, manufacture, use, or possess any alcoholic beverage, nor any other substance whatsoever capable of producing alcoholic intoxication, intended for consumption away from the premises, nor aid nor abet any Indian or non-Indian person in any of the foregoing, except in compliance with the terms of this statute, applicable federal Indian liquor laws, and applicable provisions of the laws of the State of Michigan and regulations administered by its Liquor Control Commission.

D. Application of State law. Unless otherwise contradicted by this Statute or other Tribal law, laws of the State and regulations of its Liquor Control Commission shall pertain to sale, trade, manufacture, use or possession of alcoholic beverages within the Indian Country of the Tribe. Provided that in no event shall any laws of the Tribe pertaining to liquor regulation be construed to be less

stringent than the laws and regulations of the State. Nothing in this section or Statute is intended to allow the State to exercise any jurisdiction over the Tribe, its members, or any persons or transactions within the Indian Country of the Tribe that the State would not otherwise have. Nothing in this section or statute is intended to in any way waive or limit the sovereign immunity of the Tribe.

E. Condition of tribal license. Any tribal enterprise having a license for the sale of alcoholic beverages issued by the Tribal Council shall be required to comply, as a condition of retaining such license, with any applicable tribal laws and ordinances and shall further observe the laws of the State regarding times of sale and minimum ages of persons to whom sales may be made.

(Source: WOS 1999008, June 27, 1999, Section VI)

9.207 TRIBAL LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES

A. Upon application submitted in writing by tribal representatives, the Tribal Council may issue a license authorizing (1) sale of alcoholic beverages (or specific types thereof) solely for consumption on the premises, and/or (2) sale of alcoholic beverages (or specific types thereof) intended for consumption away from the premises.

B. All applications for such licenses must be submitted to the Tribal Council in writing, setting forth the purpose for the license together with the description of the premises upon which such sale is proposed to take place.

C. The Tribal Council shall have the power and authority to determine, in its sole discretion, the number and type of licenses for the sale of alcoholic beverages that may from time-to-time be issued pursuant to this ordinance.

D. Fees. The Tribal Council may set reasonable fees for the issuance of licenses under this Statute.

E. Duration of License. Unless sooner canceled, every license issued by the Tribal Council shall expire at midnight on the 31st day of December. Applications for renewal must be submitted to the Tribal Council on or before November 15 of the preceding year. The Tribal Council will act on all renewal applications on or before December 15.

(Source: WOS 1999008, June 27, 1999, Section VI)

9.208 VIOLATIONS

A. Any Indian person found to be in violation of the provisions of this Statute shall be deemed guilty of a criminal offense and may be prosecuted in Tribal Court in an action brought by the Tribal Prosecutor. Any such criminal proceeding against an Indian person shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses. Upon conviction, the Tribal Court may impose a sentence of a fine not greater than $1,000.00 and/or a jail term not exceeding sixty (60) days.

B. Nothing in this statute shall be construed to require or authorize the criminal trial and punishment by the Tribal Court of any non-Indian except to the extent allowed under Federal law. In general, when any provision of this Statute is violated by a non-Indian, her or she shall be referred to state and/or Federal authorities for prosecution under applicable law. However, violations of this Statue by a non-Indian shall also be deemed a civil offense against the Tribe and a civil action against non-Indian violators may proceed in Tribal Court to the extent allowed under Federal law. In such civil action brought in Tribal Court by the Tribal Prosecutor, the Tribal Court may impose a fine not greater than $1,000.00 and/or exclusion from the Tribe's reservation, as authorized in Article VII, Section 1 (h) of the Tribe's Constitution. Any such civil proceeding against a non-Indian shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses.

C. Revocation of License. The Chairperson of the Tribal Council, or the Tribal Prosecutor may, for alleged violation of this Statute, institute and maintain an action in the Tribal Court in the name of the Tribe to revoke or suspend a license issued under this Statute. Such proceeding against the holder of the license in question shall comply with all due process and equal protection requirements of the Indian Civil Rights Act, which shall include at a minimum adequate notice, a full and fair hearing, and the right to call and cross examine witnesses. Upon final judgment issued against the defendant, the Tribal Court may order the forfeiture of any license issued pursuant to this Statute, and all rights of the licensee to keep or sell alcoholic beverages under this Statute shall be suspended or terminated as the case may be. Pending final judgment the Tribal Court may issue orders for preliminary injunction if the plaintiff can demonstrate a likelihood of success and irreparable injury to the Tribe or its members if such orders are not issued.

(Source: WOS 1999008, June 27, 1999, Section VIII)

9.209 EFFECTIVE DATE

The effective date of this statute shall be the date it is certified by the Secretary or his/her delegate and published in the Federal Register in accordance with Title 18 of the United States Code, Section 1161.

(Source: WOS 1999008, June 27, 1999, Section IX)

9.210 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians or applicable Federal law, such phrase, provision, paragraph, subsection or section 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.

(Source: WOS 1999008, June 27, 1999, Section X)

Chapter 3. Traffic and Motor Vehicles

9.301 PURPOSE

The purpose of this Statute is to regulate the use of motor vehicles within the jurisdiction of the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2001-06, March 18, 2001, Section I)

9.302 DEFINITIONS

2.01. Alley. "Alley" means a minor thoroughfare, opened to public use, for the purpose of ingress and egress to service adjacent buildings.

2.02. Ambulance. "Ambulance" means a privately or publicly owned motor vehicle for highway use which is specially designed or constructed and equipped, which is intended to be used for, and is maintained or operated for, the transportation of persons who are sick, injured, wounded, or otherwise incapacitated or helpless, including dual purpose police patrol cars and funeral coaches or hearses

2.03. Authorized emergency vehicle. "Authorized emergency vehicle" means a vehicle of the fire department, a police vehicle, an ambulance, a privately owned motor vehicle of a volunteer or paid fireman, or a privately owned motor vehicle of a volunteer ambulance driver or a licensed ambulance driver or attendant as is authorized by the department of state police or an Indian tribe.

2.04. Bicycle. "Bicycle" means a device on which a person may ride, which is propelled by human power, and which has either 2 or 3 wheels in a tandem or tricycle arrangement which are more than 14 inches in diameter.

2.05. Bicycle Lane. "Bicycle lane" means a portion of a street or highway which is adjacent to the roadway and which is established for the use of persons riding bicycles.

2.06. Bicycle Path. "Bicycle path" means a portion of a street or highway, which is separated from the roadway by an open, unpaved space or by a barrier and which is established for the use of persons riding bicycles.

2.07. "Bus" means a motor vehicle which is designed to carry more than 10 passengers and which is used for the transportation of persons and also means a motor vehicle, other than a taxicab, which is designed and used for the transportation of persons for compensation. The term does not include a school bus or a bus that is equipped and used for living or camping purposes.

2.08. Bus Stand or Bus Stop. "Bus stand" or "bus stop" means a fixed area in the roadway, parallel and adjacent to the curb, to be occupied exclusively by buses for layover in operating schedules or by buses waiting for, loading, or unloading passengers.

2.09. Business District. "Business district" means the territory contiguous to a highway when 50% or more of the frontage thereon, for a distance of 300 feet or more, is occupied by buildings in use for business.

2.10. Civil Infraction. "Civil infraction" means an act or omission which is prohibited by law, which is not a crime as defined in Waganakising Odawak Statute 1997014, as amended, and for which sanctions may be ordered.

2.11. Civil Infraction Determination. "Civil infraction determination" means a determination that a person is responsible for a civil infraction based on 1 of the following: (a) An admission of responsibility for the civil infraction. (b) An admission of responsibility for the civil infraction, "with explanation." (c) A preponderance of the evidence at an informal hearing or formal hearing. (d) A default judgment for failing to appear as directed by a citation or other notice at a scheduled appearance.

2.12. Commercial Vehicle. "Commercial vehicle" means every motor vehicle which is used for the transportation of passengers for hire or which is constructed or used for the transportation of goods, wares, or merchandise. The term also means a motor vehicle which is designed and used for drawing other vehicles and which is not constructed to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn.

2.13. Controlled Substance. "Controlled substance" means a controlled substance as defined by the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as amended.

2.14. Crosswalk. "Crosswalk" means either of the following:

(1) That part of a roadway at an intersection that is included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable highway.

(2) A portion of a highway, at an intersection or elsewhere, which is distinctly indicated for pedestrian crossing by lines or other markings on the surface.

2.15. Curb Loading Zone. "Curb loading zone" means a space which is adjacent to a curb and which is reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

2.16. Department. "Department" means the LTBB Police Department.

2.17. "Driver" means every person who drives, or is in actual physical control of, a vehicle.

2.18. Explosives. "Explosives" means any chemical compound or mechanical mixture which is commonly used, or intended to be used, for producing an explosion and which contains an oxidizing and combustive unit or other ingredient in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture might cause such a sudden generation of highly heated gases that the resultant gaseous pressures would be capable of producing destructible effects on contiguous objects or of destroying life or limb.

2.19. Farm Tractor. "Farm tractor" means every motor vehicle that is designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

2.20. Flammable Liquid. "Flammable liquid" means any liquid that has a flash point of 70 degrees Fahrenheit or less.

2.22. Freight Curb Loading Zone. "Freight curb loading zone" means a space which is adjacent to a curb and which is provided for the exclusive use of vehicles during the loading or unloading of freight.

2.23. LTBB or Tribe means the Little Traverse Bay Bands of Odawa Indians.

2.24. Gross Weight. "Gross weight" means the weight of a vehicle without load plus the weight of a load thereon.

2.25. Handicapper. "Handicapper" means a person who, for the purposes of this code, has a physical characteristic categorized as a handicap which limits ambulation or which necessitates the use of a wheelchair for mobility. The term also means a person who is blind.

2.26. Implement of Husbandry. "Implement of husbandry" means every vehicle which is designed for agricultural purposes and which is used exclusively in agricultural operations. The transportation in a trailer of seeds, fertilizers, or sprays, which will be used to plant, fertilize, or spray, between a place of storage or supply and farms is an agricultural operation.

2.27. Intersection. "Intersection" means either of the following:

(1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of 2 highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways that join at any other angle might come in conflict.

(2) Where a highway includes 2 roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If such intersecting highway also includes 2 roadways 30 feet or more apart, then every crossing of 2 roadways of the highways shall be regarded as a separate intersection.

2.28. Laned Roadway. "Laned roadway" means a roadway that is divided into 2 or more clearly marked lanes for vehicular traffic.

2.29. Limited Access Highway. "Limited access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same, except at such points and in such manner as may be determined by the public authority that has jurisdiction over such highway, street, or roadway.

2.30. Moped. "Moped" means a 2- or 3-wheeled vehicle with operable pedals which is equipped with a motor that does not exceed 50 cubic centimeters piston displacement, which produces 1.5 brake horsepower or less, and which cannot propel the vehicle at a speed of more than 25 miles per hour on a level surface.

2.31. Motorcycle. "Motorcycle" means every motor vehicle, which has a saddle or seat for the use of the rider and which is designed to travel on not more than 3 wheels in contact with the ground, but excludes a tractor.

2.32. Motor Vehicle. "Motor vehicle" means every vehicle, which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but which is not operated upon rails.

2.33. Official Time Standard. "Official time standard" means that hours named in this code mean hours of standard time or daylight-saving time, whichever is in current use in this governmental unit.

2.34. Operator. "Operator" means every person, other than a chauffeur, who is in actual physical control of a motor vehicle on a highway.

2.35. Parking. "Parking" means standing a vehicle, whether occupied or not, upon a highway when not loading or unloading, except when making necessary repairs.

2.36. Parking Meter Zone. "Parking meter zone" means an area, which is adjacent to a parking meter, and which is set aside for the exclusive use of vehicles upon the deposit of a coin of United States currency in the parking meter as specified thereon.

2.37. Passenger Curb Loading Zone. "Passenger curb loading zone" means a place which is adjacent to a curb and which is reserved for the exclusive use of vehicles during the loading or unloading of passengers.

2.38. Pedestrian. "Pedestrian" means a person afoot.

2.39. Person. "Person" means every person, firm, co-partnership, association, or corporation and its legal successors, but does not include the state, a political subdivision of the state, or an employee of the state operating within the scope of his or her duties.

2.40. Police Officer. "Police officer" means the police chief and police officers of the LTBB Law Enforcement Department.

2.41. Private Driveway. "Private driveway" means a piece of privately owned and maintained, or leased, property which is used for vehicular traffic, but which is not opened for, or normally used by, the public.

2.42. Private Road. "Private road" means a privately owned and maintained road which allows access to more than 1 residence or place of business, which is normally open to the public, and on which persons other than the owners may travel.

2.43. Railroad. "Railroad" means a carrier of persons or property on cars, other than streetcars, which are operated on stationary rails.

2.44. Railroad Train. "Railroad train" means a steam engine or electric or other motor, with or without coupled cars, which is operated on rails, but does not include a streetcar.

2.55. Residence District. "Residence district" means the territory contiguous to a highway not comprising a business district when the frontage on such highway for a distance of 300 feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business.

2.56. Right-Of-Way. "Right-of-way" means the privilege of the immediate use of a highway.

2.57. Roadway. "Roadway" means that portion of a highway, which is improved, designed, or ordinarily used for vehicular travel. If a highway includes 2 or more separate roadways, the term "roadway" shall refer to a roadway separately and not to all such roadways collectively.

2.58. Safety Zone. "Safety zone" means the area or space which is officially set apart within a roadway for the exclusive use of pedestrians and which is protected and so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

2.59. School Bus. "School bus" means every motor vehicle, except for a station wagon, with a manufacturer's rated seating capacity of 8 or more children, which is owned by a public, private, or governmental agency and which is operated for the transportation of children to or from school. The term also means a motor vehicle, except for a station wagon, that is privately owned and operated for compensation for the transportation of children to or from school. The term does not include a bus that is operated by a municipally owned transportation system or by a common passenger carrier certificated by the public service commission.

2.60. School Crossing. "School crossing" means a crosswalk that is designated by the department of transportation, a county road commission, a local authority or Indian tribe as any place to be used by school children for crossing a street or highway.

2.61. School-Crossing Guard. "School-crossing guard" means a person who is 18 years of age or older and who is authorized to supervise children who use a school crossing as provided in section IX(HH) of the act.

2.62. Semi-trailer. "Semi-trailer" means every vehicle, with or without motive power, other than a pole-trailer, which is designed to carry persons or property and to be drawn by a motor vehicle and which is so constructed that some part of its weight and that of its load rests on, or is carried by, another vehicle.

2.63. Sidewalk. "Sidewalk" means that portion of a street which is between the curb lines or the lateral lines of a roadway and the adjacent property lines and which is intended for the use of pedestrians.

2.64. Special Mobile Equipment. "Special mobile equipment" means every vehicle which is not designed or used primarily for the transportation of persons or property and which is incidentally operated or moved over the highways, including, but not limited to, farm tractors, road construction or maintenance machinery, mobile office trailers, mobile tool shed trailers, mobile trailer units used for housing stationary construction equipment, ditch-digging apparatus, well-boring apparatus, and well-servicing apparatus.

2.65. Stand or Standing. "Stand" or "standing" means the halting of a vehicle, other than for the purpose of, and while actually engaged in, receiving or discharging passengers.

2.66. Stop. "Stop," when required, means the complete cessation of movement.

2.67. Stop or Stopping. "Stop" or "stopping," when prohibited, means the halting, even momentarily, of a vehicle, whether occupied or not. The terms do not apply to the halting of a vehicle which is necessary to avoid conflict with other traffic or which is in compliance with the directions of a police officer or traffic-control sign or signal.

2.68. Street or Highway. "Street" or "highway" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

2.69 Taxicab. "Taxicab" means a licensed public motor vehicle for hire which is designated and constructed to seat not more than 10 persons and which is operated as a common carrier on call or demand.

2.70. Taxicab Stand. "Taxicab stand" means a fixed area in the roadway, which is set aside for taxicabs to stand or wait for passengers.

2.71. Through Highway. "Through highway" means every state trunkline highway or any other highway at the entrance to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same.

2.72. Tow-Away Zone. "Tow-away zone" means a zone where parking, stopping, or standing is not permitted, as indicated by proper signs, and where vehicles parked in violation of the signs are towed away to keep the roadway clear for traffic movement.

2.73. Traffic. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances, either singly or together, while using a highway for purposes of travel.

2.74. Traffic-Control Devices. "Traffic-control devices" means signs, signals, markings, and devices which are not inconsistent with this ordinance and which are placed or erected by authority of a public body or official who has jurisdiction for the purpose of regulating, warning, or guiding traffic.

2.75. Traffic-Control Order. "Traffic-control order" means an order which officially establishes the location of traffic-control devices and traffic-control signals on the highways of this state by the authority that has jurisdiction over such highways and which is filed with the county clerk of the county traversed by such highways. A certified copy of the order shall be prima facie evidence in all Courts of the issuance of such order.

2.76. Traffic-Control Signal. "Traffic-control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

2.77. Traffic Division. "Traffic division" means the traffic division of the Department. If a traffic division is not established, then the term shall be deemed to refer to the Department.

2.78. Trailer. "Trailer" means every vehicle, with or without motive power, other than a pole-trailer, which is designed to carry property or persons and to be drawn by a motor vehicle and which is constructed so that no part of its weight rests upon the towing vehicle.

2.79. Trailer Coach. "Trailer coach" means every vehicle, which is primarily designed and used as temporary living quarters for recreational, camping, or travel purposes and which is drawn by another vehicle.

2.80. U-Turn. "U-turn" means a turn made on a roadway or in an intersection by a vehicle for the purpose of reversing its direction of travel.

2.81. Vehicle. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn on a highway, except devices which are moved exclusively by human power or which are used exclusively on stationary rails or tracks and except for a mobile home.

(Source: WOS 2001-06, March 18, 2001, Section II)

9.303 TRAFFIC ADMINISTRATION AND AUTHORITY

3.01. Police department; traffic duties. It is the duty of the chief of police and the officers of the police department to enforce the street traffic regulations of this governmental unit and all LTBB vehicle laws which are applicable to street traffic within LTBB's jurisdiction, to make arrests for certain traffic violations, to issue citations for civil infractions, to investigate accidents, to cooperate with the other LTBB officials in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed by this code and other traffic ordinances of LTBB.

3.02. Authority of police directing traffic. Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand, or signal in conformance with traffic laws. However, in case of a fire or other emergency or to expedite traffic or safeguard pedestrians, officers of the police department may direct traffic as conditions require, notwithstanding the provisions of the traffic laws.

3.03. Authority of firemen directing traffic. Officers of a fire department, when at the scene of a fire, may direct or assist the police in directing traffic at the scene of the fire or in the immediate vicinity.

3.04. Authority of police to inspect vehicles. A police officer is authorized, on reasonable grounds shown, to stop any motor vehicle and inspect the vehicle; and if any defects in equipment are found, the officer is authorized to cite the driver in the manner provided in this code. In case of an accident, a police officer may make an inspection of the vehicle involved in the accident.

3.05. Impounding of vehicles; authority; procedure; public sale.

1. The Department may immediately remove a vehicle from public property or any other place open to travel by the public and impound the vehicle in any of the following circumstances: (a) When a vehicle is in such a condition that the continued operation of the vehicle upon the highway would constitute an immediate hazard to the public. (b) When a vehicle is parked upon the highway in such a manner as to create an immediate public hazard or an obstruction of traffic. (c) When a vehicle is left unattended on a bridge, viaduct, causeway, subway, tube, or tunnel where the vehicle constitutes an obstruction to traffic. (d) When a disabled vehicle on a street constitutes an obstruction to traffic and the person in charge of the vehicle is, by reason of physical injury, incapacitated and unable to provide for the vehicle's custody or removal. (e) When a vehicle is left unattended on a street and is parked in a manner, which constitutes a definite hazard or obstruction to the normal movement of traffic. (f) When a vehicle is found being driven on the streets or highways in an unsafe condition, which endangers persons or property. (g) When a vehicle is left continuously unattended on a street for more than 48 hours and may be presumed to be abandoned. (h) When the driver of the vehicle is taken into custody by the police department and the vehicle would thereby be left unattended on the street. (i) When removal is necessary in the interest of public safety because of fire, flood, storm, snow, or other emergency reason. (j) When a vehicle is found parked in a tow-away zone, which is properly signposted.

2. The Department which impounds a vehicle under subsection (1) of this section shall do all of the following: (a) Check to determine if the vehicle has been reported stolen. (b) Within 24 hours after impounding the vehicle, enter the vehicle as impounded into the law enforcement information network. (c) Within 7 days, excluding Saturday, Sunday, and legal holidays, after impounding the vehicle, send a notice that the vehicle has been impounded to the owner and the secured party, if any, by certified mail. Each notice shall contain all of the following information: (i) The year, make, and vehicle identification number of the vehicle. (ii) The location from which the vehicle was taken into custody. (iii) The date on which the vehicle was taken into custody. (iv) The name and address of the Department in whose custody the vehicle is being held. (v) The location where the vehicle is being held. (vi) The procedure to redeem the vehicle. (vii) The date by which the vehicle must be redeemed. (viii) That a procedure exists to contest the impoundment of the vehicle. (ix) A warning that the failure to redeem the vehicle or to contest the impoundment of the vehicle within 15 days after the date of this notice may result in the sale of the vehicle and the termination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale or to both the vehicle and the proceeds.

3. If the owner does not contest the impoundment of the vehicle, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

4. If the owner contests the impoundment of the vehicle, the matter shall be resolved after a hearing conducted in the Tribal Court. An owner who contests the impoundment of the vehicle may obtain release of the vehicle by posting a bond as determined by the Court.

5. After the disposition of the hearing described in subsection (4) of this section and, if a hearing is not requested, not less than 15 days nor more than 180 days after the date the notice described in subsection (2)(c) of this section is sent, the Department shall offer the vehicle for sale at a public sale unless the vehicle is redeemed.

6. A public sale shall be conducted in the following manner: (a) It shall be under the control of the Department. (b) It shall be open to the public and consist of open auction bidding. (c) It shall be held not less than 5 days after public notice of the sale has been published. (d) The public notice shall be published at least once in a newspaper having a general circulation within the county in which the vehicle was taken into custody. The public notice shall give a description of the vehicle for sale and shall state the time, date, and location of the sale.

7. The money received from the public sale of the vehicle shall be applied in the following order of priority: (a) Towing and storage charges. (b) Expenses incurred by the Department. (c) Remainder to the secured party, if any. If there is not a secured party, remainder to the owner. If the remainder of the money is not claimed by the secured party or owner within 30 days after the sale, it shall become the property of the unit of government that the Department represents.

8. If there are no bidders on the vehicle, the Department may do 1 of the following: (a) Turn the vehicle over to the towing firm to satisfy charges against the vehicle. (b) Obtain title to the vehicle for the Department by doing both of the following: (i) Paying the towing and storage charges. (ii) Applying for title to the vehicle. (c) Hold another public sale pursuant to subsection (6) of this section.

9. Within 2 days, excluding Saturday, Sunday, and legal holidays, after the disposition of the vehicle the Department shall cancel the entry into the law enforcement information network described in subsection (2)(b) of this section.

3.06. "Abandoned vehicle" defined; taking abandoned vehicles into custody; authority; procedure; public sale.

1. As used in this section, "abandoned vehicle" means a vehicle, which has remained on public property, or any other place open to travel by the public without the consent of the local Department for a period of 48 hours after the Department has affixed a written notice to the vehicle.

2. If a vehicle has remained on public property or any other place open to travel by the public for a period of time so that it appears to the Department to be abandoned, the Department shall do both of the following: (a) Determine if the vehicle has been reported stolen. (b) Affix a written notice to the vehicle. The written notice shall contain all of the following information: (i) The date and time the notice was affixed. (ii) The name and address of the Department taking the action. (iii) The name and badge number of the police officer affixing the notice. (iv) The date and time the vehicle may be taken into custody and stored at the owner's expense if the vehicle is not removed. (v) The year, make, and vehicle identification number of the vehicle.

3. If the vehicle is not removed within 48 hours after the date the notice was affixed, the vehicle shall be deemed abandoned, the owner is responsible for a civil infraction, and the Department may take the vehicle into custody.

4. The Department when taking a vehicle into custody shall do all of the following: (a) Recheck to determine if the vehicle has been reported stolen. (b) Within 24 hours after taking the vehicle into custody, enter the vehicle as abandoned into the law enforcement information network. (c) Within 2 days, excluding Saturday, Sunday, and legal holidays, after taking the vehicle into custody, send a report of the abandoned vehicle to the Michigan secretary of state. The report shall contain all of the following information: (i) The year, make, and vehicle identification number. (ii) The body style. (iii) The registration plate number and year. (iv) The state, which issued the registration plate. (v) The time and date the vehicle was taken into custody. (vi) The location of the abandonment. (vii) The location where the vehicle is being held. (viii) The name and address of the Department which obtained custody of the vehicle. (ix) The name and title of the reporting police officer. (d) Mail to the registered owner, by certified mail, a citation for the alleged violation.

5. After sending the report to the Michigan secretary of state, the Department shall contact the secretary of state to determine the registered owner and secured party, if any. The Department shall then send a notice that the vehicle has been deemed abandoned to the registered owner and secured party by first-class mail. Each notice shall contain all of the following information: (i) The year, make, and vehicle identification number of the vehicle. (ii) The location from which the vehicle was taken into custody. (iii) The date on which the vehicle was taken into custody. (iv) The name and address of the Department in whose custody the vehicle is being held. (v) The location where the vehicle is being held. (vi) The procedure to redeem the vehicle. (vii) The date by which the vehicle must be redeemed. (viii) That the registered owner, by following the instructions on the back of the citation, may contest the fact that the vehicle was deemed abandoned by denying responsibility for the civil infraction alleged in the citation. (ix) A warning that the failure to redeem the vehicle or to deny responsibility for a violation of subsection (3) of this section, may result in the sale of the vehicle.

6. If the owner admits responsibility for a violation of subsection (3) of this section, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

7. If the owner denies responsibility for a violation of subsection (3) of this section, the owner may obtain release of the vehicle by posting a bond as determined by the Court.

8. If the owner is found responsible for a violation of subsection (3) of this section, the Department shall offer the vehicle for sale at a public sale unless the vehicle is redeemed.

9. A public sale shall be conducted in the following manner: (a) It shall be under the control of the Department. (b) It shall be open to the public and consist of open auction bidding. (c) It shall be held not less than 5 days after public notice of the sale has been published. (d) The public notice shall be published at least once in a newspaper having a general circulation within the county in which the vehicle was abandoned. The public notice shall give a description of the vehicle for sale and shall state the time, date, and location of the sale.

10. The money received from the public sale of the vehicle shall be applied in the following order of priority: (a) Towing and storage charges. (b) Expenses incurred by the Department. (c) Remainder to the secured party, if any. If there is not a secured party, remainder to the owner. If the remainder of the money is not claimed by the secured party or owner within 30 days after the sale, it shall become the property of the unit of government that the Department represents.

11. If there are no bidders on the vehicle, the Department may do 1 of the following: (a) Turn the vehicle over to the towing firm to satisfy charges against the vehicle. (b) Obtain title to the vehicle for the Department or the unit of government the Department represents by doing both of the following: (i) Paying the towing and storage charges. (ii) Applying for title to the vehicle. (c) Hold another public sale pursuant to subsection (9) of this section.

12. Within 2 days, excluding Saturday, Sunday, and legal holidays, after the disposition of the vehicle, the Department shall do both of the following: (a) Notify the secretary of state of the disposition. (b) Cancel the entry into the law enforcement information network described in subsection (4)(b) of this section.

3.07. ”Abandoned scrap vehicle" defined; taking abandoned scrap vehicles in custody; authority; procedure; scrapping vehicles.

1. As used in this section, "abandoned scrap vehicle" means a vehicle, which meets all of the following requirements: (a) Is on public property or any other place open to travel by the public. (b) Is 7 or more years old. (c) Is apparently inoperable or is extensively damaged to the extent that the cost of repairing the vehicle so that it is operational and safe, as required by section 683 of the act, would exceed the fair market value of that vehicle. (d) Is not currently registered pursuant to the act. (e) Is not removed within 48 hours after a written notice as described in section 2.5a(2)(b) of this code is affixed to the vehicle.

2. The Department may take an abandoned scrap vehicle into custody, in which case the Department shall do all of the following: (a) Determine if the vehicle has been reported stolen. (b) Take 2 photographs of the vehicle. (c) Detail the damage or missing equipment to substantiate the vehicle as an abandoned scrap vehicle. The form shall contain all of the

following information: (i) The year, make, and vehicle identification number. (ii) The date of abandonment. (iii) The location of abandonment. (iv) A detailed listing of the damage or missing equipment.(v) The reporting officer's name and title. (d) Within 24 hours after taking the vehicle into custody, enter the vehicle as an abandoned scrap vehicle into the law enforcement information network.

3. Within 24 hours, excluding Saturday, Sunday, and legal holidays, after taking the vehicle into custody, the Department shall complete a release form and release the vehicle to the towing service or a used vehicle parts dealer or vehicle scrap metal processor. If the dealer or processor is outside of the jurisdiction of LTBB, the Department shall assist the dealer or processor in obtaining permission from the Michigan secretary of state to scrap

4. The release form described in subsection (3) of this section shall state that the Department has complied with all the requirements of subsection (2)(b) and (c) of this section.

5. The certificate of scrapping form shall be prescribed by the Department. The Department shall retain the records relating to an abandoned scrap vehicle for not less than 2 years. The 2 photographs taken pursuant to subsection (2)(b) of this section shall be retained by the Department for not less than 2 years. After the certificate of scrapping has been issued, a certificate of title for the vehicle shall not be issued again.

3.08. "Citation" defined; numbering; form.

1. As used in the following sections, "citation" means a complaint or notice upon which a police officer shall record an occurrence, which involves 1 or more vehicle law violations by the person cited. Each citation shall be numbered consecutively, shall be in a form determined by the Department, and shall consist of the following parts: (a) The original copy which shall be a complaint or notice to appear issued by the officer and which shall be filed with the Court in which the appearance is to be made. (b) The first copy, which shall be retained by the Department. (c) The second copy, which shall be delivered to the alleged violator if the violation is a misdemeanor. (d) The third copy, which shall be delivered to the alleged violator if the violation is a civil infraction.

2. With the prior approval of the Department, the citation may be appropriately modified as to content or number of copies to accommodate law enforcement and Court procedures and practices. Use of a citation for other than moving violations is optional.

3.09. Issuance of citation books. The police chief shall issue citation books to each police officer whose duties may or will include traffic duty or traffic law enforcement. The police chief shall obtain a receipt from an officer to whom a citation book has been issued.

3.10. Issuance of citation for misdemeanor.

1. When a person is arrested without a warrant for any violation of this Statute which is punishable as a misdemeanor, the arresting officer shall prepare, as soon as possible and as

completely as possible, an original and 3 copies of a written citation to appear in Court which shall contain the name and address of such person, the offense charged, and the time and place when and where such person shall appear in Court. The officer shall inform the offender of the violation and shall give the third copy of the citation to the alleged offender. If such arrested person so demands, rather than being given a citation, the arrested person shall be taken before the Court.

2. The time to appear in Court, which is specified in the citation, shall be within a reasonable time after the arrest, unless the person arrested demands an earlier hearing.

3. The place to appear in Court that is specified in the citation shall be before a magistrate who has jurisdiction over the alleged offense charged in the citation.

4. An appearance may be made in person, by representation, or by mail. When an appearance is made by representation or mail, the magistrate may accept the plea of guilty or not guilty for purposes of arraignment with the same effect as though the person personally appeared before him or her. The magistrate, by giving 5 days' notice of the date of appearance, may require an appearance in person at the time and place designated in the citation.

3.11. Civil infraction; commencing action; plaintiff; jurisdiction; time and place of appearance; minors.

1. A civil infraction action is a civil action in which the defendant is alleged to be responsible for a civil infraction. A civil infraction action is commenced upon the issuance and service of a citation as provided in this Section. The plaintiff in a civil infraction action shall be LTBB.

2. The LTBB Tribal Court shall have jurisdiction over civil infraction actions.

3. The time specified in the citation for appearance in Court shall be within a reasonable time after the citation is issued.

4. If the person cited is a minor, that individual shall be permitted to appear in Court or to admit responsibility for a civil infraction without the necessity of appointment of a guardian or next friend. The LTBB Tribal Court shall have jurisdiction over the minor and may proceed in the same manner as if that individual were an adult.

3.12. Civil infraction; temporary detention; accident citation; citation form and procedure.

1. A police officer who witnesses a person violating the act which constitutes a civil infraction may stop the person, detain the person temporarily for purposes of making a record or vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation which shall be a notice to appear in Court for 1 or more civil infractions.

2. A police officer may issue a citation to a person who is a driver of a motor vehicle which is involved in an accident if, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person is responsible for a civil infraction in connection with the accident.

3. A citation issued under subsection (1) or (2) of this section shall be in the form prescribed in this Statute.

4. The officer shall inform the person of the alleged civil infraction or infractions and shall deliver the third copy of the citation to the alleged offender.

5. In a civil infraction action that involves the parking or standing of a motor vehicle, a copy of the citation need not be served personally upon the defendant, but may be served upon the registered owner by attaching the copy to the vehicle. A city may also authorize personnel other than a police officer to issue and serve a citation for violation of its ordinance involving the parking or standing of a motor vehicle. In a civil infraction action involving the abandoning of a vehicle, a copy of the citation need not be served personally upon the defendant but may be served upon the registered owner by certified mail.

6. If a parking violation notice other than a citation is attached to a motor vehicle, and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the Department, a citation may be filed with the Court in and a copy of the citation may be served by first-class mail on the registered owner of the vehicle at the owner's last known address. A parking violation notice may be issued by a police officer or other personnel who are duly authorized by the Department. The citation that is filed with the Court pursuant to this subsection shall consist of a sworn complaint which contains the allegation stated in the parking violation notice and shall inform the defendant how to respond to the citation.

7. A citation that is issued under subsection (5) or (6) of this section for a parking or standing violation shall be processed in the same manner as a citation issued personally to a defendant pursuant to subsection (1) or (2) of this section.

8. As used in subsection (6) of this section: (a) "Parking violation notice" means a notice, other than a citation, that directs a person to appear at the Tribal Court or Police Department as stated in the notice, and to pay the fine and costs, if any, prescribed by ordinance for the parking or standing of a motor vehicle in violation of the ordinance.

3.13. Civil infraction; citation; contents.

(1) A citation that is issued pursuant to section 3.12 (1) of this code shall contain all of the following information: (a) The name of LTBB as plaintiff. (b) The name and address of the person to whom the citation is issued. (c) Each civil infraction alleged. (d) The place where the person shall appear in Court. (e) The telephone number of the Tribal Court. (f) The time period during which the appearance shall be made. (g) Additional information required by this section.

(2) The citation shall contain a notice in boldface type that the person, within the time period specified for appearance, may do any of the following: (a) Admit responsibility for the civil infraction in person, by representation, or by mail. (b) Admit responsibility for the civil infraction "with explanation" in person, by representation, or by mail. (c) Deny responsibility for the civil infraction by doing either of the following: (i) Appearing in person for an informal hearing before the Tribal Court without the opportunity of being represented by an attorney. (ii) Appearing in Court for a formal hearing before a judge with the opportunity of being represented by an attorney.

(3) The citation shall contain a notice in boldface type that if the person desires to admit responsibility "with explanation" other than by mail or desires to have an informal hearing or a formal hearing, the person shall apply to the Court in person, by mail, or by telephone within the time specified for appearance and shall obtain a scheduled date and time to appear for a hearing.

(4) The citation shall contain a notice in boldface type that the failure of a person to appear within the time specified in the citation or at the time scheduled for a formal hearing or informal hearing shall result in the entry of a default judgment against the person and in the immediate suspension of the person's operator's or chauffeur's license. Timely application to the Court for a hearing or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitutes a timely appearance.

3.14. Civil infraction; sworn complaints. If an officer issues a citation for a civil infraction, or if a citation is issued for a parking or standing violation, the Court may accept an admission with explanation or an admission or denial of responsibility on the citation without the necessity of a sworn complaint. If the person denies responsibility for the civil infraction, there shall not be any further proceedings until a sworn complaint is filed with the Court. A warrant for arrest for failure to appear in Court pursuant to the civil infraction citation shall not be issued until a sworn complaint relative to the civil infraction is filed with the Court.

3.15. Civil infraction; appearance; responsibility; denial; hearing.

(1) A person to whom a citation is issued under section 3.12(1) of this code shall appear within the time specified in the citation and may respond to the allegations in the citation as provided in this section.

(2) If a person chooses to admit responsibility for the civil infraction, a person may do so by appearing in person, by representation, or by mail. If an appearance is made by representation or mail, the Court may accept the admission as though he or she personally appeared in Court. Upon acceptance of the admission, the Court may order any of the sanctions permitted under section XIV [WOTC 9.314] of this code.

(3) If a person chooses to admit responsibility for the civil infraction "with explanation," a person may do so in either of the following ways: (a) By appearing by mail. (b) By contacting the Court in person, by mail, by telephone, or by representation to obtain from the Court a

scheduled date and time to appear. At such time, the person shall appear in person or by representation.

(4) If a person admits responsibility for a civil infraction "with explanation" under subsection (3) of this section, the Court shall accept the admission as though the person has admitted responsibility under subsection (2) of this section and may consider the person's explanation by way of mitigating any sanction which the Court may order under section XIV [WOTC 9.314] of this code. If an appearance is made by representation or mail, the Court may accept the admission as though the person personally appeared in Court, but the Court may request the person to provide a further explanation.

(5) If a person chooses to deny responsibility for a civil infraction, a person shall do so by contacting the Court in person, by representation, by mail, or by telephone and obtaining a scheduled date and time to appear for an informal or formal hearing. The Court shall schedule an informal hearing, unless a person expressly requests a formal hearing. If a person expressly requests a formal hearing, the Court shall schedule a formal hearing. If a hearing is scheduled by telephone, the Court shall mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address, which may be furnished by the defendant. An informal hearing shall be conducted pursuant to section 3.16 of this code and a formal hearing shall be conducted pursuant to section 3.17 of this code.

3.16. Civil infractions; informal hearings; procedure; witnesses; appeal.

(1) The Court may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. The judge shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law, but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except for provisions relating to privileged communications. There shall not be a jury at an informal hearing. A verbatim record of an informal hearing is not required.

(2) At an informal hearing, the person cited may not be represented by an attorney nor may the plaintiff be represented by the prosecuting attorney or the attorney for a political subdivision.

(3) Notice of a scheduled informal hearing shall be given to the citing Department. The agency may subpoena witnesses for the plaintiff. The defendant may also subpoena witnesses. Witness fees need not be paid to a witness in advance of an informal hearing.

(4) If the Court determines by a preponderance of the evidence that the person cited is responsible for a civil infraction, the Court shall enter an order against the person as provided in section XIV [WOTC 9.314] of this code. Otherwise, a judgment shall be entered for the defendant, but the defendant shall not be entitled to costs of the action.

3.17. Civil infraction; formal hearings; procedure; fees; counsel; judgment.

(1) A formal hearing shall be conducted only by a judge of the Court.

(2) In a formal hearing, the person cited may be represented by an attorney, but is not entitled to appointed counsel at public expense.

(3) Notice of a formal hearing shall be given to the prosecuting attorney. That attorney shall appear in Court for a formal hearing and that attorney shall be responsible for the issuance of a subpoena to each witness for the plaintiff. The defendant may also subpoena witnesses. Witness fees need not be paid to a witness in advance of an informal hearing.

(4) There shall not be a jury trial in a formal hearing.

(5) If the judge determines by a preponderance of the evidence that the person cited is responsible for a civil infraction, the judge shall enter an order against the person as provided in section XIV [WOTC 9.314] of this code. Otherwise, a judgment shall be entered for the defendant, but the defendant shall not be entitled to costs of the action.

3.18. Civil infraction; failure to appear. If the person to whom a citation is issued for a civil infraction fails to appear, as directed by the citation or other notice, at a scheduled appearance, at a scheduled informal hearing, or at a scheduled formal hearing, the Court shall enter a default judgment against that person, and the person's license shall be suspended until that person appears in Court and all matters pertaining to the violation are resolved or until the default judgment is set aside.

3.19. Civil infraction; stopping a nonresident; procedure; "guaranteed appearance certificate" defined. (1) When a person who is not a resident of LTBB’s reservation is stopped for a civil infraction pursuant to section 3.12 of this code, the police officer who makes the stop shall take the person's driver's license as security for the nonresident's appearance in Court and satisfaction of any order which may be issued under this code and shall issue to that person a citation as provided in sections 3.08 and 3.12 of this code. The officer who takes the driver's license, within 48 hours after the taking, excluding Sundays, legal holidays, and Saturdays when Court is closed, shall deliver the driver's license to the Court, together with a report of the facts relating to the civil infraction. Failure to make a report and deliver the license shall be considered contempt of Court. If the person does not have a license in his or her immediate possession the officer shall arrest that person.

(2) In place of the officer's taking of the license under subsection (1) of this section or before appearance in Court, the person stopped may guarantee the officer or the Court of his or her appearance by leaving with the officer or Court a guaranteed appearance certificate or a sum of money not to exceed $100.00.

(3) If a judge is available for an immediate appearance, upon demand of the person stopped, the officer shall immediately take the nonresident driver before the magistrate to answer to the civil infraction alleged. Upon entry of an admission of responsibility for the civil infraction, with or without explanation, or upon completion of an informal hearing, the defendant's license shall be returned if judgment is entered for the defendant, if any adverse judgment entered against the

defendant is satisfied, or if the defendant leaves with the Court a guaranteed appearance certificate or a sum of money not to exceed $100.00 as security for payment of any fines or costs ordered. If the nonresident defendant requests a formal hearing, the hearing shall be scheduled as provided in section 2.10g of this code, but the defendant's license shall be retained by the Court until final resolution of the matter, unless the defendant leaves with the Court the guaranteed appearance certificate or deposit as provided in subsection (2) of this section as security for appearance at the scheduled formal hearing.

(4) The officer who receives a guaranteed appearance certificate or deposit under subsection (2) of this section shall give a receipt to the person stopped for the guaranteed appearance certificate or the money deposited, together with the written citation required under subsection (1) of this section.

(5) The officer who takes a certificate or deposit shall, within 48 hours after the taking, excluding Sundays, legal holidays, and Saturdays when Court is closed, deliver the certificate or deposit to the Court named in the citation, together with a report of the facts relating to the citation. Failure to make a report and deliver the deposit shall be embezzlement of public money.

(6) If the person who posts a certificate or deposit fails to appear as required in the citation, or fails to appear for a scheduled formal hearing, the Court that has jurisdiction and venue over the civil infraction shall enter a default judgment against the person, and the guaranteed appearance certificate or deposit shall be forfeited and applied to any civil fine or costs ordered pursuant to section 907 of the act.

(7) For purposes of this section, "guaranteed appearance certificate" means a card or certificate which contains a printed statement that a surety company which is authorized to do business in this state guarantees the appearance of the person whose signature appears on the card or certificate and that the company, if the person fails to appear in Court at the time of a schedule informal or formal hearing or if the person fails to pay any fine or costs imposed pursuant to this code, will pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed $200.00.

(Source: WOS 2001-06, March 18, 2001, Section III)

9.304 CITATIONS TO DRIVERS IN ACCIDENTS

A police officer may issue a citation to a person who is a driver of a motor vehicle involved in an accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed an offense under this code in connection with the accident. The officer shall prepare an original and 3 copies of the citation which shall set forth the name and address of such person, the offense that may be charged against the person, and the time and place of the appearance of such person in Court.

(Source: WOS 2001-06, March 18, 2001, Section IV)

9.305 DISPOSITION OF CITATIONS

5.01. At or before the completion of his or her tour of duty, a police officer to whom a citation book has been issued and who has recorded the occurrence of a vehicle law violation upon a citation shall deliver to his or her police chief or to the person authorized by the police chief all copies of the citation duly signed. The police chief or the person authorized by the police chief shall deposit the original of the citation, together with the copy designated for the department's motor vehicles record, with the Court that has jurisdiction over the offense not more than 2 days after the date of the citation, Sundays and legal holidays excepted.

5.02. If a police officer arrests a person without a warrant for any vehicle law violation, the arrest shall be noted on the citation.

5.03. If a citation is voided, the citation shall be indorsed with a full explanation by the police officer that voids the citation and shall be duly accounted for to his or her police chief or to the police chief's authorized designee.

5.04. Nothing in this ordinance shall prevent a person, other than a police officer, from applying for a criminal complaint for a vehicle law violation, and such person need not show that the alleged offender has been issued a citation in connection with such offense.

(Source: WOS 2001-06, March 18, 2001, Section V)

9.306 ACCOUNTABILITY IN THE PROCESSING OF CITATIONS

6.01. The various officers and administrators of LTBB shall establish procedures, as provided to insure accountability in the processing of citations. The record that shows the issuance and subsequent disposition of a citation shall be maintained for not less than the most recent 5-year period and such records and notices shall be available for public inspection.

6.02. Falsification or illegal disposition of citations; penalties. Whoever knowingly falsifies a citation, copies of a citation, or a record of the issuance of a citation; disposes of a citation, copy, or record in a manner other than as required in this code; attempts to falsify or dispose of a citation, copy, or record; or attempts to incite or procure another to falsify or dispose of a citation, copy, or record shall be fined not more than $500.00 or shall be imprisoned for a term not to exceed 1 year, or both.

(Source: WOS 2001-06, March 18, 2001, Section VI)

9.307 CITATION OF ILLEGALLY PARKED VEHICLES

When a motor vehicle without a driver is found parked or stopped in violation of any restriction imposed by law, the officer who finds the vehicle shall take its registration number and may take any other information displayed on the vehicle which might identify its user and shall conspicuously affix to the vehicle a traffic citation.

(Source: WOS 2001-06, March 18, 2001, Section VII)

9.308 PROCEDURE UPON ARREST FOR CERTAIN OFFENSES

8.01. A person who is arrested without a warrant on a charge of violating section 11.16 of this code shall be taken, without unreasonable delay, before the Tribal Court. He or she may be released if, under existing circumstances, it does not appear that his or her release pending the issuance of a warrant would constitute a public menace.

8.02. A person who is arrested without a warrant on a charge of violating section 11.19 of this code shall be taken, without unreasonable delay, before the Tribal Court.

8.03. A person who is arrested without a warrant on a charge of driving a motor vehicle without a valid operator's or chauffeur's license in his or her immediate possession, as provided in sections 11.80, 11.82, 11.83, 11.84 and 11.85 of this code, shall be taken, without unreasonable delay, before the Court. If the arresting officer satisfactorily determines the identity of the person and the likelihood of subsequent apprehension in the event of failure to voluntarily appear before the Court as directed, the officer may release the person from custody after issuing him or her a citation as provided in section 3.10 of this code.

8.04. Sworn complaints. When under the provisions of sections 3.08 to 8.01 of this code an officer issues a citation, the Court may accept a plea of guilty/responsible or not guilty/not responsible or responsible with explanation upon the citation without the necessity of a sworn complaint, but the officer shall sign the complaint before the Court makes the docket return thereon. If the alleged offender pleads not guilty/not responsible, further proceedings shall not be conducted until a sworn complaint is filed with the Court. A warrant for arrest shall not be issued for an offense under this code until a sworn complaint is filed with the Court.

(Source: WOS 2001-06, March 18, 2001, Section VIII)

9.309 RECORDS OF TRAFFIC VIOLATIONS; WARRANTS

9.01. The chief of police shall maintain, or cause to be maintained, a record of all warrants which are issued on traffic violation charges and which are delivered to the police department for service. The chief of police shall also maintain, or cause to be maintained, a record of the final disposition of all such warrants.

9.02. Traffic accident reports. The police department shall maintain a suitable system of filing traffic accident reports. Accident reports, or cards referring to them, shall be filed alphabetically by location.

9.03. Official form for accident reports. The police department shall develop an official form for reporting accidents, which are required to be reported by the act.

9.04. Traffic accident studies. If the accidents at any particular location become numerous, the police department shall cooperate with appropriate governmental officials and staff in conducting studies of such accidents and shall determine remedial measures.

9.05. The police department shall maintain a suitable record of all traffic accidents, warnings, arrests, convictions, and complaints which are reported for each driver, except for those that concern standing or parking. The reported items shall be filed alphabetically under the name of the driver concerned. Such records shall accumulate during a period of not less than 5 years and, from that time on; such records shall be maintained for not less than the most recent 5-year period.

9.06. Traffic engineer. The office of traffic engineer is hereby established. The traffic engineer shall be appointed in a manner prescribed by the Tribal Council and shall exercise the powers and duties provided in this code in a manner which is consistent with prevailing traffic engineering and safety practices and which is in the best interests of this governmental unit. If a traffic engineer is not appointed, the authority of such engineer shall be vested in the chief of police.
9.07. Duties of traffic engineer. The general duties of the traffic engineer are as follows: (a) To plan and determine the installation and proper timing and maintenance of traffic-control devices. (b) To conduct engineering analysis of traffic accidents and to devise remedial measures. (c) To conduct engineering investigations of traffic conditions. (d) To plan the operation of traffic on the streets of the LTBB, including parking areas. (e) To cooperate with other officials of LTBB in the development of ways and means to improve traffic conditions. (f) To carry out the additional powers and duties imposed by LTBB statute, regulation of resolution.

9.08. Emergency regulations. The chief of police is hereby empowered to make and enforce temporary regulations to cover emergencies or special conditions. Temporary regulations shall remain in effect for not more than 90 days.

9.09. Testing traffic-control devices. The traffic engineer may test or experiment with traffic-control devices under actual conditions of traffic in accordance with procedures contained in the Michigan manual of uniform traffic-control devices.

9.10. Through streets: Placing and maintaining stop signs. If a through street is duly established, it is the duty of the traffic engineer to place and maintain a stop sign on each and every street which intersects such through street or which intersects that portion of such through street which is described and designated as a through street by any ordinance of LTBB unless traffic at any such intersection is controlled at all times by traffic-control signals; provided, however, that at the intersection of 2 through streets or at the intersection of a through street and a heavy traffic street not so designated, stop signs shall be erected at the approaches of either street as may be determined by the traffic engineer upon the basis of an engineering and traffic study.

9.11. Intersections where stop required. The traffic engineer is hereby authorized to determine and designate intersections where particular hazards exist on other than through streets and to determine whether vehicles shall stop at 1 or more entrances to any such stop intersection. The traffic engineer shall erect a stop sign at every place where a stop is required.

9.12. Stop signs at railroad grade crossings. The traffic engineer is hereby authorized to designate certain grade crossings of railways by highways as "stop" crossings and to erect signs thereat, which notify drivers of vehicles on such highways to come to a complete stop before crossing the railway tracks. If a crossing is so designated and signposted, it is unlawful for the driver of any vehicle to fail to stop within 50, but not less than 10, feet from such railway tracks before traversing such crossing. The erection of, or failure to replace or maintain such signs shall not be a basis for any action of negligence against local authorities.

9.13. Yield right-of-way signs. The traffic engineer may determine and designate intersections where conditions warrant requiring vehicles to yield the right-of-way to cross vehicles and to determine whether vehicles shall yield the right-of-way at 1 or more entrances to any such intersection. A yield sign shall be erected at every place where approaching vehicles are required to yield the right-of-way.

9.14. Parking adjacent to schools. The traffic engineer is hereby authorized to erect signs, which indicate that parking on either or both sides of any street adjacent to any school property is prohibited if such parking will, in his or her opinion, interfere with traffic or create a hazardous situation.

9.15. Parking prohibited on narrow streets. The traffic engineer is hereby authorized to erect signs which indicate that parking upon any street is prohibited if the width of the roadway is not more than 20 feet or that parking on 1 side of a street as indicated by such signs is prohibited if the width of the roadway is not more than 30 feet.

9.16. Standing or parking on 1-way streets. The traffic engineer is authorized to erect signs on the left-hand side of any 1-way street to prohibit the standing or parking of vehicles on the left-hand side of such street.

9.17. Standing or parking on 1-way roadways. The traffic engineer is authorized to determine when standing or parking is permitted on the left-hand side of any 1-way roadway and to erect signs giving notice thereof.

9.18. No stopping, standing, or parking zones. The traffic engineer may determine and designate zones where stopping, standing, or parking is prohibited due to hazardous conditions, which may exist, or where conditions do exist, which will cause undue delay to traffic. Such zones shall be designated by posting proper signs at such locations, and the distance between the signs shall be not more than 100 feet.

9.19. Tow-away zones. The traffic engineer may establish tow-away zones as follows: (a) At locations already designated as no stopping, standing, or parking zones. (b) On streets where the normal width of the roadway is reduced by a building or buildings or by a construction project. (c) At or adjacent to streets and locations where safety and traffic movement is affected by occurrence of a public event. (d) Such tow-away zones shall be designated by posting signs that read "tow-away zone." Such signs shall be posted independently or as an extra panel attached below the posted signs which prohibit stopping, standing, or parking at the location. The distance between such posted signs shall be not more than 100 feet.

9.20. Traffic-control devices on private property; violation as civil infraction. (1) With the consent, or at the request, of the owners or persons in charge of private property that is open to the general public for travel, the traffic engineer may determine controls of the movement of vehicles and pedestrians and the parking of vehicles as needed for the safety and convenience of the public and users of the property. The traffic engineer shall place and maintain whatever traffic-control devices are necessary to give notice of the controls determined to be necessary. (2) A person who violates the directions of the traffic-control devices is responsible for a civil infraction.

9.21. Curb loading zones. The traffic engineer is hereby authorized to determine the location of passenger and freight curb loading zones and shall place and maintain appropriate signs which indicate the zones and which state the hours during which the zones are restricted for loading purposes.
9.22. Permits for curb loading zones. The traffic engineer shall not designate or sign any curb loading zone upon special request of any person unless such person makes application for a permit for such zone and for 2 signs to indicate the ends of each zone. When approved by the traffic engineer, the clerk, upon granting a permit and issuing such signs, shall collect from the applicant and deposit with the treasurer a service fee for 1 year or a fraction thereof in an amount specified by resolution of the ordinance making body. LTBB may, by regulation, impose conditions upon the use of the signs and provide for reimbursement for the value of the signs if they are lost or damaged and for return of the signs if they are misused or upon expiration of the permit. Every such permit shall expire at the end of 1 year.

9.23. Public carrier stands. The traffic engineer is hereby authorized to establish bus stops, bus stands, taxicab stands, and stands for other passenger common-carrier motor vehicles on such public streets, in such places, and in such number as he or she shall determine to be of the greatest benefit and convenience to the public. Every such bus stop, bus stand, taxicab stand, or other stand shall be designated by appropriate signs, which the traffic engineer shall cause to be erected.

9.24. Permit for loading or unloading at an angle to the curb. The traffic engineer may authorize the Department to issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of such permit. A permit may be issued either to the owner or lessee of real property or to the owner of the vehicle. A permit shall grant to such person the privileges which are stated in the permit and which are authorized in this code.

9.25. Parking meter zones. The traffic engineer is hereby authorized, subject to the approval of the Tribal Council, to determine and designate metered parking zones and to install and maintain as many parking meters as necessary in the metered parking zones, if it is determined that the installation of parking meters is necessary to aid in the regulation, control, and inspection of the parking of vehicles.

9.26. Angle parking zones. The traffic engineer shall determine the location of angle parking zones and shall erect and maintain appropriate signs, which indicate the location, and which give notice thereof, except that such zones shall not be established on state trunkline highways.

9.27. Duty to erect parking signs. It is the duty of the traffic engineer to erect and maintain appropriate signs, which give notice of regulations that, relate to the stopping, standing, or parking of vehicles.

9.28. Speed restrictions. The traffic engineer is hereby authorized to establish, increase, or decrease speed regulations provided for in this code and to erect signs which give notice thereof, as follows: (a) Establish prima facie lawful speed limits on streets outside of business or residential districts, which shall not be less than 15 miles per hour. (b) Increase the prima facie speed limits on through streets within business or residential districts. (c) Establish the prima facie speed limit in public parks, alleys, and cemeteries.

9.29. Authority to place turning markers. The traffic engineer is authorized to place markers, buttons, or signs within or adjacent to intersections which indicate the course to be traveled by vehicles turning at such intersections. The course to be traveled, as indicated, may conform to, or be other than, that prescribed by law or ordinance.

9.30. Turn signs. The traffic engineer may determine the locations at which drivers of vehicles shall not make a right, left, or U-turn and shall place proper signs at such locations. Right, left, and U-turns may be prohibited between certain hours of the day and permitted at other times. At such locations, the different times shall be plainly shown on the signs or the signs may be removed when turns are permitted.

9.31. Authority to sign 1-way streets and alleys. Where any 1-way street or alley is duly established, the traffic engineer shall place and maintain signs which give notice of the 1-way street or alley and such regulation shall not be effective unless such signs are in place. Signs that indicate the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

9.32. Authority to restrict direction of movement on streets during certain periods. The traffic engineer is hereby authorized to determine and designate streets, parts of streets, or specific lanes of streets on which vehicular traffic shall proceed in 1 direction during 1 period of the day and the opposite direction during another period of the day and shall place and maintain appropriate markings, signs, barriers, or other devices to give notice thereof. The traffic engineer may erect signs that temporarily designate lanes to be used by traffic moving in a particular direction, regardless of the centerline of the roadway.

9.33. Authority to establish no passing zones. The traffic engineer is hereby authorized to designate zones on streets or parts of streets where passing is prohibited and shall place and maintain official signs or markings on the roadway to indicate such zones.

9.34. Truck routes; road limits. The traffic engineer is hereby authorized to prohibit the use of designated streets by trucks or other commercial vehicles and to impose limitations as to the weight of vehicles on designated streets; however, prohibitions and limitations shall not become effective until notice thereof is given by means of official signs.

9.35. Prohibiting certain traffic. The traffic engineer may, after an engineering and traffic investigation, designate any heavily traveled street under his or her jurisdiction as prohibited to a class or kind of traffic found to be incompatible with the normal and safe movement of traffic. The traffic engineer shall erect appropriate traffic-control devices, which give notice of the determination.

9.36. Operating bicycle on sidewalk; violation as civil infraction. (1) A person who operates a bicycle on a sidewalk that is constructed for the use of pedestrians shall yield the right-of-way to a pedestrian and give an audible signal before overtaking and passing the pedestrian. (2) A person who violates this section is responsible for a civil infraction.

9.37. Traffic-control orders. (1) The authority in this code to regulate traffic shall be exercised by the traffic engineer by the issuance of traffic-control orders, which shall specify the rules and regulations adopted or established by him or her. Such traffic-control orders shall become effective upon being filed with the clerk and upon erection of adequate signs or signals which give notice of the existence of such regulation, if signs or signals are required by the provisions of this code which pertain to such regulation. (2) Traffic-control orders may be issued by the traffic engineer on his or her own authority, but when so issued shall be known as temporary traffic-control orders and shall not be effective after the expiration of 90 days from the date of filing and such temporary traffic-control orders shall not be renewed or extended, except upon approval by the Tribal Council. (3) Permanent traffic-control orders shall be issued by the traffic engineer, approved by the Tribal Council, and filed with the clerk. (4) Temporary orders shall become permanent orders upon being approved by the ordinance making body, and notice of such approval shall be filed with the clerk. (5) All traffic-control orders, and any actions, which modify or repeal such orders, shall be kept by the clerk in a separate book, which shall be known as the traffic-control order book. (6) A copy of a traffic-control order, certified by the clerk to be a true copy compared by him or her with the original in his or her office, shall be permitted into evidence in all Court proceedings in the same manner as the original would be permitted into evidence if produced. If it appears that a traffic-control sign, signal, or device that conforms to the provisions of this code was erected or in place when the alleged violation of this code occurred, such showing shall be prima facie evidence of the existence of a lawful traffic-control order which authorizes such traffic control, sign, signal, or device, and it is not necessary for the prosecution to affirmatively show the existence of a valid traffic-control order in such cases, unless and until such presumption is rebutted by competent evidence.

9.38. Clerk. The duties set forth in sections 9.39 to 9.42 of this code shall apply to the person who is appointed by the chief of police as traffic clerk.

9.39. Clerk to issue permit for loading or unloading at an angle to the curb. The clerk, upon receipt of a written application, shall issue, subject to the approval of the traffic engineer, permits to back a vehicle at right angles to the curb for the purpose of loading or unloading of merchandise or material. Such permits shall be subject to the terms and conditions stated thereon. Every such permit shall expire at the end of each calendar year, but may be reissued.

9.40. Clerk to issue permit for curb loading zones. The clerk, upon receipt of a written application, shall issue, subject to the approval of the traffic engineer, permits for curb loading zones. Such permits shall be subject to the terms and conditions stated thereon.

9.41. Clerks to provide traffic citation forms. Traffic citation forms in serially numbered sets which notify alleged violators to appear and answer to charges of violating traffic laws and ordinances shall be provided by the clerk in books and in a form as provided in sections 3.08 and 3.09 of this code.

9.42. Issuance and record of traffic citation books. The clerk shall be responsible for the issuance of traffic citation books to the chief of police and shall maintain a record of each book.

(Source: WOS 2001-06, March 18, 2001, Section IX)

9.310 OBEDIENCE TO TRAFFIC REGULATIONS

10.01. Required obedience to traffic ordinances; violation as civil infraction. It is a violation of this code for any person to do any act, which is forbidden, or to fail to perform any act which is required, by this code.

10.02. Parental responsibility; violation as civil infraction. (1) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this code. (2) A person who violates this section is responsible for a civil infraction.

10.03. Obedience to police and fire department officials; violation as misdemeanor. (1) A person shall not willfully fail or refuse to comply with any lawful order or direction of any police officer or member of the fire department, at the scene of or in the immediate vicinity of a fire, who is vested with authority under the code to direct, control, or regulate traffic. (2) A person who violates this section is guilty of a misdemeanor.

10.04. Failure to stop upon police signal; violation as misdemeanor. (1) If a driver of a motor vehicle is given a visual or audible signal by hand, voice, emergency light, or siren by a police officer who is acting in the lawful performance of his or her duty and who is directing the driver to bring his or her motor vehicle to a stop and the driver willfully fails to obey such direction by increasing his or her speed, extinguishing his or her lights, or otherwise attempting to flee or elude the officer, the driver shall be guilty of a misdemeanor. The officer who gives the signal shall be in uniform. A police vehicle that is driven at night shall be adequately identified as an official police vehicle.

10.05. Persons propelling push carts or riding animals subject to traffic regulations; violation as misdemeanor. (1) Persons who propel any push cart or who ride an animal upon a roadway and persons who drive any animal-drawn vehicle are subject to the provisions of this code which are applicable to the driver of any vehicle, except for the provisions of this code, which by their very nature can have no application. (2) A person who violates this section is guilty of a misdemeanor.

10.06. Use of coasters, roller skates, and similar devices restricted; violation as civil infraction. (1) A person who is on roller skates or who is riding in, or by means of, any coasters, toy vehicle, or similar device shall not go on any roadway, except while crossing a street on a crosswalk, unless lanes or specific are designated for such use by the traffic engineer.

10.07. When crossing a street on a crosswalk, such person shall be granted all of the rights, and shall be subject to all of the duties, applicable to pedestrians. (2) A person who violates this section is responsible for a civil infraction.

10.08. Public employees to obey traffic regulations. The provisions of this code that are applicable to the drivers of vehicles on streets and highways shall apply to the drivers of all vehicles owned by, or used in the service of LTBB or any government, subject to such specific exceptions as are set forth in this code or other applicable law.
10.09. Authorized emergency vehicles. The driver of an authorized emergency vehicle, when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to, but not upon returning from, a fire alarm, may exercise the privileges set forth in section 10.10 of this code, subject to the conditions stated in sections 10.10-10.13 of this code.

10.10. Privileges of authorized emergency vehicles. The driver of an authorized emergency vehicle may do all of the following: (a) Park or stand, irrespective of the provisions of this code. (b) Proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation. (c) Exceed the prima facie speed limits if the excessive speed does not endanger life or property. (d) Disregard regulations that govern direction of movement or the turning in specified directions. (e) Drive through a funeral or other authorized procession.

10.11. Signal required. The privileges granted to an authorized emergency vehicle in sections 10.9 and 10.10 of this code shall apply only when the driver of the vehicle in motion sounds an audible signal by bell, siren, or exhaust whistle, as may be reasonably necessary, and when the vehicle is equipped with at least 1 lighted lamp which displays a flashing, oscillating, or rotating red or blue light which is visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle. Only authorized emergency vehicles shall be equipped with a flashing, oscillating, or rotating red or blue light which, when activated, shall be visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except when deemed advisable not to equip such authorized emergency vehicle operating as a police vehicle with a flashing, oscillating, or rotating light. A police vehicle shall retain the exemptions granted in this section to an authorized emergency vehicle without sounding an audible signal if the police vehicle is engaged in an emergency run where silence is required.

10.12. Authorized emergency vehicle driver responsibility. The preceding provisions of this code do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and such provisions shall not protect the driver from the consequences of his or her reckless disregard for the safety of others.

10.13. Workers on surface of highways. The provisions of this code do not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work on the surface of a street to the extent code provisions are not consistent with the work to be performed. All provisions apply to such persons and vehicles when traveling to or from such work.

10.14. Code provisions; exclusive applicability to operation of vehicles on streets, except where otherwise referred to. The provisions of this code that relate to the operation of vehicles refer exclusively to the operation of vehicles on streets, except where a different place is specifically referred to in a given section of this code.

10.15. Enforcing violation on private road. Notwithstanding any other provision of law, a police officer may enter upon a private road to enforce violations of this code.

10.16. Authority to install traffic-control devices. The traffic engineer shall place, maintain, or remove traffic-control signs, signals, lane markings, and other devices and shall determine the hours and days during which any traffic-control device shall be in operation or in effect. This shall be done when and as required under this code and applicable law to regulate, warn, or guide traffic.

10.17. Manual and specifications for traffic-control devices. All traffic-control signs, signals, and devices shall conform to the official Michigan manual of uniform traffic-control devices. All signs and signals required by this code for a particular purpose shall, so far as practicable, be uniform as to type and location throughout this governmental unit. All traffic-control devices so erected and not inconsistent with the provisions of state law or this code shall be official traffic-control devices.

10.18. Limit to authority. Notwithstanding the authority granted to the traffic engineer under this code, traffic-control devices shall not be placed or maintained on any trunkline highway which is under the jurisdiction of the state highway commissioner, except by the commissioner's permission, or on any county road, except by permission of the county road commission which has jurisdiction thereof.

10.19. Obedience to official traffic-control devices; violation as civil infraction. (1) The driver of any vehicle shall obey the instructions of any official traffic-control device, which is placed in accordance with the traffic ordinances of this governmental unit, unless otherwise directed by a police officer. (2) A person who violates this section is responsible for a civil infraction.

10.20. Avoiding traffic-control device; violation as civil infraction. (1) The driver of a vehicle shall not avoid obedience to an official traffic-control device by driving on or through private property or on or through public property which is not a street or highway. (2) A person who violates this section is responsible for a civil infraction.

10.21. Provisions of code, which require signs; enforceability. Provisions of this code which require signs shall not be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign was not in proper position and was not sufficiently legible so as to be seen by an ordinarily observant person. When a particular section does not state that signs are required, such section shall be effective even though signs are not erected or in place.

10.22. Traffic-control signal placement and legend; violation as civil infraction. (1) When traffic is controlled by traffic-control signals, at least 1 signal shall be located over the traveled portion of the roadway to give drivers a clear indication of the right-of-way assignment from their normal positions approaching the intersection. The vehicle signals shall exhibit different colored lights successively 1 at a time or with arrows. The following colors shall be used and the terms and lights shall indicate and apply to drivers of vehicles as follows: (a) Green indication. Vehicular traffic facing the signal may proceed straight through or turn right or left, unless a sign at such place prohibits either turn. However, vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians who are lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited. (b) Steady yellow indication. Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection or at a limit line, when marked, but if such stop cannot be safely made, the vehicle may be driven cautiously through the intersection. (c) Steady red indication. Vehicular

traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or at a limit line, when marked, or, if none, then before entering the intersection and shall remain standing until a green indication is shown, except that vehicular traffic facing a steady red signal, after stopping before entering the crosswalk on the near side of the intersection or at a limit line, when marked, or, if none, then before entering the intersection, may make a right turn from a 1- or 2-way street into a 2-way street or into a 1-way street carrying traffic in the direction of the right turn or may make a left turn from a 1- or 2-way street into a 1-way roadway carrying traffic in the direction of the left turn unless prohibited by sign, signal, marking, light, or other traffic-control device. The vehicular traffic shall yield the right-of-way to pedestrians who are lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. (d) Arrow indications. Green arrow (steady): Vehicular traffic facing a green arrow signal which is shown alone or in combination with another indication may cautiously enter the intersection only to make the movement indicated by the arrow or to make other movement permitted by other indications shown at the same time. Vehicle traffic shall yield the right-of-way to pedestrians who are lawfully within an adjacent crosswalk and to other traffic which is lawfully using the intersection. Red arrow (flashing): When a red arrow is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line, when marked, or, if none, then before entering the intersection and may then make the movement indicated if interference is not offered to pedestrians or vehicles which are lawfully on the highway. (2) A person who violates this section is responsible for a civil infraction.

10.23. Non-intersection signals; violation as civil infraction. (1) If a traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable, except for those provisions which by their nature can have no application. Any stop that is required shall be made at a sign or marking on the pavement which indicates where the stop shall be made. In the absence of any sign or marking, the stop shall be made at the signal. (2) A person who violates this section is responsible for a civil infraction.

10.24. Pedestrian signals; violation as civil infraction. (1) When special pedestrian-control signals are not utilized, the regular traffic-control signals, as indicated in sections 10.23 and 10.24 of this code, shall apply to pedestrians as follows: (a) Green indication. Pedestrians facing such signal may proceed across the roadway within any marked or unmarked crosswalk. (b) Steady yellow indication. Pedestrians facing such signal are advised that there is insufficient time to cross the roadway and any pedestrian then starting to cross shall yield the right-of-way to all vehicles. (c) Steady red indication. Pedestrians facing such signal shall not enter the highway unless they can do so safely and without interfering with any vehicular traffic. (d) Red with arrow. Pedestrians facing such signal shall not enter the highway unless they can do so safely without interfering with any vehicular traffic. (2) A person who violates this section is responsible for a civil infraction.

10.25. Special pedestrian signals; violation as civil infraction. (1) When special pedestrian-control signals are installed, they shall be placed at the far end of each crosswalk and shall indicate a "walk" or "don't walk" interval. These special signals shall apply to pedestrians only to the exclusion of any regular traffic-control signal or signals which may be present at the same location. (2) Walk interval. Pedestrians facing such signal may proceed across the highway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles. (3) Don't walk (steady burning or flashing) interval. A pedestrian shall not start to cross the highway in the direction of such signals, but any pedestrian who

has partially completed his or her crossing on the walk interval of such signal shall proceed to a sidewalk or safety island while the don't walk interval of the signal is showing. (4) A person who violates this section is responsible for a civil infraction.

10.26. Flashing signals; violation as civil infraction. (1) When flashing red or yellow signals are used, they shall be obeyed by vehicular traffic as follows: (a) Flashing red (stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line, when marked, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign. (b) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may only proceed through the intersection or past such signal if caution is exercised. (2) A person who violates this section is responsible for a civil infraction.

10.27. Unauthorized sign, signal, marking, device, decoration, or banner; violation as misdemeanor. (1) Except as authorized by the traffic engineer, a person shall not place, maintain, or display, along any street or upon any structure in or over any street, any sign; signal; marking; device; blinking, oscillating, or rotating light or lights; decoration; or banner which is or purports to be a traffic-control device or railroad sign or signal, which imitates or resembles, or which can be mistaken for, a traffic-control device or railroad sign or signal, which attempts to direct the movement of traffic, or which hides from view, or interferes with the effectiveness of, any traffic-control device or any railroad sign or signal. (2) A person shall not place or maintain, and a public authority shall not permit, on any highway, a traffic sign or signal that bears any commercial advertising. (3) A person shall not place, maintain, or display, along any street, any blinking, oscillating, or rotating light or lights which are sufficiently similar to the distinguishing lights authorized by law for emergency vehicles in color and design that they may be mistaken for the distinguishing lights authorized by law for emergency vehicles or which create a hazard for the safety of drivers using any street. Every such prohibited sign, signal, marking, device, decoration, or banner is a public nuisance, and the authority that has jurisdiction over the street is empowered to remove the same or cause it to be removed without notice. (4) Decorations or banners that may be placed over the traveled portion of any street or highway shall be placed not closer than 10 feet on either side of traffic lights or signals and shall be placed so as not to obstruct a clear view of such traffic lights or signals. (5) A person who violates this section is guilty of a misdemeanor.

10.28. Interference with traffic-control devices or railroad signs or signals; violation as misdemeanor. (1) A person shall not, without lawful authority, attempt to alter, deface, injure, knock down, or remove any traffic-control device, any railroad sign or signal, any inscription, shield, or insignia thereon, or any other part thereof. (2) A person who violates this section is guilty of a misdemeanor.

10.29. Crosswalks. The traffic engineer is hereby authorized to designate and maintain, by appropriate devices, marks, or lines upon the surface of the roadway, crosswalks at intersections where, in his or her opinion, there is particular danger to pedestrians crossing the roadway and at such other places as he or she may deem necessary.

10.30. Safety zones. The traffic engineer is hereby authorized to establish safety zones of a kind and character and at such places, as he or she may deem necessary for the protection of pedestrians.

10.31. Traffic lanes. The traffic engineer is hereby authorized to mark traffic lanes on the roadway of any street or highway where a regular alignment of traffic is necessary.

10.32. School crossings; designation; creation. The traffic engineer may, after traffic and engineering studies and in consultation with the superintendent of the school district, designate appropriate crosswalks as school crossings and may create additional school crossings where they are considered necessary on streets or highways under his or her jurisdiction.

10.33. School-crossing guards; duty periods; identifying clothing; signs. (1) When school-crossing guards are assigned, they shall be stationed at school crossings during the times of day designated by the superintendent of the school and the police chief. (2) When on duty, a school-crossing guard shall wear an outer vest of a color and style that meets the standards of the Michigan manual of uniform traffic-control devices. The school-crossing guard shall also hold a stop sign, which conforms to the Michigan manual of traffic-control devices for hand-held signs. (3) When the school-crossing guards are assigned at designated school crossings, warning signs shall be erected in conformance with the Michigan manual of uniform traffic-control devices.

10.34. School-crossing guards; selection; training; supervision. (1) The Police Department has the responsibility for selection and training of school-crossing guards in their jurisdiction. (2) A person shall receive not less than 4 hours of instruction before performing the duties of a school-crossing guard. Two hours of additional instruction shall be given annually to a school-crossing guard before the beginning of each school year.

10.35. School-crossing guard; failure to obey signal as violation; presumption; violation as misdemeanor. (1) The driver of a motor vehicle who fails to stop at a school crossing when a school-crossing guard is in the crossing and is holding the stop sign in an upright position that is visible to approaching vehicular traffic is guilty of a violation of section 10.19 of this code. (2) In a proceeding for a violation of subsection (1) of this section, proof that the particular vehicle described in the citation, complaint, or warrant was in violation of subsection (1), together with proof that the defendant named in the citation, complaint, or warrant was, at the time of the violation, the registered owner of the vehicle, constitutes an evidentiary presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation. (3) A person who violates this section is guilty of a misdemeanor.

10.36. Bicycle paths or bicycle lanes; establishment; traffic-control devices. (1) When the traffic engineer, after a traffic survey and engineering study, determines there is a need, he or she may establish a part of a street or highway under his or her jurisdiction as a bicycle path or lane. (2) The bicycle path or lane shall be identified by official traffic-control devices which conform to the Michigan manual of uniform traffic-control devices.

10.37. Bicycle paths; vehicles prohibited; snowmobiles permitted under certain conditions; violation as misdemeanor. (1) A person shall not operate a vehicle on or across a bicycle path, except to enter or leave adjacent property or as otherwise permitted in this section. (2) A person may operate a snowmobile on a bicycle path which is snow-covered and which is not snowplowed for bicycle traffic. (3) A person shall not park a vehicle on a bicycle path. (4) A person who violates this section is guilty of a misdemeanor.

10.38. Bicycle lanes; vehicles prohibited; parking permitted under certain conditions; violation as misdemeanor. (1) A person shall not operate a vehicle on or across a bicycle lane, except to enter or leave adjacent property. (2) A person shall not park a vehicle on a bicycle lane, except where parking is permitted by official signs. (3) A person who violates this section is guilty of a misdemeanor.

(Source: WOS 2001-06, March 18, 2001, Section X)

9.311 RIGHTS AND DUTIES OF DRIVERS AND OTHERS

11.01. Operation of vehicles on approach of authorized emergency vehicles; violation as civil infraction. (1) Upon the immediate approach of an authorized emergency vehicle equipped with at least 1 lighted, flashing, rotating, or oscillating lamp which exhibits a red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, if the driver of the emergency vehicle gives an audible signal by siren, exhaust whistle, or bell, the driver of any other vehicle shall yield the right-of-way and shall immediately drive to a position parallel, and as close as possible, to the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. This section does not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. (2) A person who violates this section is responsible for a civil infraction.

11.02. Involvement in accident resulting in damage to vehicles; stopping; violation as misdemeanor. (1) The driver of any vehicle who knows or who has reason to believe that he or she has been involved in an accident that results only in damage to a vehicle which is driven or attended by any person shall immediately stop his or her vehicle at the scene of such accident and shall remain at the scene until he or she has fulfilled the requirements of section 11.05 of this code. Every such stop shall be made without unnecessarily obstructing traffic. (2) A person who violates this section is guilty of a misdemeanor.

11.03. Accidents; fixtures on or adjacent to highway; report; violation as misdemeanor. (1) The driver of any vehicle that is involved in an accident which results only in damage to fixtures that are legally on or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such accident, his or her name and address, and the registration number of the vehicle he or she is driving and shall, upon request, exhibit his or her operator's or chauffeur's license and, if such owner cannot be found, shall forthwith report such accident to the nearest or most convenient police officer. (2) The officer who receives such report or his or her commanding officer shall forward each individual report to the director of state police on forms prescribed by the director, which shall be completed in full by the investigating officer. A copy of the accident report required under this section shall be retained by the local police department for not less than 3 years. (3) A person who violates this section is guilty of a misdemeanor.

11.04. Involvement in accident resulting in injury or death; stopping; violation as felony. (1) The driver of any vehicle who knows or who has reason to believe that he or she has been involved in an accident on either public or private property, when such property is open to travel by the public, that results in injury or the death of any person shall immediately stop such vehicle at the scene of such accident and

shall remain at the scene until he or she has fulfilled the requirements of section 11.05 of this code. Every such stop shall be made without unnecessarily obstructing traffic. (2) A person who violates this section is guilty of a felony.

11.05. Giving information and obtaining aid; violation as misdemeanor. (1) The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident that results in injury or the death of a person or damage to a vehicle which is driven or attended by any person shall give his or her name, address, and registration number of the vehicle he or she is driving and the name and address of the owner and shall exhibit his or her operator's or chauffeur's license to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident reasonable assistance in securing medical aid or transportation. (2) A person who violates this section is guilty of a misdemeanor.

11.06. Unattended vehicles; report; violation as misdemeanor. (1) The driver of any vehicle that collides, on either public or private property, with any vehicle which is attended or unattended shall immediately stop and either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the vehicle or, if such owner cannot be located, forthwith report the accident to the nearest or most convenient police officer. (2) A person who violates this section is guilty of a misdemeanor.

11.07. Duty to report accidents forthwith; violation as misdemeanor. (1) The driver of every motor vehicle that is involved in an accident which results in injury or the death of any person or total damage to all property to an apparent extent of $200.00 or more shall forthwith report such accident to the Police Department if the accident occurs within LTBB’s jurisdiction. A copy of the accident report required under this section shall be retained by the Police Department for not less than 3 years. (2) A person who violates this section is guilty of a misdemeanor.

11.08. Report of garage keeper or repairmen; violation as misdemeanor. (1) The person in charge of any garage or repair shop to which is brought any motor vehicle that shows evidence of having been involved in an accident or having been struck by any bullet shall report the same to the Police Department immediately after such motor vehicle is received and shall give the engine number, registration number, and the name and address of the owner and operator of such vehicle. (2) A person who violates this section is guilty of a misdemeanor.

11.09. Use of accident reports. The reports required by sections 11.03, 11.06, and 11.07 of this code are not available for use in any Court actions, but are available for the purpose of furnishing statistical information as to the number and cause of accidents.

11.10. Speed restrictions; violation as civil infraction. (1) Any person who drives a vehicle on a street shall drive the vehicle at a careful and prudent speed which is reasonable and proper considering the traffic, surface and width of the street, and any other condition then existing. A person shall not drive any vehicle on a street at a speed greater than will permit him or her to bring the vehicle to a stop within the assured clear distance ahead. (2) A person who violates this section is responsible for a civil infraction.

11.11. Driving at slow speed; violation as a civil infraction. (1) A person shall not drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or to comply with law. (2) A person who violates this section is responsible for a civil infraction.

11.12. Business and residence; districts and parks; designated work areas; decrease in prima facie speed limits; violation as civil infraction. (1) Subject to the provisions of section 11.10 of this code, except in those instances where a different speed is lawfully established and posted, it shall be prima facie lawful for the driver of a vehicle to drive at a speed of not more than 25 miles an hour on all streets in business and residence districts and parks, unless such speed would be unsafe. (2) A person who operates a vehicle on the highway shall not exceed a speed of 45 miles per hour or such slower speed as posted when entering and passing through a designated work area where a normal lane or part of the lane of traffic has been closed due to highway construction, maintenance, or surveying activities. (3) A person who violates this section is responsible for a civil infraction.

11.13. Violation of speed limitations; violation as civil infraction. (1) It shall be prima facie unlawful for any person to exceed any of the speed limitations set forth in section 11.12 of this code. (2) A person who violates this section is responsible for a civil infraction.

11.14. Violation of signs; violation as civil infraction. (1) It shall be prima facie unlawful to exceed the speed stated on signs erected in accordance with this code. (2) A person who violates this section is responsible for a civil infraction.

11.15. Manner of charging violation of speed restriction. In every charge of violating a speed restriction, the complaint and traffic citation shall specify the speed at which the defendant is alleged to have driven and the speed applicable within the district or at the location.

11.16. Reckless driving; violation punishable as misdemeanor. A person who drives any vehicle on a highway or a frozen public lake, stream, pond, or other place open to the general public, including any area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving, which, upon conviction, is punishable as a misdemeanor.

11.17. Careless driving; violation as civil infraction. (1) Any person who operates a vehicle on a highway or a frozen public lake, stream, pond, or other place open to the general public, including any area designated for the parking of vehicles, in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness, shall be punished, upon conviction, by a fine of not more than $100.00. (2) A person who violates this section is responsible for a civil infraction.

11.18. Drag races prohibited; "drag racing" defined; violation punishable as misdemeanor. (1) A person shall not operate a vehicle on any highway or other place open to the general public, including any area designated for the parking of motor vehicles, in a speed or acceleration contest or for the purpose of making a speed record, whether from a standing start or otherwise, over a measured or unmeasured distance, and shall not participate in drag racing as defined in subsection (2) of this section. (2) "Drag racing" means the operation of 2 or more vehicles from a point side-by-side at accelerating speeds in a

competitive attempt to outdistance each other over a common selected course or where timing is involved or where timing devices are used in competitive accelerations of speeds by participating vehicles. Persons who render assistance in any manner to such competitive use of vehicles shall be equally charged as participants. The operation of 2 or more vehicles either at speeds in excess of prima facie lawfully established speeds or rapidly accelerating from a common starting point to a speed in excess of such prima facie lawful speed is prima facie evidence of drag racing and is unlawful and shall be punished, upon conviction, as a misdemeanor.

11.19. Driving under the influence of intoxicating liquor or a controlled substance. (1) It shall be unlawful and punishable as provided in subsections (3) and (4) of this section for a person, whether licensed or not, who is under the influence of intoxicating liquor or a controlled substance, or a combination thereof, to drive a vehicle upon a highway or other place open to the general public, including an area designated for the parking of motor vehicles, within this state. A peace officer may, without a warrant, arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a motor vehicle involved in the accident and was driving the vehicle while under the influence of intoxicating liquor. (2) It shall be unlawful and punishable as provided in subsections (3) and (4) of this section for the owner of a motor vehicle or a person in charge or in control of a motor vehicle to authorize or knowingly permit the vehicle to be driven or operated on a highway or any other place open to the general public, including an area designated for the parking of motor vehicles, within this state by a person who is under the influence of intoxicating liquor or a controlled substance, or a combination thereof. (3) A person who is convicted of a violation of subsection (1) or (2) of this section may be punished by imprisonment for not more than 90 days or by a fine of not less than $50.00 nor more than $100.00, or both, together with the costs of the prosecution. (4) Upon a second conviction under this section or a local ordinance substantially corresponding to this section, a person shall be guilty of a misdemeanor, which is punishable by imprisonment for not more than 1 year and, in the discretion of the Court, a fine of not more than $1,000.00. (5) Upon a third or subsequent conviction, within a period of 10 years, under this section or a local ordinance substantially corresponding to this section, a person shall be guilty of a felony. (6) Upon conviction of a person under this section or a local ordinance substantially corresponding to this section, the Court, in addition to the penalty imposed under subsection (3) of this section and as part of the sentence, shall order the operator's or chauffeur's license of that person to be suspended by the secretary of state for a period of not more than 2 years and may order the secretary of state to issue to that person a restricted license permitting that person, during all or any specified portion of the period of suspension, to drive only to and from the person's residence and place of employment, in the course of employment, to and from an alcohol training program ordered by the Court, or in accordance with a combination of these restrictions. The Court shall not order the secretary of state to issue a restricted chauffeur's license, which permits a person to drive a truck or truck tractor, including trailers, which hauls a hazardous material. (7) The Court, before accepting a plea of guilty under this section, shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of an operator's or chauffeur's license, the penalty imposed for violation of this section, and the limitation on the right of appeal. (8) The operator's or chauffeur's license of a person who is found guilty of violating this section or a local ordinance substantially corresponding to this section shall be surrendered to the Court in which the conviction shall be had, and that Court shall immediately forward the surrendered license and a certificate of conviction to the secretary of state. The certificate of conviction shall indicate the sentence imposed pursuant to subsections (3) and (4) of this section. Upon receipt of, and pursuant to,

the certificate of conviction, the secretary of state shall suspend the person's license and, where applicable, shall issue to the person a restricted license, which states the limited driving privileges indicated on the certificate. If the license is not forwarded, an explanation of the reason for its absence shall be attached. If the conviction is appealed to the LTBB Court of Appeals, that Court may ex parte order the secretary of state to rescind the suspension or restricted license issued pursuant to this section.

11.20. Criminal prosecutions for driving under influence of intoxicating liquor; tests; admissibility; presumption; liability for withdrawing blood; refusal to take test; other evidence; option to demand breath test only. (1) In a criminal prosecution for driving a vehicle while under the influence of intoxicating liquor, or in a criminal prosecution arising from the death or injury of another, including homicide and assault or for any other crime committed with an automobile while the driver is under the influence of intoxicating liquor, the amount of alcohol in the driver's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or saliva, shall be admissible into evidence. If a test is given, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the Court, and the prosecution shall furnish the report not less than 2 days before the day of the trial and the report shall be offered as evidence by the prosecution in a criminal proceeding. Failure to fully comply with the request shall bar the prosecution from admitting the results into evidence. The amount of alcohol in the driver's blood at the time alleged shall give rise to the following presumptions: (a) If there was at that time 0.07% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor. (b) If there was at that time more than 0.07% but less than 0.10% by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a motor vehicle was impaired within the provisions of 11.21 of this code due to the consumption of intoxicating liquor. (c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor. (2) A sample or specimen of urine, breath, or saliva shall be taken and collected in a reasonable manner. Only a duly licensed physician or a licensed nurse or medical technician who is under the direction of a licensed physician is qualified to withdraw blood in a medical environment at the request of a police officer. They may withdraw blood for the purpose of determining the alcoholic content of the blood. Liability for a crime or civil damages predicated on the act of withdrawing blood and related procedures shall not attach to a qualified person who withdraws blood or who assists in a withdrawal, unless the withdrawal is performed in a negligent manner. (3) A person charged with a crime specified in subsection (1) of this section and who takes a chemical test administered at the request of a police officer, as provided in subsections (1) and (2) of this section, shall be informed that he or she will be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests, as provided in this section, within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. A person who is charged with a crime specified in subsection (1) of this section shall be informed that he or she has the right to demand that 1 of the tests provided for in subsection (1) of this section shall be given to him or her, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. (4) The person charged shall be advised that the person's refusal to take a test as provided in this section shall result in the suspension or revocation of his or her operator's or chauffeur's license or his or her operating privilege. (5) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the

influence of intoxicating liquor. (6) Notwithstanding any other provision of these rules, a person who is requested to take a test shall be advised that he or she has the option to demand that only a breath test be given, in which case his or her refusal to submit to another test does not constitute a refusal.

11.21. Impaired driving; violation as misdemeanor. (1) A person shall not operate a vehicle on a highway or any other place open to the general public, including an area designated for the parking of motor vehicles, within this state when, due to consumption of intoxicating liquor or a controlled substance, or a combination thereof, a person has visibly impaired his or her ability to operate the vehicle. If a person is charged with violating section 11.19 of this code, a finding of guilty is permissible under this section. (2) A person who is convicted of a violation of this section may be imprisoned for not more than 90 days or fined not more than $100.00, or both, in addition to being charged with the costs of prosecution. On a second and subsequent conviction under this section or a local ordinance substantially corresponding thereto, a person may be imprisoned for not more than 1 year or fined not more than $1,000.00, or both. The secretary of state, within 10 days after the receipt of a properly prepared abstract, shall record 4 points for each conviction under this section. (3) A person who violates this section is guilty of a misdemeanor.

11.22. Implied consent. (1) A person who operates a vehicle on the public highways of this state is deemed to have given consent to chemical tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the alcoholic content of his or her blood if he or she is arrested for driving a vehicle while under the influence of intoxicating liquor or while his or her ability to operate a vehicle has been impaired due to the consumption of intoxicating liquor. Any person who is afflicted with hemophilia, diabetes, or any condition that requires the use of an anticoagulant under the direction of a physician shall not be deemed to have given consent to the withdrawal of blood. (2) The tests shall be administered at the request of a law enforcement officer who has reasonable grounds to believe that the person was driving a vehicle on the public highways of this state while under the influence of intoxicating liquor.

11.23. Right to refuse chemical tests. (1) A person who is under arrest shall be advised of his or her right to refuse to submit to chemical tests. If the person refuses the request of a law enforcement officer to submit to chemical tests, no test shall be given. (2) A sworn statement shall be forwarded to the Department by the law enforcement officer which states that he or she had reasonable grounds to believe that the person was driving a motor vehicle on the public highways of the state while under the influence of intoxicating liquor or that the person was driving a vehicle while his or her ability to operate a vehicle was impaired due to the consumption of intoxicating liquor and that the person refused to submit to the test upon the request of the law enforcement officer and was advised of the consequences of such refusal. The form of the statement shall be prescribed and furnished by the department.

11.24. Notice of receipt of sworn statement. (1) Upon receipt of the sworn statement, the Department shall immediately send a written notice to the person, mailed to his or her last known address, that the sworn statement has been received and that within 14 days of the date of the notice he or she may request a hearing. (2) The notice shall specifically state that failure to request a hearing within 14 days will result in the suspension of the person's license or permit to drive. The notice shall also state that the person is not required to retain counsel for the hearing, although counsel may represent the person at the hearing.

11.25. Hearing; failure to request; suspension, revocation, or denial of license, permit, or operating privilege. (1) If a person does not request a hearing within 14 days of the date of the notice of the receipt of the sworn statement, the secretary of state shall suspend or revoke the person's operator's or chauffeur's license or permit to drive or any nonresident operating privilege for a period of not less than 90 days, but not more than 2 years. If the person is a resident without a license or permit to operate a vehicle in this state, the secretary of state shall deny to that person the issuance of a license or permit for a period of not less than 3 months, but not more than 2 years. (2) If a hearing is requested, the Court shall hold the hearing within 30 days of receipt of the request. A notice of the hearing shall be mailed not less than 10 days before the hearing to the person requesting the hearing, to the law enforcement officer who filed the sworn statement, and to the prosecuting attorney. A hearing shall cover only the following issues: (a) Whether the law enforcement officer had reasonable grounds to believe that the person was driving a motor vehicle on the highways of this state while under the influence of an intoxicating liquor or while his or her ability to operate a vehicle was impaired due to the consumption of intoxicating liquor. (b) Whether the person was placed under arrest for driving a motor vehicle on the highways of this state while under the influence of an intoxicating liquor or while his or her ability to operate a vehicle was impaired due to the consumption of intoxicating liquor. (c) Whether the person reasonably refused to submit to the test upon the request of the officer. (d) Whether the person was advised of his or her rights as set forth in this section. (3) After the hearing, the Court may request the secretary of state to suspend, revoke, or deny issuance of a license or driving permit or any nonresident operating privilege of the person involved for a period of not less than 90 days, but not more than 2 years. If the person involved is a resident without a license or permit to operate a motor vehicle in this state, the secretary of state may deny to that person the issuance of a license or permit for a period of not less than 3 months, but not more than 24 months. The person involved may file a petition in the LTBB Court of Appeals review the suspension, revocation, or denial. (3) When it has been finally determined that a nonresident's privilege to operate a vehicle in this state has been suspended or revoked, the department shall give notice in writing of the action taken to the motor vehicle administrator of the state in which the nonresident has his or her residence and of any state in which the nonresident has a license to operate a motor vehicle.

11.26. Uniform standards for the administration of blood tests. The Police Department may adopt uniform standards for the administration of blood tests which may be the same as those adopted by the Michigan Department of Public Health.

11.27. Transporting or possessing liquor within passenger compartment of vehicle; violation punishable as misdemeanor. (1) A person shall not transport or possess, within the passenger compartment of a vehicle that is on the streets or highways of LTBB, alcoholic liquor in a container which is open or uncapped or which has a broken seal. If the vehicle does not have a trunk or compartment separate from the passenger compartment, a container which is open or uncapped or which has a broken seal shall be encased or enclosed. This section does not apply to a chartered passenger vehicle, which is licensed by the Michigan public service commission. (2) Violation of this section shall, upon conviction, be punished as a misdemeanor.

11.28. Consumption of liquor on highways or on property open to public; violation as misdemeanor. (1) Alcoholic liquor shall not be consumed on a highway, street, alley, or any public or private property

which is open to the general public and which is not licensed to sell alcoholic liquor for consumption on the premises. (2) A person who violates this section is guilty of a misdemeanor.

11.29. Driving on right side of roadway; exceptions; violation as civil infraction. (1) On all roadways of sufficient width, a vehicle shall be driven on the right half of the roadway, except as follows: (a) When overtaking and passing another vehicle which is proceeding in the same direction under the rules governing such movement. (b) When the right half of a roadway is closed to traffic while under construction or repair. (c) On a roadway that is divided into 3 marked lanes for traffic under the rules applicable thereon. (d) On a roadway designated and signposted for 1-way traffic. (2) A person who violates this section is responsible for a civil infraction.

11.30. Passing vehicles proceeding in opposite directions; violation as civil infraction. (1) Drivers of vehicles proceeding in opposite directions shall pass each other to the right. On roadways that are not wider than 1 lane of traffic in each direction, drivers passing each other in opposite directions shall give to the other, as near as possible, at least ½ of the main-traveled portion of the roadway. (2) A person who violates this section is responsible for a civil infraction.

11.31. Overtaking and passing of moving vehicles proceeding in same direction; violation as civil infraction. (1) The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules set forth in this code: (a) The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left thereof and, when safely clear of such overtaken vehicle, shall take up a position as near the right-hand edge of the main-traveled portion of the highway as is practicable. (b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle. (2) A person who violates this section is responsible for a civil infraction.

11.32. Overtaking and passing on right of moving vehicles; violation as civil infraction. (1) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions: (a) When the vehicle overtaken is making or is about to make a left turn. (b) On a street or highway with unobstructed pavement which is not occupied by parked vehicles and which is of sufficient width for 2 or more lanes of moving vehicles in each direction, if vehicles on such street or highway are moving in substantially continuous lanes of traffic. (c) On a 1-way street or on any roadway on which traffic is restricted to 1 direction of movement, which is free from obstructions, and which is of sufficient width for 2 or more lanes of moving vehicles, if vehicles on such street or roadway are moving in substantially continuous lanes of traffic. (d) The driver of a vehicle may overtake and pass another vehicle on the right only under conditions that permit such movement in safety. Such movement shall not be made by driving off the pavement or main-traveled portion of the roadway. (2) A person who violates this section is responsible for a civil infraction.

11.33. Overtaking and passing on left; restrictions; violation as civil infraction. (1) A vehicle shall not be driven to the left side of the center of a 2-lane street or in the center lane of a 3-lane street when overtaking and passing another vehicle proceeding in the same direction, unless such left side or center lane is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such

overtaking and passing to be completed without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. (2) A person who violates this section is responsible for a civil infraction.

11.34. Driving to the left side of roadway prohibited under certain conditions; violation as civil infraction. (1) A vehicle shall not be driven to the left side of the roadway at any time in the following situations: (a) When approaching the crest of a grade or on a curve in the highway where the driver's view is obstructed so as to create a hazard if another vehicle is approaching from the opposite direction. (b) When the driver's view is obstructed when approaching within 100 feet of any bridge, viaduct, or tunnel. (2) The limitations set forth in subsection (1)(a) and (b) of this section do not apply when a vehicle is driven on a 1-way roadway. (3) A person who violates this section is responsible for a civil infraction.

11.35. No passing zones; violation as civil infraction. (1) The driver of a vehicle shall not overtake and pass any vehicle in a no passing zone where official signs or markings on the roadway indicate the beginning and end of such zone and when such signs or markings are in place and clearly visible to an ordinarily observant person. (2) A person who violates this section is responsible for a civil infraction.

11.36. One-way roadways; violation as civil infraction. (1) On a roadway or alley that is designated and signposted for 1-way traffic, a vehicle shall be driven only in the direction designated. (2) A person who violates this section is responsible for a civil infraction.

11.37. Rotary traffic islands; violation as civil infraction. (1) A vehicle that is passing around a rotary traffic island shall be driven only to the right of such island. (2) A person who violates this section is responsible for a civil infraction.

11.38. Driving on roadways laned for traffic; violation as civil infraction. (1) When a roadway is divided into 2 or more clearly marked lanes for traffic, the following rules, in addition to all other rules consistent herewith, apply: (a) A vehicle shall be driven, as nearly as practicable, entirely within a single lane and shall not be moved from the lane until the driver has first made sure that the movement can be made with safety. On a roadway with 4 or more lanes, which provides for 2-way movement of traffic, a vehicle shall be driven within the extreme right-hand lane, except when overtaking and passing, and shall not cross the centerline of the roadway unless making a left turn. (b) On a roadway which is divided into 3 lanes and which provides for 2-way movement of traffic, a vehicle shall not be driven in the center lane, except when overtaking and passing another vehicle traveling in the same direction, when, in preparation for a left turn, the center lane is clear of traffic within a safe distance, or when the center lane is allocated exclusively to traffic moving in the same direction the vehicle is proceeding and the allocation is designated by official traffic-control devices. (c) Official traffic-control devices may be erected to direct specified traffic to use a designated lane or to designate those lanes to be used by traffic moving in a particular direction, regardless of the center of the roadway. Drivers of vehicles shall obey the directions of the devices. (d) Official traffic-control devices may be installed which prohibit the changing of lanes on sections of roadway, and drivers of vehicles shall obey the direction of the devices. (e) This section shall not be construed to prohibit a vehicle traveling in the appropriate direction from traveling in any lane of a freeway having 3 or more lanes for travel in the same direction. A city, village,

township, or county shall not enact an ordinance, which regulates the same subject matter as any provision of this subsection. (2) A person who violates this section is responsible for a civil infraction.

11.39. Driving on divided highways; violation as civil infraction. (1) When any highway has been divided into 2 roadways by leaving an intersection space or by a physical barrier or clearly indicated dividing section which is constructed to impede vehicular traffic, every vehicle shall be driven only on the right-hand roadway and a vehicle shall not park or be driven over, across, or within any such physical barrier or dividing section or space or at a crossover or intersection which is established by public authority. Crossovers on limited access highways shall not be used, except by such vehicles as provided in sections 3.6, 3.7, and 3.8 of this code and except by road service vehicles while going to or returning from servicing a disabled vehicle and except as otherwise permitted by authorized signs. As used in this section, "road service vehicle" means a vehicle that is clearly marked and readily recognizable as a vehicle used to assist disabled vehicles. (2) A person who violates this section is responsible for a civil infraction.

11.40. Limited access roadways; violation as civil infraction. (1) A person shall not drive a vehicle onto or from any limited-access roadway, except at such entrances and exits as are established by public authority. (2) A person who violates this section is responsible for a civil infraction.

11.41. Limited access highway; pedestrians and certain vehicles prohibited; violation as civil infraction. (1) A person shall not operate a moped or motorcycle with less than a 125 cubic centimeter engine, a farm tractor, or other self-propelled farm implement, nor shall any pedestrian, bicycle, or other non-motorized traffic be permitted, on any limited access highway in this state. (2) A person who violates this section is responsible for a civil infraction.

11.42. Following too closely; violation as civil infraction. (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent considering the speed of such vehicle and the traffic on, and the condition of, the street. (2) A person who violates this section is responsible for a civil infraction.

11.43. Following fire apparatus prohibited; violation as civil infraction. (1) The driver of any vehicle, other than an authorized emergency vehicle on official business, shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet and shall not drive or park such vehicle within 500 feet where fire apparatus has stopped in answer to a fire alarm. (2) A person who violates this section is responsible for a civil infraction.

11.44. Required positions and method of turning at intersections; violation as civil infraction. (1) The driver of a vehicle who intends to turn at an intersection shall do so as follows: (a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway. (b) Left turns on 2-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and, after entering the intersection, the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. When practicable, the left turn shall be made in that portion of the intersection to the left of the center of

the intersection. (c) Left turns on other than 2-way roadways. At any intersection where traffic is restricted to 1 direction on 1 or more of the roadways, the driver of a vehicle who intends to turn left at any such intersection shall approach the intersection in the extreme left-hand lane which is lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection, the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane which is lawfully available to traffic moving in such direction on the roadway being entered. (2) A person who violates this section is responsible for a civil infraction.

11.45. Obedience to turning markers; violation as civil infraction. (1) When authorized markers, buttons, or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, a driver of a vehicle shall not disobey the directions of such indications. (2) A person who violates this section is responsible for a civil infraction.

11.46. Obedience to no-turn signs; violation as civil infraction. (1) When authorized signs are erected indicating that right, left, or U-turns are not permitted, a driver of a vehicle shall not disobey the directions of any such sign. (2) A person who violates this section is responsible for a civil infraction.

11.47. Limitations on turning around; violation as civil infraction. (1) The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction on any street in a business district and shall not, on any other street, so turn a vehicle unless such movement can be made in safety and without interfering with other traffic. (2) A person who violates this section is responsible for a civil infraction.

11.48. Signals for stopping or turning; violation as civil infraction. (1) The driver of a vehicle or bicycle on a highway, before stopping or turning from a direct line, shall first see that the movement can be made in safety and shall give a signal as required in this section. (2) The signal required in this section shall be given either by means of the hand and arm, in the manner herein specified, or by a mechanical or electrical signal device which conveys a clear signal or warning to other highway traffic, except as provided in subsection (3) of this section. When a signal is given by means of hand and arm, the driver shall indicate his or her intention to stop or turn by extending his or her hand and arm from and beyond the left side of the vehicle and signal as follows: (a) Left turn--Hand and arm extended horizontally. (b) Right turn--Hand and arm extended upward. (c) Stop or decrease speed--Hand and arm extended downward. (3) A commercial motor vehicle, other than one in transit from a manufacturer to a dealer, in use on a highway shall be equipped with, and the required signal shall be given by, a signal light or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of the commercial motor vehicle is more than 24 inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof is more than 14 feet. The latter measurement shall apply to a single vehicle or combination of vehicles. (4) A person who violates this section is responsible for a civil infraction.

11.49. Stop signs; violation as civil infraction. (1) Except when directed to proceed by a police officer, the driver of a vehicle that is approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, shall stop at a clearly marked stop line or, if none, shall stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or

which is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver would be moving across or within the intersection. (2) A person who violates this section is responsible for a civil infraction.

11.50. Right-of-way at merging highways; violation as civil infraction. (1) When a vehicle approaches the intersection of a highway from an intersecting highway or street which is intended to be, and is constructed as, a merging highway or street and which is plainly marked at such intersection with appropriate merge signs, the vehicle shall yield the right-of-way to any vehicle so close as to constitute an immediate hazard on the highway about to be entered, and the vehicle's speed shall be adjusted to enable the vehicle to merge safely with the through traffic. (2) A person who violates this section is responsible for a civil infraction.

11.51. Emerging from alley, driveway, or building; violation as civil infraction. (1) The driver of a vehicle that is merging from an alley, driveway, or building shall stop such vehicle immediately before driving onto a sidewalk or onto the sidewalk area extending across any alleyway, shall yield the right-of-way to any pedestrian as may be necessary to avoid collision and, upon entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway. (2) A person who violates this section is responsible for a civil infraction.

11.52. Entering intersection or crosswalk; obstructing traffic prohibited; violation as civil infraction. (1) A driver shall not enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he or she is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed. (2) A person who violates this section is responsible for a civil infraction.

11.53. Obedience to signal indicating approach of railroad train; violation as civil infraction. (1) When a person who is driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50, but not less than 15, feet from the nearest rail of such railroad and shall not proceed until he or she can do so safely. The requirements of this subsection apply in all of the following situations: (a) When a clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train. (b) When a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train. (c) When a railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard. (d) When an approaching railroad train is plainly visible and is in hazardous proximity to such crossing. (2) A person who violates this section is responsible for a civil infraction.

11.54. Railroad crossing gate or barrier; violation as civil infraction. (1) A person shall not drive any vehicle through, around, or under any crossing gate or barrier at a railroad grade crossing while such gate or barrier is closed or being opened or closed. (2) A person who violates this section is responsible for a civil infraction.

11.55. Obstruction of vehicular traffic on highway or street by train; violation as misdemeanor. (1) It is unlawful for a railroad company to permit any of its trains to obstruct any vehicular traffic on public

streets or highways for a period of more than 5 minutes at any one time. (2) A railroad company that violates this section is guilty of a misdemeanor.

11.56. Obstruction of vehicular traffic by successive train movements on highways or streets; violation as misdemeanor. (1) It is unlawful for a railroad company to permit successive train movements to obstruct any vehicular traffic on any public streets or highways until all vehicular traffic previously delayed by such train movements has been cleared or until a period of 5 minutes has elapsed between train movements. (2) A railroad company that violates this section is guilty of a misdemeanor.

11.57. School buses and carriers of explosives and flammables to stop for railroad crossings; violation as civil infraction. (1) The driver of any motor vehicle carrying passengers for hire, of any school bus, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50, but not less than 10, feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he or she can do so safely. After stopping as required in this subsection, and upon proceeding when it is safe to do so, the driver of the vehicle shall only cross with the vehicle in a gear that will not require changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks. (2) A stop need not be made at crossing where a police officer or a traffic-control signal directs traffic to proceed. (3) A stop shall not be made at a crossing on a freeway or limited access highway where such crossing is protected by a clearly visible signal, crossing gate, or barrier, which at the time, is not activated. (4) A person who violates this section is responsible for a civil infraction.

11.58. Right-of-way at intersection; violation as civil infraction. (1) The driver of a vehicle that is approaching an intersection shall yield the right-of-way to a vehicle that has entered the intersection from a different highway. (2) When 2 vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. (3) The driver of any vehicle that is traveling at an unlawful speed shall forfeit any right-of-way to the vehicle on the right. (4) The right-of-way rules set forth in subsections (1) and (2) of this section are modified at through highways and as otherwise stated in this code. (5) A person who violates this section is responsible for a civil infraction.

11.59. Yield right-of-way signs; violation as civil infraction. (1) The driver of a vehicle that is approaching a yield sign, in obedience to such sign, shall slow down to a speed which is reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver would be moving across or within the intersection. However, if required for safety to stop, the driver shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. (2) The driver of any vehicle that is traveling at an unlawful speed shall forfeit any right-of-way, which he or she might otherwise have under this code. (3) A person who violates this section is responsible for a civil infraction.

11.60. Right-of-way; vehicle turning left at intersection; violation as civil infraction. (1) The driver of a vehicle within an intersection who intends to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or which is so close thereto as to constitute an immediate hazard, but the driver having so yielded and having given a signal when and as required by this code, may make such left turn and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn. However, at an intersection at which a traffic signal is located, a driver who intends to make a left turn shall permit vehicles bound straight through in the opposite direction, which are awaiting a go signal to pass through the intersection. (2) A person who violates this section is responsible for a civil infraction.

11.61. Funeral procession; right-of-way; violation as civil infraction. (1) A motor vehicle that is part of a funeral procession going to a place of burial has the right-of-way over all other vehicles, except for fire apparatus, ambulances, and police patrol vehicles, at a street or highway intersection within this state if the vehicle in the funeral procession displays a flag which is fluorescent orange in color. The lead vehicle and the last vehicle in the funeral procession may carry an additional flag. A flag shall not contain a name embossed or printed on it, but may contain the word "funeral." (2) A person who passes through a funeral procession of motor vehicles, designated pursuant to subsection (1) of this section, with a vehicle of any kind is responsible for a civil infraction.

11.62. Driving through a funeral or other procession prohibited; exception; violation as civil infraction. (1) A driver of a vehicle shall not drive through the vehicles, persons, or animals comprising a funeral or other authorized procession while such funeral or other procession is in motion, except when otherwise directed by a police officer. (2) A person who violates this section is responsible for a civil infraction.

11.63. Drivers in a procession; violation as civil infraction. (1) Each driver in a funeral or other authorized procession shall drive as near the right-hand edge of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe. (2) A person who violates this section is responsible for a civil infraction.

11.64. Parades and processions; permit required; violation as misdemeanor. (1) A procession or parade, other than the forces of the police and fire departments, shall not occupy, march, or proceed along any roadway, unless pursuant to a permit issued by the chief of police and unless the procession or parade is in accordance with other regulations as are set forth in this code. (2) A person who violates this section is guilty of a misdemeanor.

11.65. Driving on sidewalk prohibited; violation as misdemeanor. (1) The driver of a vehicle shall not drive on or within any sidewalk area, except at a driveway. (2) A person who violates this section is guilty of a misdemeanor.

11.66. Limitations on backing; violation as civil infraction. (1) The driver of a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic. (2) A vehicle shall not be backed a distance of more than 60 feet. (3) A vehicle shall not be backed into an intersection, except that a vehicle may be backed into an intersection when it is not otherwise possible to turn about and when such movement can be made safely without interfering with other traffic. (4) A person who violates this section is responsible for a civil infraction.

11.67. Driving over fire hose prohibited; violation as civil infraction. (1) A vehicle shall not be driven over any unprotected fire hose of a fire department without the consent of the fire department official in command. (2) A person who violates this section is responsible for a civil infraction.

11.68. Driving through or over a safety zone occupied by people prohibited; violation as civil infraction. (1) The driver of a vehicle shall not at any time drive through or over a safety zone when such safety zone contains any person therein. (2) A person who violates this section is responsible for a civil infraction.

11.69. Avoidance of traffic-control devices prohibited; violation as civil infraction. (1) A driver of a vehicle shall not attempt to avoid obedience to any traffic-control device by driving on or through any private property. (2) A person who violates this section is responsible for a civil infraction.

11.70. Splashing prohibited; violation as civil infraction. (1) A driver of a motor vehicle shall not recklessly, willfully, wantonly, or carelessly operate his or her vehicle in such manner as to splash snow, rain, water, mud, dirt, or debris on any person who is on a sidewalk, crosswalk, or safety zone. (2) A person who violates this section is responsible for a civil infraction.

11.71. Deposit of litter on streets prohibited; violation as misdemeanor. (1) A person shall not, without the consent of the public authority having supervision of a street, deposit, place, dump, throw, or leave, or cause or permit the dumping, depositing, placing, throwing, or leaving of, any destructive or injurious material, any rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, or debris on any street. (2) A person who throws or drops, or permits to be thrown or dropped, on a street any of the material or matter listed in subsection (1) of this section shall immediately remove it or cause it to be removed. (3) The violation of this section is punishable as a misdemeanor.

11.72. Throwing objects at or into paths of vehicles prohibited; violation as misdemeanor. (1) A person shall not knowingly cause any litter or any object to fall or to be thrown into the path of or to hit a vehicle traveling on a street. (2) The violation of this section is punishable by a fine of not more than $500.00 or not more than 1 year in county jail, or both. A person who violates this section is guilty of a misdemeanor.

11.73. Definitions; removal or deposit of snow, ice, or slush which obstructs safety vision prohibited; deposit of snow, ice, or slush prohibited; violation as misdemeanor. (1) As used in this section, "safety vision" means an unobstructed line of sight, which enables a driver to travel on, enter, or exit a roadway in a safe manner. (2) A person shall not remove, or cause to be removed, snow, ice, or slush onto or across a roadway or the shoulder of the roadway in a manner, which obstructs the safety vision of the driver of a motor vehicle other than an off-road vehicle. (3) A person shall not deposit, or cause to be deposited, snow, ice, or slush onto or across a roadway or the shoulder of the roadway in a manner, which obstructs the safety vision of the driver of a motor vehicle. (4) A person shall not deposit, or cause to be deposited, snow, ice, or slush on any roadway or highway. (5) A person who violates this section is guilty of a misdemeanor.

11.74. Removal of wrecked or damaged vehicles; violation as misdemeanor. (1) A person who removes a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped on the street from the vehicle. (2) The violation of this section is punishable as a misdemeanor.

11.75. Spilling loads on streets prohibited; violation as misdemeanor. (1) A vehicle shall not be driven or moved on any street unless the vehicle is constructed or loaded to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom. (2) Actual spillage of material on the highway or proof of that spillage is not necessary to prove a violation of this section. (3) A person who violates this section is guilty of a misdemeanor, which is punishable by a fine of not more than $500.00 or imprisonment for not more than 90 days, or both.

11.76. Requirements when leaving motor vehicle unattended; violation as civil infraction. (1) A person who has control or charge of a motor vehicle shall not allow such vehicle to stand unattended on any street or any other place without first stopping the engine, locking the ignition, removing and taking possession of the ignition key, effectively setting the brakes thereon, and, when standing on any grade, turning the front wheels of such vehicle to the curb or side of the street. The provisions of this section that pertain to the locking of the ignition and removing and taking possession of the ignition key do not apply to motor vehicles that are manufactured with an ignition system which does not have a key and which is incapable of being locked. (2) A person who violates this section is responsible for a civil infraction.

11.77. Interference with driver's view or control prohibited; violation as civil infraction. (1) A person shall not drive a vehicle if it is loaded in a manner, or if the front seat is occupied by such number of persons, so as to obstruct the view of the driver to the front or sides of the vehicle or so as to interfere with the driver's control over the driving mechanism of the vehicle. (2) A person who violates this section is responsible for a civil infraction.

11.78. Position of passengers; violation as civil infraction. (1) Passengers in a vehicle shall not ride in a position, which interferes with the driver's view ahead or to the sides or which interferes with his or her control over the driving mechanism of the vehicle. (2) A person who violates this section is responsible for a civil infraction.

11.79. Operating, stopping, standing, or parking truck or commercial vehicle with gross weight of more than signed limits prohibited; violation as civil infraction. (1) When signs are erected that give notice of weight limits, a person shall not operate, stop, stand, or park any truck or commercial vehicle with a gross weight of more than the amounts specified on the signs at any time on any of the streets or parts of streets on which such signs have been posted. (2) A person who violates this section is responsible for a civil infraction.

11.80. Driver's license required; motorcycle endorsement; change of residence; violation as misdemeanor. (1) A person who is not licensed as an operator or chauffeur by a state or tribe shall not operate a motor vehicle on the streets or highways of LTBB. (2) A person who operates a motorcycle shall have a motorcycle endorsement on his or her operator's, or chauffeur's license. (3) An operator or chauffeur who changes his or her residence before the expiration of his or her license shall immediately take the license to the local examining board or to the secretary of state, where the new address and the

date of the changes shall be entered on the back of the license. (4) Before operating a moped on a highway, a person shall procure a special restricted license to operate a moped, unless the person has a valid operator's, or chauffeur's license. A special restricted license to operate a moped may be issued to a person who is 15 years of age or older, if the person satisfies the office of the secretary of state that he or she is competent to operate a moped with safety. The secretary of state shall not require a road test before issuing a special restricted license to operate a moped. (5) Before operating a single vehicle weighing over 24,000 pounds gross vehicle weight or a bus or school bus, a person shall procure a class 1 endorsement on his or her operator's, or chauffeur's license. Before operating a combination of vehicles weighing over 24,000 pounds gross vehicle weight or a vehicle towing a vehicle weighing over 10,000 pounds gross vehicle weight, a person shall procure a class 2 endorsement on his or her operator's or chauffeur's license. The license shall be issued, suspended, revoked, canceled, or renewed pursuant to the act. (6) A person who violates this section is guilty of a misdemeanor.

11.81. Penalties. (1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified of the suspension or revocation or whose application for license has been denied, or who has never applied for a license and who drives a motor vehicle on the highways under LTBB jurisdiction or who knowingly permits a motor vehicle owned by the person to be operated by another on a highway, except as otherwise permitted by law, while the license or registration certificate is suspended or revoked is guilty of a misdemeanor and, upon conviction, shall, except as provided in subsection (2) of this section, be punished by imprisonment for a period of not less than 3, but not more than 90, days and, in addition, a fine of not more than $100.00 may be imposed. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be confiscated. (2) A person whose operator's or chauffeur's license has been suspended because the person failed to answer a citation and who drives a motor vehicle on a highway may be punished by imprisonment for not more than 90 days or a fine of not more than $100.00, or both. (3) A person who is convicted of a second or subsequent violation of this section is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 5 days, but not more than 1 year and, in addition, a fine of not more than $500.00 may be imposed. Unless the vehicle was stolen, the registration plates of the vehicle shall be confiscated. (4) The secretary of state, upon receiving a record of the conviction of a person upon a charge of unlawful operation of a motor vehicle while the license of the person is suspended, revoked, or denied, or of the conviction of a person for violation of the motor vehicle laws of this state while the license of the person is suspended, revoked, or denied, shall immediately extend the period of the first suspension or revocation for an additional like period or, if a period has not been determined, then for not less than 30 days, but not more than 1 year. (5) Before the plea of the person is accepted under this section, the arresting officer shall check with the LTBB Police Department and Michigan Department of State to determine the record and status of the person and shall so inform the Court.

11.82. Possession and display of license; violation punishable as misdemeanor. (1) Every driver shall have his or her operator's or chauffeur's license in his or her immediate possession at all times when driving a motor vehicle and shall display the license on demand of any police officer. (2) The violation of this section is punishable as a misdemeanor.

11.83. License restrictions; violation punishable as misdemeanor. (1) A person shall not drive a motor vehicle in violation of the restrictions imposed on his or her license the Court or by the secretary of state. (2) The violation of this section is punishable as a misdemeanor.

11.84. Unlawful use of license; violation punishable as misdemeanor. (1) It is unlawful for any person to display or cause or permit to be displayed or to have in his or her possession any operator's, or chauffeur's license knowing the same to be fictitious or to have been cancelled, revoked, suspended, or altered. (2) The violation of this section is punishable as a misdemeanor.

11.85. Lending license to, or permitting use by, person not entitled; violation punishable as misdemeanor. (1) It is unlawful for any person to lend his or her chauffeur's, or operator's license to, or knowingly permit use of the license by, one who is not entitled thereto. (2) The violation of this section is punishable as a misdemeanor.

11.86. Unlawful display or representation of license; violation punishable as misdemeanor. (1) It is unlawful for any person to display or to represent, as one's own any operator's, or chauffeur's license, which has not been issued to the person so displaying the license. (2) The violation of this section is punishable as a misdemeanor.

11.87. Instruction permit; violation punishable as misdemeanor. (1) It is unlawful for an operator who holds an instruction permit to operate a motor vehicle unless accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver. (2) The violation of this section is punishable as a misdemeanor.

11.88. Authorizing or permitting unlicensed driver to operate vehicle prohibited; violation punishable as misdemeanor. (1) A person shall not knowingly authorize or permit a motor vehicle owned by him or her or under his or her control to be driven by any person who is unlicensed to drive such a vehicle. (2) The violation of this section is punishable as a misdemeanor.

11.89. License plates required; violation punishable as misdemeanor. (1) A person shall not operate or park on the streets under LTBB jurisdiction any vehicle which is required to be registered by the State of Michigan or an Indian Tribe, unless the vehicle bears valid registration plates issued for it. (2) The violation of this section is punishable as a misdemeanor.

11.90. Registration certificate; violation as civil infraction. (1) The certificate of registration shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer. (2) A person who violates this section is responsible for a civil infraction.

11.91. Driving or moving unsafe vehicles prohibited; violation as civil infraction. (1) A person shall not drive or move, and an owner shall not cause or knowingly permit to be driven or moved on any street, any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person; which does not contain those parts, or is not at all times equipped with such lamps and other equipment in proper condition and adjustment, as required by this code; or which is equipped in any manner in violation of this code. (2) A person who violates this section is responsible for a civil infraction.

11.92. Equipment; exceptions. The provisions of this code or of the act with respect to equipment on vehicles does not apply to implements of husbandry, road machinery, road rollers, or farm tractors, except as made applicable by this code.

11.93. Additional parts and accessories. Nothing contained in this code shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this code.

11.94. Lights required; violation as civil infraction. (1) Every vehicle on a street within the jurisdiction of LTBB shall be equipped with lights, which shall be lighted pursuant to the provisions of the act. (2) A person who violates this section is responsible for a civil infraction.

11.95. Dimming lights; violation as civil infraction. (1) When the driver of a vehicle approaches an oncoming vehicle within 500 feet, the driver shall use a distribution of light or composite beam, which is aimed so that the glaring rays are not projected into the eyes of the oncoming driver. (2) A person who violates this section is responsible for a civil infraction.

11.96. Spot lamps and fog lamps; violation as civil infraction. (1) A motor vehicle may be equipped with not more than 2 spot lamps, except that a motorcycle shall not be equipped with more than 1 spot lamp. Every lighted spot lamp shall be aimed and used upon approaching another vehicle so that part of the beam is not directed into the eyes of the approaching driver. Spot lamps shall not emit light that is other than white or amber. (2) A motor vehicle may be equipped with not more than 2 fog lamps mounted on the front at a height of not less than 12, but not more than 30, inches above the level surface on which the vehicle stands. The fog lamps shall be aimed so that, when the vehicle is not loaded, none of the high-intensity portion of the light to the left of the center of the vehicle, at a distance of 25 feet ahead, projects higher than a level of 4 inches below the level of the center of the lamp from which it is emitted. Lighted fog lamps that meet the requirements of this subsection may be used with lower headlamp beams. (3) A person who violates this section is responsible for a civil infraction.

11.97. Running board courtesy lamps; cowl or fender lamps; backing lights; additional lamps or reflectors; flashing, rotating, or oscillating lights; warning lamps; violation as civil infraction or misdemeanor. (1) A motor vehicle may be equipped with not more than 2 side cowl or fender lamps that emit an amber or white light without glare. (2) A motor vehicle may be equipped with not more than 1 running board Courtesy lamp on each side that emits a white or amber light without glare. (3) Backing lights that emit red, amber, or white light may be mounted on the rear of a motor vehicle if the switch that controls the light is arranged so that it may be turned on only when the vehicle is in reverse gear. When unlighted, the backing lights shall be covered or otherwise arranged so as not to reflect objectionable glare in the eyes of drivers of vehicles approaching from the rear. (4) Lamps or reflectors on a vehicle, other than those expressly required or permitted by the provisions of this chapter shall, if visible from the front, display or reflect a white or amber light; if visible from either side, display or reflect an amber or red light; and if visible from the rear, display or reflect a red light, except as otherwise provided by law. (5) The use or possession of flashing, oscillating, or rotating red, blue, or amber lights is prohibited, except under the following circumstances: (a) Publicly owned police vehicles shall be equipped with flashing, rotating, or oscillating red or blue lights for use in the performance of

police duties. (b) Publicly owned fire vehicles and ambulances that are available for public use or for use by LTBB, the United States, or other governmental unit, whether publicly or privately owned, shall be equipped with flashing, rotating, or oscillating red lights and shall be used as required for safety. (c) School buses shall be equipped with flashing red lights, which shall be actuated by the driver only when the school bus is stopped or is stopping on a highway. (d) When authorized by LTBB or the department of state police, private motor vehicles owned by volunteer or paid firemen, volunteer ambulance drivers, or licensed ambulance drivers or attendants may be equipped with flashing, rotating, or oscillating red lights for use when responding to an emergency call if, when in use, the flashing, rotating, or oscillating red lights are mounted on the roof section of the vehicle, either as a permanent installation or by means of suction cups or magnets, and are clearly visible in a 360-degree arc from a distance of 500 feet. A person who operates lights under this subsection at any time other than when responding to an emergency call is guilty of a misdemeanor. (e) Flashing, rotating, or oscillating amber lights that are placed in such a position as to be visible throughout an arc of 360 degrees shall be used by state, county, or municipal vehicles which are engaged in the removal of ice, snow, or other material from the highway and in other operations designed to control ice and snow. (f) Vehicles that are used to perform public utility services, automobile service cars and wreckers, vehicles engaged in authorized highway repair or maintenance, vehicles of peace officers, vehicles operated by rural letter carriers, vehicles utilized for snow removal, and farm tractors may be equipped with flashing, rotating, or oscillating amber lights. However, wreckers may be equipped with flashing, rotating, or oscillating red lights which shall be activated only when a wrecker is engaged in removing or assisting vehicles at the scene of a traffic accident or disablement. The flashing, rotating, or oscillating amber lights shall not be activated, except in those circumstances when the warning produced by the light is required for public safety. (g) Any lights or reflectors on a vehicle, except when otherwise authorized by this code, shall, if visible from the front, display or reflect a white or amber light; if visible from either side, display or reflect an amber light; and if visible from the rear, display or reflect a red light. (h) Police vehicles, ambulances, and fire vehicles may display a flashing, rotating, or oscillating white light in conjunction with an authorized emergency light as prescribed in this section. (i) A private motor vehicle of a physician who is responding to an emergency call may be equipped with, and the physician may use, flashing, rotating, or oscillating red lights which are mounted on the roof section of the vehicle, either as a permanent installation or by means of magnets or suction cups, and which are clearly visible in a 360-degree arc from a distance of 500 feet when in use. The physician shall first obtain written authorization from the county sheriff. (j) A person who is engaged in the manufacture, sale, or repair of flashing, rotating, or oscillating lights governed by this subsection may possess such lights for purposes of his or her employment, but shall not activate them on the highway unless authorized to do so under the provisions of subsection (6) of this section. (6) A person shall not sell, loan, or otherwise furnish a flashing, rotating, or oscillating blue or red light which is designed primarily for installation on an authorized emergency vehicle to any person, except a duly constituted police officer, sheriff, deputy sheriff, authorized physician, volunteer or paid fireman, volunteer ambulance driver, or licensed ambulance driver or attendant of LTBB or other governmental unit, or a person who is engaged in the business of operating an ambulance or wrecker service. This subsection does not prohibit an authorized vehicle that is equipped with flashing, rotating, or oscillating blue or red lights from being operated by a person other than as described in this section, if the person receives authorization to operate the emergency vehicle from a policeman, sheriff, deputy sheriff, volunteer or paid fireman, volunteer ambulance driver, licensed ambulance driver or attendant, authorized physician, or person who operates an ambulance or wrecker service, except that the authorization shall not permit the person to operate lights as described

in subsection (5)(a), (b), (d), (g), or (h) of this section. A person who operates an authorized emergency vehicle in violation of the terms of such authorization is guilty of a misdemeanor. (7) This section shall not be construed to prohibit, restrict, or limit the use of lights that are authorized or required under applicable law of another jurisdiction. (8) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing and, when so equipped, may display such warning in addition to any other warning signals required by law. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable and shall show simultaneously flashing amber or red lights or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night. (9) A person who violates subsection (1), (2), (3), (4), or (8) of this section is responsible for a civil infraction. Violations of subsection (5) or (6) of this section are misdemeanors.

11.98. Slow-moving vehicle; reflective devices required; violation as civil infraction. (1) When operated on the highway, a vehicle which has a maximum potential speed of 25 miles an hour, an implement of husbandry, a farm tractor, or special mobile equipment shall be identified with a reflective device as follows: (a) An equilateral triangle in shape which is not less than 16 inches wide at the base and not less than 14 inches in height and which has a dark red border that is not less than 1 3/4 inches wide and is made of highly reflective beaded material. (b) A center triangle which is not less than 12 1/4 inches on each side and which is made of yellow-orange fluorescent material. (c) The device shall be mounted on the rear of the vehicle, broad base down, not less than 3, nor more than 5, feet above the ground and as near the center of the vehicle as possible. The use of this reflective device is restricted to use on slow-moving vehicles specified in this section. Use of such reflective device on any other type of vehicle or stationary object on the highway is prohibited. (2) A person who violates this section is responsible for a civil infraction.

11.99. Turn signal requirements; violation as civil infraction. (1) A person shall not sell, offer for sale, or operate on any street any vehicle manufactured or assembled after January 1, 1955, unless the vehicle is equipped with mechanical or electrical turn signals. This section does not apply to a motorcycle or a moped. (2) A person who violates this section is responsible for a civil infraction.

11.100. Stop lamp requirements; violation as civil infraction. (1) A person shall not sell, offer for sale, or operate on the highway any vehicles manufactured or assembled after January 1, 1965, unless the vehicle is equipped with 2 rear stop lamps, except on a motorcycle or a moped, which meet the requirements of the act. A motorcycle or moped shall have 1 rear stop lamp. (2) A person who violates this section is responsible for a civil infraction.

11.101. Brake requirements; violation as civil infraction. (1) The requirements for brake equipment are as follows: (a) A motor vehicle, other than a motorcycle or moped, when operated on a highway, shall be equipped with brakes which are adequate to control the movement of, and to stop and hold, the vehicle, including 2 separate means of applying the brakes to not less than 2 wheels. If these 2 separate means of applying the brakes are connected in any way, they shall be constructed so that the failure of 1

part of the operating mechanism still leaves the motor vehicle with brakes on not less than 2 wheels. (b) A motorcycle or moped, when operated on a highway, shall be equipped with not less than 2 brakes, 1 on the front wheel and 1 on the rear wheel, which may be operated by hand or foot. (c) A trailer or semi-trailer of a gross weight of 5,500 pounds or more, when operated on a highway, shall be equipped with brakes which are adequate to control the movement of, and to stop and hold, the vehicle and which are designed to be applied by the driver of the towing motor vehicle from its cab. (d) A new motor vehicle, trailer, or semi-trailer which is hereafter sold and which is operated on the highways shall be equipped with brakes that are adequate to control the movement of, and to stop and hold, the vehicle, except for a motorcycle or moped, and except that a semi-trailer or trailer of less than 3,300 pounds gross weight need not be equipped with brakes. This subdivision does not apply to a trailer or semi-trailer which is owned by a farmer and which is used exclusively in connection with the farming operations of the farmer and is not used for hire. A truck or truck tractor that has 3 or more axles need not have brakes on the front wheels. A truck or truck tractor that is equipped with not less than 2 steerable axles shall require brakes on 1 of the steerable axles. (e) In any combination of motor-driven vehicles, means shall be provided for applying the rearmost trailer brakes, for a trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and for developing the required braking effort on the rearmost wheels at the fastest rate, or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes, or both of the means specified in this subdivision which are capable of being used alternatively may be employed. (f) A motor vehicle and any combination of vehicles, except pole trailers, motorcycles, and mopeds, shall be equipped with parking brakes which are adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the requirements of section 11.101 of this code by the driver's muscular effort, by spring action, or by equivalent means. Their operation may be assisted by the service brakes or another source of power if failures of the service brake actuation system or another power assisting mechanism will not prevent the parking brakes from being applied. The parking brakes shall be designed so that when once applied they remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes, lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be constructed so that failure of 1 part still leaves the vehicle with operative brakes. (g) The brake shoes operating within or on the drums of the vehicle wheels of a motor vehicle may be used for both service and hand operation. (2) A motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road which is free from loose material within the distances specified in this subsection or shall be capable of being decelerated at a sustained rate corresponding to these distances upon initial application of the service (foot) brake. Feet to stop from Deceleration 20 miles in feet, per hour, per second. Vehicles or combination of vehicles having brakes on all wheels.....30.....14. Vehicles or combination of vehicles not having brakes on all wheels.....40.....10.7. (3) All brakes shall be maintained in good working order and shall be adjusted to operate as equally as practicable with respect to the wheels on the opposite side of the vehicle. (4) A person who violates this section is responsible for a civil infraction.

11.102. Horn requirements; violation as civil infraction. (1) Every motor vehicle, when operated on a street, shall be equipped with a horn which is in good working order and which is capable of emitting sound that is audible under normal conditions from a distance of not less than 200 feet, but a horn or other warning device shall not emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his or her horn, but shall not otherwise use such horn when on a street. (2) A person who violates this section is responsible for a civil infraction.

11.103. Windshield required; exemptions; goggles required for operator of motorcycle; violation as civil infraction. (1) A motor vehicle shall not be operated on the streets or highways unless the vehicle is equipped with a windshield of sufficient dimensions to protect the driver and occupants from insects, other airborne objects, and highway surface water and debris when the motor vehicle is moving forward. A farm tractor, other implements of husbandry, and historic vehicles, are exempt from this section. If a motorcycle operated on the streets and highways in excess of 35 miles an hour is not equipped with a windshield, the operator shall wear goggles with transparent lenses or a transparent face shield or eyeglasses. The goggles, eyeglasses, or face shield shall be made of shatter-resistant material and shall be of sufficient size to protect the operator's eyes against insects, other airborne material, and highway surface water and debris. (2) A person who violates this section is responsible for a civil infraction.

11.104. Windshield; obstructions; cleaning devices; wipers; additional equipment; violation as civil infraction. (1) A person shall not drive a motor vehicle with a sign, poster, or other nontransparent material on the front windshield, sidewings, or side or rear windows of the vehicle, which obstructs the driver's clear view of the highway or an intersecting highway. A person shall not drive a motor vehicle with a dangling ornament or other suspended object, which in any way obstructs the vision of the driver of the vehicle, except as authorized by law. (2) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield. The device shall be constructed so as to be controlled or operated by the driver of the vehicle. A vehicle that is licensed as an historical vehicle is exempt from this subsection if the vehicle was not originally equipped with such a device. (3) Every windshield wiper on a motor vehicle shall be maintained in good working order. (4) On and after October 1, 1955, a licensed commercial vehicle shall not be operated on the highways at any time between December 15 and March 15, both dates inclusive, unless the vehicle is equipped with a hot air windshield defroster, an electrically heated windshield, or other means capable of keeping the windshield heated and maintained in operable condition at all times. (5) A licensed motor vehicle that is manufactured after January 1, 1956, shall not be operated on the highways unless it is equipped with a windshield washer which is maintained in operable condition at all times and which is capable of cleaning the windshield so that the driver has a clear view of the highway or an intersecting highway. (6) A person who violates this section is responsible for a civil infraction. (7) A person shall not drive a motor vehicle with either of the following: (a) A window application, reflective film, or nonreflective film upon or in the front windshield, the side windows immediately adjacent to the driver or front passenger, or the sidewings adjacent to and forward of the driver or front passenger, except that a tinted film may be used along the top edge of the windshield and the side windows or sidewings immediately adjacent to the driver or front passenger if the material does not extend more than 4 inches from the top of the windshield, or lower than the shade band, whichever is closer to the top of the windshield. (b) A rear window or side window to the rear of the driver composed of, covered by, or treated with, a material that creates a total solar reflectance of 35% or more in the visible light range, including a silver

or gold reflective film. (8) A person shall not drive a motor vehicle if driver visibility through the rear window is obstructed, unless the vehicle is equipped with 2 rearview mirrors, 1 on each side, adjusted so that the operator has a clear view of the highway behind the vehicle. (9) This section shall not apply to any of the following: (a) The use of draperies, louvers, or other special window treatments, except those specifically designated in this section, on the rear window, or a side window to the rear of the driver if the vehicle is equipped with 2 outside rearview mirrors, 1 on each side, adjusted so that the driver has a clear view of the highway behind the vehicle. (b) The use of a non-reflective smoked or tinted glass, non-reflective film, perforated window screen, or other decorative window application on the rear window or a side window to the rear of the driver. (c) The placement of a necessary certificate or sticker that does not obstruct the driver's clear view of the roadway or an intersecting roadway. (d) A special window treatment or application determined necessary by a physician for the protection of a person who is light sensitive or photosensitive, if the owner or operator of a motor vehicle has in his or her possession a letter signed by a physician, indicating the need for the special window treatment or application as a medical necessity. However, the special window treatment or application shall not interfere with or obstruct the driver's clear vision of the highway or an intersecting highway. (10) Any person who violates this Section is responsible for a civil infraction.

11.105. Tire requirements; violation as civil infraction. (1) A person shall not operate on a public highway a vehicle or special mobile equipment which has metal or plastic track or a tire which is equipped with metal that comes in contact with the surface of the road or which has a partial contact of metal or plastic with the surface of the road, except as provided in subsections (3), (4), and (5) of this section. (2) A person shall not operate on a highway a vehicle which has a tire that has on its periphery a block, stud, flange, cleat, spike, or other protuberance of a material other than rubber which projects beyond the tread of the traction surface of the tire, except as provided in subsections (2), (3), and (4) of this section. A person may, however, use farm machinery with a tire having a protuberance, which will not injure a highway. A person may also use a tire chain of reasonable proportion on a vehicle when required for safety because of snow, ice, or other condition that tends to cause a vehicle to skid. (3) A person may operate on a highway a vehicle which has a pneumatic tire in which wire of .075 inches in diameter or less is embedded, if the tire is constructed so that the percent of metal in contact with the highway is not more than 5% of the total tire area in contact with the roadway, except that during the first 1,000 miles of use or operation of the tire, the metal in contact with the highway shall not be more than 20% of the tire area. (4) A person may operate on a highway a vehicle which has a pneumatic tire in which are inserted ice grips or tire studs, if the person is a law enforcement officer operating a vehicle owned by a law enforcement agency, a person operating an ambulance, or a United States postal service rural carrier driving a vehicle the rural carrier owns and maintains as a prerequisite to employment in the postal service. (5) A person shall not operate a vehicle on a highway when a tire in use on that vehicle is unsafe as provided in subsection (7) of this section. (6) A person who is in the business of selling tires shall not sell or offer for sale for highway use a tire, which is unsafe as provided in subsection (7) of this section. (7) A tire is unsafe if it is in any of the following conditions: (a) Has a part of the belting material, tire cords, or plies exposed. (b) Has evidence of cord or tread separations. (c) Is worn to or below the minimum tread level in 2 or more adjacent major grooves at 3 or more locations spaced around the circumference of the tire. Minimum allowable tread levels are as follows: (i) Motorcycles and mopeds 1/32 inch front and rear. (ii) Passenger cars and vehicles weighing less than 10,000 pounds 2/32 inch front and rear. (iii) Vehicles weighing 10,000 pounds or more 4/32 inch front and 2/32 inch rear. Measurements shall not be made at locations of tread wear indicators or tie bars. A motor vehicle

that is licensed as an historic vehicle under section 803a of the act is exempt from the tread depth requirements of this subsection. (d) Has a marking "not for highway use," "for racing purposes only," "for farm use only," or "unsafe for highway use." (e) Has been re-grooved or re-cut below the original tread design depth, except in the case of special purpose designed tires which have extra under-tread rubber provided for this purpose and which are identified as such tires. (8) A person who violates this section is responsible for a civil infraction.

11.106. Mirror requirements; violation as civil infraction. (1) A person shall not drive on a highway a motor vehicle which is constructed or loaded so as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the driver's position, unless the vehicle is equipped with a mirror located to reflect to the driver a view of the highway to the rear of the vehicle. In addition, all motor vehicles shall be equipped with an outside rearview mirror on the driver's side which shall be positioned to give the driver a rear viewing angle from the driver's side of the vehicle, except for a motor vehicle that is licensed as an historic vehicle if the vehicle was not originally equipped with an outside rearview mirror. Rearview mirrors may be positioned on the helmet or visor worn by the operator of a motorcycle if the helmet is securely attached to the head of the operator. Every commercial vehicle of ½-ton capacity or more that operates on the public highways of this state shall be equipped with 2 mirrors, 1 on each side, adjusted so that the operator has a clear view of the highway behind the commercial vehicle. The outside mirrors shall not be considered to be a part of the vehicle for the purpose of determining the maximum width under section 717 of the act. (2) A person who violates this section is responsible for a civil infraction.

11.107. Bumper height; vehicle modification; exemption; "passenger vehicle" defined; violation as civil infraction. (1) A person shall not operate a passenger vehicle on a public highway or street unless the vehicle is equipped with a bumper or other energy absorption system with an analogous function. (2) A person shall not modify a passenger vehicle or operate upon a public highway or street of this state a passenger vehicle, except for a 4-wheel drive vehicle, which has been modified, if the resultant operational altitude of a bumper of the vehicle is less than 14, or more than 22, inches, as measured from the ground to a load-bearing member of the horizontal bumper bar. The suspension system of a passenger vehicle shall not be modified to defeat the safe operation of the system. (3) A vehicle shall not be modified to cause the vehicle body or chassis to come in contact with the ground or to expose the fuel tank to damage from collision or to cause the wheels to come in contact with the body under normal operation, and no part of the original suspension system shall be disconnected to defeat the safe operation of the suspension system. However, nothing contained in this section shall prevent the installation of heavy-duty equipment, including shock absorbers and overload springs, and nothing contained in this section shall prevent a person from operating a motor vehicle on a public highway with normal wear of the suspension system if normal wear does not affect the control of the vehicle. (4) This section does not apply to a commercial vehicle, other than a vehicle carrying passengers for hire, a vehicle that has a design which intrinsically precludes conformance with the act, or to a vehicle that has an unaltered and undamaged stock bumper or energy absorption system with an analogous function of the type supplied by the vehicle manufacturer. (5) Installation of a shock absorber or overload spring as heavy-duty equipment is not prohibited by this section. (6) This section shall not be construed to establish standards higher than those formulated by the United States department of transportation for bumpers on a passenger motor vehicle sold within the United States. (7) For purposes of this section,

"passenger vehicle" means a vehicle displaying valid registration plates. (8) A person who violates this section is responsible for a civil infraction.

11.108. Requirements for flap-type devices on commercial vehicles; violation as civil infraction. (1) A commercial vehicle, except for a truck tractor between terminals which is traveling at a speed of not more than 25 miles per hour, and a combination of a commercial vehicle and trailer or semi-trailer, when used on a highway, shall be constructed, equipped, or operated to prevent water or other road surface substances from being thrown from the rear wheels of the vehicle or combination at tangents of more than 22 ½ degrees measured from the road surface. If a flap-type device is used, it shall not have attached any type of lamp, breakable reflective material, or reflecting buttons, and the device shall not extend beyond the 96-inch maximum width of the vehicle or combination. (2) A person who violates this section is responsible for a civil infraction.

11.109. Lamp or flag on projecting load required; violation as civil infraction. (1) When the load on any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle, a red light or lantern that is plainly visible from a distance of not less than 500 feet to the sides and rear shall be displayed at the extreme rear end of the load during the hours between ½ hour after sunset and ½ hour before sunrise and at any other time when there is not sufficient light to clearly discern persons and vehicles on the highway at a distance of 500 feet ahead. The red light or lantern required under this section shall be in addition to the red rear light required on every vehicle. (2) At times other than between ½ hour after sunset to ½ hour before sunrise, a red flag or cloth not less than 12 inches square shall be displayed at the extreme rear end of such load and shall be hung so that the entire area is visible to the driver of a vehicle approaching from the rear. (3) A person who violates this section is responsible for a civil infraction.

11.110. Mufflers required; violation as civil infraction. (1) A motor vehicle, including a motorcycle or a moped, shall at all times be equipped with a muffler that is in good working order which prevents excessive or unusual noise. A person shall not remove, destroy, or damage the baffles contained in the muffler. A person shall not use a muffler cutout, bypass, or similar device on a motorcycle or moped on any street or highway. (2) A person who violates this section is responsible for a civil infraction.

11.111. Operation of vehicle with unnecessary noise prohibited; violation as civil infraction. (1) A person shall not operate a motor vehicle with unnecessary noise and shall not start, move, or turn a motor vehicle or apply the brakes or the power on a motor vehicle or in any manner operate the vehicle so as to cause the tires to squeal or the tires or vehicle to make any noise not usually connected with the operation of the motor vehicle, except in case of an emergency. (2) A person who violates this section is responsible for a civil infraction.

11.112. Excessive fumes or smoke; violation as civil infraction. (1) The engine and power mechanism of every motor vehicle shall be equipped and adjusted to prevent the escape of excessive fumes or smoke. (2) A person who violates this section is responsible for a civil infraction.

11.113. Devices for causing flame or smoke from motor vehicle prohibited; violation as civil infraction; replacing muffler or exhaust which causes vehicle to exceed established noise levels prohibited; modifying, repairing, replacing, or removing part of exhaust which causes vehicle to exceed established

noise levels prohibited; sale of secondhand vehicle by dealer to comply with act; violation as misdemeanor. (1) A person shall not install, sell, or distribute any device for the purpose of causing flame or smoke to be emitted from a motor vehicle, except for highway maintenance vehicles, and a person shall not use any such device on a motor vehicle not so excepted. (2) A person, either acting for himself or herself or as the agent or employee of another, shall not sell, install, or replace a muffler or exhaust part which causes the motor vehicle to which the muffler or exhaust part is attached to exceed the noise limits established by the act or this code. (3) A person shall not modify, repair, replace, or remove parts of an exhaust system, which causes the motor vehicle to which the system is attached to produce noise in excess of the levels established by the act and shall not operate a motor vehicle so altered on a street or highway. (4) A dealer shall not sell a used motor vehicle, which is not in compliance with this code for use on a street or highway. (5) A person who violates subsection (1) of this section is responsible for a civil infraction. Violations of subsection (2), (3), or (4) are misdemeanors.

11.114. Display on vehicle of official designation, sign, or insignia prohibited; violation as misdemeanor. (1) An owner shall not display on any part of his or her vehicle, or knowingly permit the display of, any official designation, sign, or insignia of any public or quasi-public corporation; municipal, state, or national department; or government subdivision without authority of such agency. (2) A person who violates this section is guilty of a misdemeanor.

11.115. Television set; placement in motor vehicle; violation as misdemeanor. (1) A person shall not drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat or which is visible to the driver while operating the motor vehicle. (2) A person who violates this section is guilty of a misdemeanor.

11.116. Size and weight restrictions; violation as misdemeanor; exception. (1) A person shall not drive, move, or cause or knowingly permit to be driven or moved on any street any vehicle or vehicles of a width, height, length, or weight of more than the limitations governing size and weight restrictions specified by the Traffic Engineer. (2) A person who violates this section is guilty of a misdemeanor unless the specific violation is declared to be a civil infraction.

11.117. Merchandising within highway right-of-way prohibited; exception; violation as civil infraction. (1) A person, firm, or corporation shall not sell, offer for sale, display, or attempt to display for sale any goods, wares, produce, fruit, vegetables, or merchandise within the right-of-way of any highway, except as allowed by Tribally issued permit. This section shall not be construed to interfere with any permanently established business presently located on or partially on private property, to grant to the owner any additional rights or authority that the owner may not now possess, or to diminish the legal rights or duties of the authority that has jurisdiction of the right-of-way. (2) A person who violates this section is responsible for a civil infraction.

11.118. School buses; signs; overtaking, meeting, or passing; violation as misdemeanor; discharge of passengers; signal lights; mirror; evidence of violation; violation as civil infraction. (1) A school bus that transports pupils outside of incorporated cities or villages and inside of incorporated cities or villages where stopping of school buses is controlled by local ordinance shall be painted, and shall

contain signs on the back and front of the school bus, as approved by LTBB or the Michigan department of transportation and the superintendent of public instruction. (2) The driver of a vehicle that overtakes or meets a school bus which has stopped and which is displaying 2 alternately flashing red lights located at the same level shall bring the vehicle to a full stop not less than 10 feet from the school bus and shall not proceed until the school bus resumes motion or the visual signals are no longer actuated. The driver of the school bus, before resuming motion, shall deactivate flashing lights, shall permit stopped traffic to proceed, and shall, when resuming motion, proceed in a manner that will allow congested traffic to disperse by keeping the bus as near to the right side of the road as can be done with safety. (3) Passengers who cross a road upon being discharged from a school bus shall cross in front of the stopped school bus. (4) At an intersection where traffic is controlled by an officer or a traffic stop-and-go signal, a vehicle need not be brought to a full stop before passing a stopped school bus, but may proceed past the school bus at a speed not greater than is reasonable and proper, but not more than 10 miles an hour, and shall proceed with due caution for the safety of passengers being received or discharged from the school bus. (5) If the stopping for school buses is controlled by local ordinance, the ordinance shall be enforceable if signs giving notice of the local traffic regulation are posted on or at the entrance to the area, or part of the area, affected as may be most appropriate or sufficiently legible as to be seen by an ordinarily observant person. (6) The driver of a vehicle who fails to stop for a school bus as required by subsections (2) to (5) of this section, who passes a school bus in violation of subsections (2) to (5) of this section, or who fails to stop for a school bus in violation of an ordinance which complies with subsections (2) to (5) of this section is guilty of a misdemeanor. (7) Subsections (2) to (6) do not apply to buses inside incorporated cities or villages. (8) A school bus driver shall not stop the bus for the purpose of receiving or discharging passengers unless the bus is clearly visible in its stopped position to approaching or overtaking drivers of vehicles for a distance of not less than 500 feet. (9) The driver of a vehicle on a highway that has been divided into 2 roadways by leaving an intervening space, by a physical barrier, or by clearly indicated dividing sections constructed so as to impede vehicular traffic need not stop upon meeting a school bus which has stopped across the dividing space, barrier, or section. (10) A school bus that transports pupils outside of incorporated cities or villages and inside of incorporated cities or villages where stopping of school buses is controlled by local ordinance, in addition to any other equipment and distinctive marking required by law, shall be equipped with signal lamps mounted as high and as widely spaced laterally as practicable. The lamps shall be capable of displaying to the front 2 alternately flashing red lights located at the same level and to the rear 2 alternately flashing red lights located at the same level. The lights shall have sufficient intensity to be visible from a distance of not less than 500 feet in normal sunlight and shall be actuated by the driver of the school bus when, but only when, the vehicle is stopped and for a distance of not less than 200 feet in advance of a stop for the purpose of receiving or discharging school children. The lights shall not be actuated inside of incorporated cities or villages unless stopping of school buses is controlled by local ordinance. (11) A school bus shall be equipped with a mirror, convex in shape, which is not less than 7-1/2 inches in diameter and which is firmly mounted at hood or fender top height in front of the bus. The mirror shall be located on either the left or right side of the bus in a manner so that the seated driver may observe the road from the front bumper forward to the point where direct observation is possible. (12) In a proceeding for a violation of subsection (2) of this section, proof that the particular vehicle described in the citation, complaint, or warrant was in violation of subsection (2) of this section, together with proof that the defendant named in the citation, complaint, or warrant was, at the time of the violation, the registered owner of the vehicle, shall constitute in evidence a presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation. (13) Except as otherwise

provided in subsection (2) of this section, a person who violates this section is responsible for a civil infraction. A violation of subsection (2) of this section is a misdemeanor.

11.119. Opening vehicle doors so as to impede traffic prohibited; violation as civil infraction. (1) A person shall not open a door of a vehicle in a manner that interferes with or impedes the flow of traffic. (2) A person who violates this section is responsible for a civil infraction.

11.120. Blocking, obstructing, impeding, or otherwise interfering with traffic prohibited; violation as civil infraction. (1) A person without authority shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic on a public street or highway by means of a barricade, object, device, or with his or her person. This section does not apply to persons who maintain, arrange, or construct public utilities in, or adjacent to, a street or highway. (2) A person who violates this section is responsible for a civil infraction.

11.121. Towed vehicles; violation as civil infraction. (1) A passenger vehicle shall not be driven on any highway drawing or having attached thereto more than 1 vehicle or trailer. (2) The draw bar or other connection between any 2 vehicles, 1 of which is towing or drawing the other on a highway, shall not be more than 15 feet in length from 1 vehicle to the other. When such connection consists of a chain, rope, or cable, a red flag or other signal or cloth not less than 12 inches both in length and width shall be displayed on such connection. (3) Every vehicle or trailer drawn by any motor-propelled vehicle shall be so attached to such vehicle with such forms of coupling devices as will prevent such vehicle or trailer from being deflected more than 6 inches from the path of the towing vehicle's wheels. Such vehicle or trailer shall also be connected to the towing vehicle by suitable safety chains or devices, 1 on each side of the coupling and at the extreme outer edge of the vehicle, and each such chain or device and connection so used shall be of sufficient strength to haul the trailer when loaded. (4) A person who violates this section is responsible for a civil infraction.

(Source: WOS 2001-06, March 18, 2001, Section XI)

9.312 OPERATION OF BICYCLES, MOTORCYCLES, MOPEDS, AND TOY VEHICLES

12.01. Operator of motorcycle or moped; rights and duties; violation as civil infraction. (1) Every person who operates a motorcycle or a moped on a roadway shall be granted all the rights, and shall be subject to all the duties, applicable to the driver of a vehicle under this code, except as to those provisions which by their nature do not apply. (2) A person who violates this section is responsible for a civil infraction.

12.02. Supplementary provisions. The provisions of this chapter applicable to motorcycles and mopeds shall be considered supplementary to other provisions of this code governing the operation of such vehicles.

12.03. Bicycles; ordinances applicable. The provisions of this code that are applicable to bicycles shall apply when a bicycle is operated on any street or on any public path set aside for the exclusive use of bicycles, subject to those exceptions stated in this code.

12.04. Riders to obey traffic law. Every person who rides a bicycle on a roadway shall be granted all of the rights, and shall be subject to all of the duties, applicable to the driver of a vehicle, which are applicable to the driver of a vehicle, except as to special regulations in this chapter and except as to those provisions of laws and ordinances which by their nature do not apply.

12.05. Limited access highway; pedestrians and certain vehicles prohibited; violation as civil infraction. (1) A person shall not operate a moped, farm tractor, motorcycle with less than a 125-cubic centimeter engine, or other self-propelled farm implement, nor shall any pedestrian, bicycle, except as provided in this code, or other non-motorized traffic be permitted, on any limited access highway in this state. Bicycles shall be permitted on paths which are constructed separately from the roadway and which are designated for the exclusive use of bicycles. (2) A person who violates this section is responsible for a civil infraction.

12.06. Bicycle dealers. Every person who is engaged in the business of buying or selling new or secondhand bicycles shall make a report to the chief of police of every bicycle purchased or sold by such dealer, which shall include all of the following information: (a) The name and address of the person from whom purchased or to whom sold. (b) A description of such bicycle by name or make. (c) The frame number. (d) The number of license plate, if any, found thereon.

12.07. Obedience to traffic-control devices; violation as civil infraction. (1) Any person who operates a bicycle shall obey the instructions of official traffic-control signals, signs, and other control devices applicable to vehicles, unless otherwise directed by a police officer. (2) A person who violates this section is responsible for a civil infraction.

12.08. Obedience to pedestrian regulations when dismounted from a bicycle. When authorized signs are erected which indicate that right, left, or U-turns are not permitted, a person who operates a bicycle shall obey the direction of any such sign, except where the person dismounts from the bicycle to make such turn, in which event the person shall then obey the regulations applicable to pedestrians.

12.09. Passengers on motorcycles or mopeds; violation as civil infraction. (1) A person who operates a motorcycle shall ride on and astride the permanent and regular seat attached to the vehicle and shall not carry another person, or permit another person to ride, on the motorcycle as a passenger, unless the motorcycle is designed and equipped to carry more than 1 person. If the motorcycle is so designed and equipped, the passenger may ride on the permanent and regular seat if the motorcycle is designed for 2 persons or may ride on another seat firmly attached to the vehicle, which is to the rear or side of the operator. (2) A person who operates a moped shall ride on and astride the permanent and regular seat attached to the vehicle and shall not carry another person as a passenger on the moped. (3) A person who violates this section is responsible for a civil infraction.

12.10. Bicycles; number and manner of carrying persons; violation as civil infraction. (1) A person who propels a bicycle shall not ride other than astride a permanent and regular seat attached thereto and shall not carry more persons at one time than the number for which the bicycle is designed and equipped. (2) A person who violates this section is responsible for a civil infraction.

12.11. Riding on roadways and bicycle paths; violation as civil infraction. (1) A person who operates a bicycle, motorcycle, or moped on a roadway shall ride as near to the right-hand side of the roadway as practicable and shall exercise due care when passing a standing vehicle or a vehicle proceeding in the same direction. (2) A person who operates a moped, a motorcycle, or a bicycle shall not pass between lines of traffic, but may pass in an unoccupied lane on the left of traffic moving in his or her direction in the case of a 2-way street and on the left or right of traffic in the case of a 1-way street. (3) A person who violates this section is responsible for a civil infraction.

12.12. Riding 2 abreast prohibited; exception; violation as civil infraction. (1) Every person who operates a bicycle, motorcycle, or moped on a roadway shall not ride more than 2 abreast, except on paths or parts of roadways set aside for the exclusive use of such vehicles. (2) A person who violates this section is responsible for a civil infraction.

12.13. Bicycles; use of paths required when provided; violation as civil infraction. (1) When a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. (2) A person who violates this section is responsible for a civil infraction.

12.14. Clinging to other vehicles prohibited; violation as civil infraction. (1) A person who rides on any bicycle, motorcycle, moped, coaster, roller skates, sled, or toy vehicle shall not attach the same or himself or herself to any vehicle on a roadway. (2) A person who violates this section is responsible for a civil infraction.

12.15. Bicycles; speed; violation as civil infraction. (1) A person shall not operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing. (2) A person who violates this section is responsible for a civil infraction.

12.16. Emerging from alley, driveway, or building; yielding right-of-way; violation as civil infraction. (1) The operator of a bicycle who emerges from an alley, driveway, or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on the sidewalk area and, upon entering the roadway, shall yield the right-of-way to all vehicles approaching on the roadway. (2) A person who violates this section is responsible for a civil infraction.

12.17. Carrying articles; height of handlebars; violation as civil infraction. (1) A person who operates a bicycle, motorcycle, or moped shall not carry a package, bundle, or article which prevents the driver from keeping both hands on the handlebars of the vehicle. (2) A person shall not operate on a street or highway a motorcycle or moped equipped with handlebars that are higher than 15 inches from the lowest point of the undepressed saddle to the highest point of the handle grip of the operator. (3) A person who violates this section is responsible for a civil infraction.

12.18. Bicycles; parking on sidewalk; violation as civil infraction. (1) A person shall not park a bicycle on a sidewalk where bicycle parking is prohibited by official traffic-control devices. A person shall not park a bicycle on a sidewalk in a manner that would unreasonably obstruct pedestrian or other traffic. (2) A person who violates this section is responsible for a civil infraction.

12.19. Bicycles; parking on roadway; violation as civil infraction. (1) Notwithstanding the provisions of this code, and unless prohibited or restricted by traffic-control devices, a bicycle may be parked as follows: (a) On the roadway at an angle to the curb or edge of the roadway at any location where the parking of vehicles is allowed. (b) On the roadway abreast of another bicycle near the side of the roadway at any location where the parking of vehicles is allowed. (2) In all other respects, a bicycle parked anywhere on a street shall conform with the provisions of this code which regulate the parking of vehicles. (3) A person who violates this section is responsible for a civil infraction.

12.20. Obedience to signs prohibiting riding of bicycles; violation as civil infraction. (1) When a sign is erected on a sidewalk, which prohibits the riding of bicycles thereon by any person, a person shall obey the sign. (2) A person who violates this section is responsible for a civil infraction.

12.21. Riding on sidewalks; right-of-way; violation as civil infraction. (1) When any person is riding a bicycle on a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian. (2) A person who violates this section is responsible for a civil infraction.

12.22. Bicycles; lights; red reflector; violation as civil infraction. (1) Every bicycle, when in use at nighttime, shall be equipped with a lamp on the front which shall emit a white light that is visible from a distance of not less than 500 feet to the front and shall be equipped with a red reflector on the rear that is visible from all distances from 100 feet to 600 feet to the rear when the bicycle is directly in front of the lawful upper beams of head lamps on a motor vehicle. A lamp that emits a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector. (2) A person who violates this section is responsible for a civil infraction.

12.23. Bicycles; brake required; violation as civil infraction. (1) Every bicycle shall be equipped with a brake, which enables the operator to make the braked wheels skid on dry, level, clean pavement. (2) A person who violates this section is responsible for a civil infraction.

12.24. Motorcycles; protective helmet required; violation as civil infraction. (1) A person who operates or rides on a motorcycle on a public thoroughfare shall wear on his or her head a protective helmet of a type approved by the Police Department or Michigan department of state police. (2) A person who violates this section is responsible for a civil infraction.

12.25. Motorcycles; protective helmet standards; label. Protective helmets required by section 12.24 of this code, which are sold or offered for sale shall meet or exceed the stated standards and shall be clearly labeled as meeting those standards.

12.26. Dealers; renting, leasing, or furnishing motorcycles or mopeds to unlicensed operators prohibited; violation as misdemeanor. (1) A dealer shall not rent, lease, or furnish a motorcycle or moped to a person for use on the streets and highways who is not licensed to operate a motorcycle or moped by this state, if a resident, or by the state of which he or she is a resident, if a nonresident. (2) A person who violates this section is guilty of a misdemeanor.

12.27. Subleasing motorcycles or mopeds to unlicensed operators prohibited; violation as misdemeanor. (1) It is unlawful for a person to whom a motorcycle or moped is rented, leased, or furnished to rent, sublease, or otherwise authorize the use of the motorcycle or moped on public streets and highways to any person who is not licensed to operate a vehicle in this state. (2) A person who violates this section is guilty of a misdemeanor.

12.28. Dealers; maintenance of motorcycles or mopeds in safe operating condition; explaining operation to person to whom rented, leased, or furnished; refusing to rent, lease, or furnish; violation as misdemeanor. (1) The dealer shall maintain in safe operating condition all motorcycles and mopeds rented, leased, or furnished by him or her. The dealer or his or her agents or employees shall explain the operation of the motorcycle or moped being rented, leased, or furnished. If such dealer or his or her agent or employee believes that the person to whom the motorcycle or moped is to be rented, leased, or furnished is not competent to operate such motorcycle or moped on public streets and highways, he or she shall refuse to rent, lease, or furnish the same. (2) A person who violates this section is guilty of a misdemeanor.

12.29. Motorcycle dealers; motor vehicle liability policies required; violation as misdemeanor. (1) Any dealer who rents, leases, or furnishes any motorcycle shall carry a motor vehicle liability policy of the same type and coverage as that outlined in section 520 of the act for each motorcycle so rented, leased, or furnished or, in the alternative, shall demand and be shown proof that the person renting, leasing, or being furnished a motorcycle carries a motor vehicle liability policy of at least the type and coverage as specified in section 520 of the act. (2) A person who violates this section is guilty of a misdemeanor.

(Source: WOS 2001-06, March 18, 2001, Section XII)

9.113 PEDESTRIANS' RIGHTS AND DUTIES

13.01. Pedestrians; traffic-control signals; privileges and restricts; violation as civil infraction. (1) Pedestrians are subject to traffic-control signals at intersections as provided in section 10.16-10.38 of this code. At all other places, pedestrians shall be accorded the privileges, and shall be subject to the restrictions, stated in this chapter. (2) A person who violates this section is responsible for a civil infraction.

13.02. Pedestrians; right-of-way in crosswalk; violation as civil infraction. (1) When traffic-control signals are not in place or are not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is on the half of the roadway on which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but a pedestrian shall not suddenly leave a curb or other place of safety and walk or run into a path of a vehicle which is so close that it is impossible for the driver to yield. (2) A person who violates this section is responsible for a civil infraction.

13.03. Passing vehicle stopped at intersection to permit pedestrian to cross-prohibited; violation as civil infraction. (1) When any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching

from the rear shall not overtake and pass such stopped vehicle. (2) A person who violates this section is responsible for a civil infraction.

13.04. Limited access highway; pedestrians prohibited; violation as civil infraction. (1) Pedestrians are prohibited on limited access highways. (2) A person who violates this section is responsible for a civil infraction.

(Source: WOS 2001-06, March 18, 2001, Section XIII)

9.314 PENALTIES

14.01. Civil infractions. Unless otherwise specified in this code, the penalty for a civil infraction shall be a fine no less than $10.00 and no greater than $100.00.

14.02. Misdemeanors. Unless otherwise specified in this code, the punishment for conviction of a misdemeanor shall be a jail term not to exceed ninety (90) days, or to a fine not to exceed one thousand dollars ($1,000.00), or to both.

14.02. Felonies. Unless otherwise specified in this code, the punishment for conviction of a felony shall be a jail term not to exceed one year, or to a fine not to exceed five thousand dollars ($5,000.00), or to both.

(Source: WOS 2001-06, March 18, 2001, Section XIV)

9.315 EFFECTIVE DATE

This Statute takes effect upon enactment and shall remain in effect for a period of sixty days following the date of enactment.

(Source: WOS 2001-06, March 18, 2001, Section XV)

Chapter 4. Check, Draft or Order for Payment of Money

9.401 PURPOSE

The purpose of this Statute is to protect the financial resources for The Little Traverse Bay Bands of Odawa Indians through the imposition of imprisonment and/or fines on any person who issues a check, draft, or order for payment of money to The Little Traverse Bay Bands of Odawa Indians, a department of The Little Traverse Bay Bands of Odawa Indians, or any enterprise that is owned by The Little Traverse Bay Bands of Odawa Indians, that is returned unpaid from the issuer's financial institution.

(Source: WOS 2004-05, September 26, 2004, Section I)

9.402 DEFINITION

A. The word "credit" as used herein, shall mean an arrangement or understanding with the bank or depository, for the payment of such check, draft, or order, in full, upon the presentation thereof for payment.

B. "Imprisonment" means confinement in a jail or other facility, or community service as may be ordered by the Court.

(Source: WOS 2004-05, September 26, 2004, Section II)

9.403 APPLICABILITY

This Statute applies to all persons that fall under the jurisdiction of The Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2004-05, September 26, 2004, Section III)

9.404 CHECK, DRAFT, OR ORDER FOR PAYMENT OF MONEY; MAKING, DRAWING, UTTERING, OR DELIVERING WITHOUT SUFFICIENT FUNDS WITH INTENT TO DEFRAUD; VIOLATION; PENALTIES

The following provisions shall apply to all checks, drafts, or orders for payment of money within the jurisdiction of The Little Traverse Bay Bands of Odawa Indians:

A. A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud and knowing at the time of the making, drawing, uttering, or delivering that the maker or drawer does not have sufficient funds in or credit with the bank or other depository to pay the check, draft, or order in full upon its presentation.

B. A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud if the person does not have sufficient funds for the payment of the check, draft, or order when presentation for payment is made to the drawee. This subsection does not apply if the lack of funds is due to garnishment, attachment, levy, or other lawful cause and that fact was not known to the person when the person made, drew, uttered, or delivered the check, draft, or order.

C. A person who violates this section is guilty of a crime as follows:

1. If the amounts payable in the check, draft, or order is less than $100.00, as follows:

a. For a first offense, a misdemeanor punishable by imprisonment for not more than thirty (30) days or a fine of not more than $500.00, or both.

b. For an offense following one (1) or more prior convictions under this section or a local ordinance substantially corresponding to this section, a misdemeanor punishable by

imprisonment for not more than six (6) months or a fine of not more than $1,000.00, or both.

2. If the amount payable in the check, draft, or order is $100.00 or more but less than $500.00, as follows:

a. For a first or second offense, a misdemeanor punishable by imprisonment for not more than six (6) months or a fine of not more than $1,000.00 or three (3) times the amount payable, whichever is greater, or both imprisonment and a fine.

b. For an offense following two (2) or more prior convictions under this section, a felony punishable by imprisonment for not more than one (1) year or a fine of not more than $2,000.00, or both. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection IV(C)(1).

3. If the amount payable in the check, draft, or order is $500.00 or more, a felony punishable by imprisonment for not more than one (1) year or a fine of not more than $2,000.00 or three (3) times the amount payable, whichever is greater up to $5,000.00, or both imprisonment and a fine.

D. If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having one (1) or more prior convictions, the prosecuting attorney shall include in the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, one (1) or more of the following:

1. A copy of the judgment of conviction.
2. A transcript of a prior trial, plea taking, or sentencing.
3. Information contained in a pre-sentence report.
4. The defendant's statement.

E. A person shall not, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for payment of money, to apply on an account or otherwise, upon any bank or other depository, it at the time of making, drawing, uttering, or delivering the check, draft, or order he or she does not have an account in or credit with the bank or other depository for the payment of the check, draft, or order upon presentation. A person who violates this section is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than $500.00, or both.

F. A person shall not, with intent to defraud, make, utter, or deliver, within a period of not more than ten (10) days, three (3) or more checks, drafts, or orders for the payment of money, to apply on account or otherwise, upon any bank or other depository, knowing at the time of making, drawing, uttering, or delivering each of the checks, drafts, or orders that the maker or drawer does not have sufficient funds or credit with the bank or other depository for the payment of the check, draft, or order

in full upon its presentation. A person who violates this section is guilty of a felony, punishable by imprisonment for not more than one (1) year, or by a fine of not more than $500.00, or both.

G. Evidence of intent to defraud, etc. – As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft, or order, payment of which is refused by the drawee, when presented in the usual course of business, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs and protest fees, within five (5) days after receiving notice that such check, draft or order has not been paid by the drawee.

H. Notice of protest as evidence of intent to defraud, etc. – Where such check, draft, or order is protested, on the ground of insufficiency of funds or credit, the notice of protest thereof shall be admissible proof of presentation, non-payment and protest, and shall be prima facie evidence of intent to defraud, and of knowledge of insufficient funds or credit with such bank or other depository.

(Source: WOS 2004-05, September 26, 2004, Section IV)

9.405 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section 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 phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

(Source: WOS 2004-05, September 26, 2004, Section V)

9.406 EFFECTIVE DATE

This Statute shall take effect thirty (30) days after enactment by Tribal Council [September 26, 2004].

(Source: WOS 2004-05, September 26, 2004, Section VI)

TITLE X. LAND USE AND BUILDING

Chapter 1. Handicap Accessible New Construction

IT IS RESOLVED THAT all new construction of the Tribe be designed and constructed in a manner that is handicap accessible whenever required by law and even if not required by law wherever physically and financially feasible.

(Source: WOS 1995006, April 9, 1995)

Chapter 2. Authorization of Traditional Activities on Osborne Road Property

The LTBB Tribal Council supports and authorizes traditional Indian activities on the tribal land located on Osborne Rd. Groups which have scheduled activities on the land may set the criteria for participation on events they hold. Groups intending to use the property must contact the tribal office, which shall maintain a calendar of scheduled events. Scheduling guidelines shall be developed as necessary and these guidelines must be presented to and approved by the Tribal Council.

(Source: WOS 1995014, September 24, 1995)

Chapter 3. Zoning

10.301 SHORT TITLE AND PURPOSE

1.01. Short Title: This Statute may be cited as the "Zoning Statute."

1.02. Purpose: The purpose of this Statute is to provide for the regulation of land use; the 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.

1.03. Repeal of Prior Statute. This Statute repeals and replaces the Land Use Regulation enacted on June 22, 1997, being Waganakising Odawak Statute 1997007.

(Source: WOS 2001-13, October 21, 2001, Section I)

10.302 EXISTING USES OF LAND AND BUILDINGS

The lawful use of any dwelling, building or structure, and of land or premises as existing and lawful 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 with the provisions of this Statute.

(Source: WOS 2001-13, October 21, 2001, Section II)

10.303 DEFINITIONS

The following definitions of word use shall apply:

3.01. Words used in the present tense shall include the future.

3.02. Words used in the singular number shall include the plural number and the plural the singular.

3.03. The word "shall" is mandatory and not discretionary.

3.04. The word "may" is permissive.

3.05. The word "lot" shall include the words "piece", "parcel" and "plot".

3.06. The phrase "used for" shall include the phrases "maintained for" and "occupied for".

3.07. The phrase "designed for" shall include the phrases "arranged for" and "intended for".

3.08. All "measured distances" shall be to nearest foot. If a fraction is one-half foot (½') or less, the next full number below shall be taken.

3.09. The words "dwelling", "family dwelling", "2 family dwelling", "multiple dwelling". "building", "house", "premises", or "lot" as used in this Statute shall be construed as if followed by the words "or any part thereof".

3.10. ACCESSORY BUILDING: An accessory building is a subordinate building situated upon the same lot as the main building the use of which is incidental to the main building.

3.11. ACCESSORY USE: An accessory use is a use subordinate and customarily incidental to the main use on a lot.

3.12. AIRCRAFT LANDING AREA: Any premises which are used or made available for the landing or takeoff of aircraft, including premises which are classified as a restricted landing area as contemplated by the rules and regulations promulgated by the Federal Aeronautics Administration, and including any appurtenant areas which are used or suitable for use for buildings or facilities incidental to aircraft services.

3.13. ALLEY: A narrow thoroughfare upon which the rear of premises generally abut or upon which service entrances of buildings abut, and which is not generally used as a thoroughfare by both pedestrians and vehicles, or which is not used for general traffic circulation, or which is not in excess of 30 feet in width at its intersection with a street.

3.14. ALTERATIONS: Any change, addition, or modification in construction or type of occupancy, or in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to here-in as "altered" or "reconstructed".

3.15. APARTMENTS: A suite of rooms or a room in a multiple-family building arranged and intended for a place or residence of a single-family or group of individuals living together as a single house keeping unit.

3.16. BASEMENT: That portion of a building which is partly or wholly below grade but is so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a story.

3.17. BED AND BREAKFAST: A bed and breakfast facility is a dwelling licensed to serve over night guests in a residence for a fee. Such a facility shall be owner occupied with the owner operating the facility as proprietor.

3.18. BUILDING: Any structure, either temporary or permanent, having a room supported by columns or walls, and intended for the shelter or enclosure of persons, animals, chattels or property of any kind.

3.19. BUILDING HEIGHT: The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between saves and ridge for gable, hid and gambrel roofs. Where a building height is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.

3.20. BUILDING, EXISTING: An "existing" building is any building actually constructed or the construction of which is started previous to the effective date of this Statute; provided that the construction of any such building continues uninterruptedly and is completed within 6 months from such date.

3.21. BUILDING LINE: A line formed by the face of the building. A minimum building line is the same as the front setback line.

3.22. CLUB: A non-profit organization of persons for the promulgation of culture, sports, arts, sciences, literature, politics or the like.

3.23. COMPREHENSIVE PLAN: The Comprehensive Plan for the Little Traverse Bay Bands of Odawa Indians as may be amended or updated, including graphic and written proposals indicating the general location for streets, parks, schools, public buildings and other physical development features.

3.24. CONVALESCENT OR NURSING HOME: A structure with sleeping rooms where persons are housed and furnished with meals, nursing and medical care.

3.25. DEVELOPMENT: The construction of a new building or other structure, on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.

3.26. DISTRICT: Any section within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians Reservation, or otherwise within LTBB's jurisdiction, where the zoning regulations are uniform under the laws of LTBB.

3.27. DRIVE-IN: A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure.

3.28. DWELLING: A building or portion thereof designed or used for residential occupancy, but not including house trailers, mobile homes, hotels, motels, boarding and lodging houses, tourist courts or tourist homes.

3.29. DWELLING, MULTIPLE: A building designed for or occupied by three or more families.

3.30. DWELLING, SINGLE-FAMILY: A building designed for or occupied by one family.

3.31. DWELLING, TWO-FAMILY: A building designed for or occupied by two families.

3.32. ERECTED: Built, constructed, altered, reconstructed, moved upon, or any "physical" operations on the premises which are required for construction, excavation, fill, drainage, and the like, shall be considered a part of erection.

3.33. ESSENTIAL SERVICES: The erection, construction, alteration or maintenance by public utilities or municipal departments of underground, surface, or overhead; gas, electrical, steam, fuel or water transmission or distribution system, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants, and similar equipment in connection herewith, but not including buildings, which are necessary for the furnishing of adequate service by such utilities or municipal departments for the general health, safety or welfare.

3.34. EXCAVATION: Any breaking of ground, except common household gardening, ground care, and sail tilling related to agricultural production or tree plantations.

3.35. FAMILY: One or two persons or parents, with their direct lineal descendants, dependents, and adopted children (and including the domestic employees thereof) together with not more than two persons not so related, living together as a single housekeeping unit.

3.36. FARM: A "farm" includes structures, facilities and lands for carrying on of agricultural activity or the raising of livestock or small animals as a source of income.

3.37. FLOOR AREA, USABLE: For the purpose of computing parking requirements, usable floor area is that area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons clients or customers. Floor area used or intended to be for the storage or processing of merchandise, hallways or for utilities or sanitary facilities shall be excluded for the computation of usable floor area.

3.38. GARAGE, PRIVATE: Accessory building space designed or used for the storage of motor-driven vehicles.

3.39. GASOLINE SERVICE STATION: A place primarily operated and designed for the dispensing, sale or offering for sale of motor fuels and other petroleum products, which may include a repair garage, together with the sale of accessories. Such site may also include a convenience store and/or restaurant if appropriate permits are obtained.

3.40. GRADE: For the purpose of regulating the number of stories and the height of buildings, the building grade shall be the level of the ground adjacent to the walls of the building. If the ground is not

level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

3.41. GREENBELT, SCREENING: A strip of land of definite width and location reserved for the planting of shrubs and/or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this Statute.

3.42. GREENBELT, SHORELINE: When bordering bodies of water, an undisturbed area of land paralleling the water's edge to a depth of the required zoning setback distance if not otherwise stipulated, which is retained in a natural condition and is essentially void of any structural improvements. Beaches and/or vegetated areas shall be defined as shoreline greenbelts.

3.43. HOME OCCUPATION: Where permitted in a district, a business use of a residential premise by the occupant that may be carried on in accordance with the restrictions contained in this Statute and other applicable law or regulation.

3.44. HOTEL: See definition "Motel, Motor Inn or Hotel".

3.45. JUNK/SALVAGE YARD: An open area where waste, used or second hand materials are bought and sold, exchanged, stored, baled, packed, disassembled or handled including, but not limited to scrap and other metals, paper, rags, rubber tires, and bottles. A “junk/salvage” yard includes automobile wrecking yards and includes any area of more than two hundred (200) square feet for storage, keeping or abandonment of junk, but does not include uses established entirely within enclosed buildings.

3.46. KENNEL, COMMERCIAL: A dwelling unit or a nonresidential building, structure, parcel of land or portion thereof in which three (3) or more dogs, cats or other household domestic animals are maintained, boarded, bred, cared for or kept for the purpose of sale, or temporary boarding but not including veterinary care or treatment.

3.47. LOADING SPACE: An off-street space for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

3.48. LOT COVERAGE: That portion of the lot occupied by main and accessory buildings

3.49. LOT DEPTH: The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

3.50. LOT LINES:
(1) Front lot line: is that line which creates the abutting street right of way line (in the case of a corner lot the front line shall be that line which the front of the house faces).
(2) Rear lot line: that line which is opposite the front line.
(3) Side lot line: any lot line other than the front or rear lot line.

3.51. LOT OF RECORD: A lot which is part of a subdivision, the map of which has been recorded in the office of the Register of Deeds of the Bureau of Indian Affairs; or a parcel of land, the deed of which was recorded in the office of the Register of Deeds of the Bureau of Indian Affairs.

3.52. LOT WIDTH: Lot width is the distance from one side lot line to the other side lot line measured at the minimum building setback permitted in this Statute.

3.53. LOT, ZONING: A contiguous tract of land which at the time of filing for a building and zoning permit is designated by its owner or developer as a tract to be used, developed or built upon as a unit, under simple ownership or control. A zoning lot may not coincide with a lot of record, but may include one or more lots of record.

3.54. MAIN BUILDING: A building containing the principal use of the lot upon which it is situated.

3.55. MASTER PLAN: See Comprehensive Plan.

3.56. MOBILE HOME: Any structure designed and pre-manufactured as a complete and transportable housing unit to be used as a place of residence for one family. Mobile homes are structures legally transportable over a highway, but the term shall not include licensed travel trailers. The term "mobile homes" shall include double wide mobile homes, but shall exclude modular homes or pre-manufactured homes which are installed with a permanent foundation and which do not come with a steel frame attached.

3.57. MOBILE HOME-Permanent: Mobile Homes shall be considered permanent dwellings when the unit is mounted on a continuous masonry foundation or on a foundation of solid masonry pilings as specified elsewhere in this Statute. Further, the permanent mobile home shall meet the minimum floor area requirements for one-family dwellings, be securely anchored to the ground, and be taxable as real estate if such taxes be assessed.

3.58. MOBILE HOME-Temporary: Any unit other than a travel trailer or permanent mobile home having no foundation; but which may be equipped with wheels or other devices for transporting from place to place.

3.59. MOBILE HOME PARK: A parcel or tract of land under the control of a person upon which three (3) or more mobile homes are located on a continual non recreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, sheet, equipment or facility used or intended for use incident to the occupancy of a mobile home and which is not intended for use as a temporary trailer park.

3.60. MOTEL, MOTOR INN OR HOTEL: A building or part of a building with a common entrance or entrances in which the dwelling units or rooming units are used primarily for transient occupancy. A hotel or motor inn may contain a restaurant, cocktail lounge and conference center facilities.

3.61. NON-CONFORMING USE: A building, structure or use of land lawfully existing at the time of enactment of this Statute, and which does not conform to the regulations of the District or Zone which it is situated.

3.62. NUISANCE: The word "nuisance" shall be held to embrace whatever is dangerous to human life or detrimental to health; or any dwelling or building which is over-crowded with occupants or is not provided with adequate ingress or egress to or from the same, or is not sufficiently supported, ventilated, sewered, drained, cleaned or lighted in reference to its intended or actual use; or whatever renders the air or human food or drink unwholesome.

3.63. NURSERY, PLANT MATERIALS: A space, building or structure or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises including products used for gardening or landscaping. The definition of nursery does not include space used for the sale of fruits, vegetables, gifts, lawn furniture and gardening or farm equipment.

3.64. OFFICIAL MAP: A map prepared by or in consultation with the Zoning Administrator and the Planning Department, and approved by the Tribal Council, that depicts LTBB's reservation and delineates the land use districts defined and located by the Tribal Council under this Statute.

3.65. OFF STREET PARKING LOT: An area of definite length and width exclusive of drives, aisles or entrances giving access thereto and fully accessible for the storage or parking of permitted vehicles.

3.66. PARKING SPACE: A parking space is an accessible either garage or surfaced area, not less than 10 feet in width and 20 feet in length, exclusive of area required for ingress or egress, which can be used at all times for parking a motor vehicle.

3.67. PERSON: An individual, partnership, association, trust or corporation or any other legal entity or combination thereof.

3.68. PLANNED UNIT DEVELOPMENT (PUD): A residential or commercial development guided by a master design plan in which one or more of the zoning or subdivision regulations, shall be permitted to be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with guidelines shown herein.

3.69. PRINCIPAL USE: The primary or chief purpose for which the lot is used.

3.70. PUBLIC UTILITY: A public utility is any person, firm, corporation, municipal department or board duly authorized to furnish or furnishing under regulation, to the public, electricity, gas, steam, communication, transportation, drainage or water.

3.71. RECREATIONAL VEHICLE: A vehicle primarily designed and used as temporary living quarters for recreational, camping or travel purposes, including a vehicle having its own motive power or a vehicle mounted on or drawn by another vehicle.

3.72. RECREATION CAMPS, LODGES & RESORTS: A recreational facility normally operated for gain, which provides overnight lodging and recreational activities including but not limited to golf, skiing, dude ranching, recreational farming, snowmobiling, pack trips, and boating.

3.73. RESTAURANT: A commercial establishment whose primary business is the preparation of food for immediate consumption, either on site or carryout.

3.74. RETAIL STORE: Commercial establishment for public retail sale of goods, related services, food or beverage, including but not limited to convenience stores. A retail store may sell perishable items, tobacco products or alcoholic beverages if applicable permits are obtained.

3.75. ROADSIDE STAND: An accessory and temporary farm structure operated for the purpose of selling local agricultural products raised or produced by the proprietor and his employees on the same premises.

3.76. ROOM: For the purpose of determining lot area requirements and density. A room is a living room, dining room, or bedroom equal to at least eighty (80) square feet in area. A room shall not include the area in kitchen, sanitary facilities, utility provisions, corridors, hallways and storage.

3.77. SERVICE BASED BUSINESSES: Commercial establishments who primarily provide services, and limited related retail items.

3.78. SETBACK: The distance required to obtain front, side or rear yard open space provisions of this Statute.

3.79. SHOPPING CENTER: A group, cluster or complex of retail stores within a single architectural plan, and occupying a site under single ownership, management or control. At least three (3) retail stores and services, so arranged or planned, shall qualify as a shopping center for zoning purposes.

3.80. SIGN, ACCESSORY: A sign, which is accessory to the principal use of the premises and located on the same lot as the principal use.

3.81. STORY: That part of a building, except a mezzanine and/or basement, between the surface of one floor and the surface of the next floor, or if there is no floor above, than the ceiling next above. A story shall not be counted as a story when more than fifty (50) percent, by cubic content, is below the grade level of the adjoining ground.

3.82. STORY, HALF: An uppermost story lying-under a sloping roof having an area of at least two hundred (200) square feet with a clear height of seven feet six inches (7'6"). For the purposes of this Statute the useable floor area is only that area having at least four feet (4') clear height between floor and ceiling.

3.83. STREET: A public dedicated right-of-way, affording the principal means of access to abutting property (excludes alleys).

3.84. STRUCTURE: Anything constructed or erected, the use of which requires location on the ground or attachment something having location on the ground.

3.85. TEMPORARY USE OF BUILDING: A use or building permitted to exist during periods of construction of the main building or use, or for special events.

3.86. TRAVEL TRAILER AND CAMPER: A trailer coach, motor home, tent camper, de-mountable camper or unit designed as a vacation unit for short-term seasonal occupancy, which measures eight (8) feet or less in width and designed to be operated on highways.

3.87. USE, REASONABLE: A proposed use is "reasonable" when it would be harmonious, compatible, appropriate, would not impinge unreasonably on the value or use of nearby properties, and would not impair sound communal development as and where proposed to be established. An existing use is "reasonable" when it is harmonious, compatible, and appropriate as and where established, does not impinge unreasonably on the value or use of nearby properties, and does not impair sound communal development. Uses which are not "reasonable" are "unreasonable." No use shall be deemed "reasonable" if its establishment or actual conduct is unlawful under the statutory or common law of the Little Traverse Bay Bands of Odawa Indians.

3.88. YARD: A yard is an open space, unoccupied and unobstructed from the ground upward, except as otherwise provided herein, and on the same lot with a building. The measurement of a yard shall be the minimum horizontal distance between the lot lines and the building or structure.

(1) Required Yard: That portion of any lot on which the erection of a main building is prohibited.

(2) Front Yard: A yard on the same lot with a building between the front line of the building and the front lot line and extending from one side lot line to the other side lot line.

(3) Rear Yard: A yard on the same lot with a building between the rear line of the building and the rear lot line and extending from one side lot line to the other side lot line.

(4) Side Yard: A yard on the same lot with a building between the side lot line and the nearest sideline of the building and extending from the rear yard to the front yard.

(Source: WOS 2001-13, October 21, 2001, Section III)

10.304 CLASSIFICATION AND DESCRIPTION OF LAND USE DISTRICTS

To achieve the aims and purposes set forth above, any lands under the jurisdiction of the Little Traverse Bay Bands of Odawa Indians are hereby divided into the following six districts:

4.01. Low Density/Suburban Residential. The purpose of this district is to maintain certain areas within the Tribe's zoning jurisdiction as primarily agricultural and sparsely developed. Low Density is defined as no more than one dwelling unit per every ten acres of land.

4.02. Medium Density Cluster Residential. It is the purpose of the Medium Density Cluster Residential District to provide for the most efficient use of limited residential land use resources while also providing open space, access to forested and riparian areas, and recreational opportunities for residents. This district has among its goals the concentration of residential areas within a larger parcel; establishment of areas for recreation, natural preservation, cultural use, and scenic views; and designation of nearby areas for multiple light density commercial uses tailored to the needs of the development. In this context, Medium Density is defined as the range of one dwelling unit per every two to three acres of land.

1. **Uses permitted by right**. The following uses are permitted by right, and require only a zoning permit and review by the Zoning Administrator for height and bulk requirements:

(a) Detached single-family homes, meeting the BOCA standards for construction, of not less than 960 square feet in area, not including porches and appurtenances.

(b) Duplex-type two family homes, meeting the BOCA standards for construction, of not less 760 square feet in area, not including porches and appurtenances.

(c) Community centers and other quasi-governmental buildings, directly related in purpose to the development and residents thereof.

(d) Sweat lodges and other traditional structures of a transient use.

(e) Home Occupations that do not involve signs, customers coming to the residence, or any outdoor activity not typical in a residential area.

2. **Uses permitted by special review**. The following uses are permitted as a general rule, but only after a review by the Zoning Administrator to ensure compatibility with existing uses and limitations on any detrimental effects from the proposed use.

(a) Business and industry located in designated areas

(b) Planned or mixed use developments

(c) Government buildings and operations

(d) Churches

(e) Recreational facilities

(f) Farming

(g) Home occupations that involve a sign, customers coming to the residence, or any outdoor activity not typical in a residential area.

(h) Other similar uses consistent with the management objectives and purposes set forth in this Section

3. **Lot, setback, and other dimensional requirements.** Since it is the intent of this district to promote compact, yet secluded residential development, the dimensional requirements in this section have been selected to fulfill these contradictory elements in the most feasible manner.

(a) Minimum overall development size is 20 acres.

(b) Minimum individual lot size is 17,000 square feet. This assumes an overall density of not more than .5 dwelling units per acre.

(c) Minimum front yard (setback) is 5 feet.

(d) Maximum front yard setback is 20 feet.

(e) Minimum side yard clearance is 10 feet.

(f) Minimum rear yard setback is 35 feet.

(g) Minimum lot width when abutting a residential street is 75 feet.
(h) Maximum building height is two stories or 35 feet, consistent with equipment capabilities of local fire fighting agencies.
(i) One accessory building is permitted, with an area not to exceed 1000 square feet, or one half the dwelling unit size, whichever is less. The sidewall of said accessory building shall not exceed 10 feet in height. Garages for the storage of automobiles are considered accessory buildings. Accessory buildings are not permitted in the required yard set back area.
(j) Land within the right-of-way of public roads shall be included in all density calculations.

4. General Requirements.

(a) Public water and sewerage facilities shall be available to serve the cluster subdivision.
(b) Common "open space" shall not be less than fifteen percent (15%) of the gross acreage of any tract submitted for cluster subdivision
(c) A maximum of fifty percent (50%) of the required open space may be steep slopes, streams, ponds, watercourse, and flood plain.
(d) The land derived from reduction of lot sizes shall be provided and maintained as "open space", "traditional areas" or "recreational areas".
(e) Lots shall not be further subdivided and the Record Plat shall so indicate.
(f) All lots shall be designed and located to minimize potential environmental degradation of the natural resources.
(g) Access arrangements to open spaces shall be carefully designed and located to enable perpetual maintenance and accessibility.
(h) No lot shall be created or designed in which the depth is more than 5 times the width.
(i) The maximum coverage of any lot by impermeable surfaces, including structures, pavement, and sidewalks, shall be 25%.

4.03. Multi-Family/Mixed Residential. The purpose of this district is to provide an area for multi-family apartments buildings, single family and duplex dwelling units within the same neighborhood.

4.04. Forest/Recreational/Conservation. The purpose of these districts is to preserve lands for hunting, gathering, recreation, and the conservation of plants, animals and general genetic diversity. There shall be no dwelling units or commercial structures or development within this district. Only Tribal governmental developments consistent with the purposes of this district with minimal environmental impact, such as small biological services buildings, trails and minimal roads, are permitted in these districts.

4.05. Commercial. The purpose of this district is to provide sites for the development of Tribal commercial enterprises, and other businesses owned by tribal members or others when the Tribal Council determines through official action that the location of such non-member businesses within this district is in the best interests of the Tribe.

4.06. Governmental Ceremonial/Outdoor Assembly. The purpose of this district is to provide locations for governmental administration and services, Tribal ceremonies and gatherings. Permissible structures in this district shall include buildings to house Tribal government and administration, health, education and welfare. The development of permanent outdoors seating, amphitheaters and structures used for ceremonial purposes shall also be permissible in this district under the direction and approval of the Tribal Council.

(Source: WOS 2001-13, October 21, 2001, Section IV)

10.305 BOUNDARIES OF LAND USE DISTRICTS

The boundaries of specific districts will be determined by the Tribal Council, and will be published on the Official Map.

(Source: WOS 2001-13, October 21, 2001, Section V)

10.306 ALLOWED BY RIGHT IN ALL DISTRICTS

Traditional ceremonial and outdoor structures utilized in traditional ceremonial and outdoor gatherings and for the purpose of sighting traditional communal structures such as sweat lodges are allowed by right in all districts on members' own leasehold estates or fee lands. These structures are not to be utilized as permanent dwelling units. Their erection may be permanent, as long as occupancy is of a temporary nature for a specific, traditional purpose.

(Source: WOS 2001-13, October 21, 2001, Section VI)

10.307 ADMINISTRATION AND VIOLATIONS

7.01. The Zoning Administrator shall be hired or assigned by the Tribal Administrator.

7.02. The Zoning Administrator shall record all nonconforming uses existing at the effective date of this Statute.

7.03. The Zoning Administrator shall under no circumstances be permitted to make changes to this Statute or to vary the terms of this Statute in carrying out his/her duties as Zoning Administrator. Any and all modifications to this Statute shall be approved by the Tribal Council prior to their taking effect.

7.04. The Zoning Administrator shall not refuse to issue a permit when conditions imposed by this Statute are complied with by the applicant despite violations of contracts, such as covenants or private agreements, which may occur upon the granting of said permit.

7.05. OTHER DUTIES: The Zoning Administrator, and such deputies or assistants as are assigned shall enforce this Statute and any subsequent zoning regulations adopted by the Tribe and in addition thereto, and in furtherance of such authority, shall:

1. Register all nonconforming uses when they are identified.

2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Statute.

3. Issue violation notices that require compliance within ten (10) days, and advise suspected violators of right of appeal.

4. Require that all construction or work of any type be stopped when such work is not in compliance with this Statute.

5. Forward, to the Tribal Council, applications for amendments to the Zoning Statute text or map and special uses.

6. Forward, to the Zoning Board, applications for appeals and variances.

7. Forward, to the Zoning Board, applications for temporary buildings, structures and uses of land.

8. Review all cases of encroachment into required yards.

9. Interpret the Zoning Regulations when questions arise, subject to appeal and review by the Zoning Board if requested.

10. Determine which uses, though not contained by name in a zoning district list of permitted uses, are of the same general character and permit their establishment.

11. Initiate an examination of the administrative record of variances and make a report to the Zoning Board and Tribal Council not less than once a year.

12. Maintain permanent and current records of this Statute, including but not limited to maps, amendments, variances, conditional uses, and interim use permits.

13. Receive, file and forward all applications for amendments, variances, conditional uses, interim uses, or other matters to the designated official bodies.

14. Issue citations in the name of the Tribe to prevent, to restrain, to correct, or to abate a violation or threatened violation.

15. Provide and maintain public information relative to matters arising out of this Statute.

16. Conduct inspections of land, buildings, or structures at reasonable times; determine compliance with and enforce the provisions of this Statute.

17. Issue permits as required by this Statute.

(Source: WOS 2001-13, October 21, 2001, Section VII)

10.308 ZONING PERMIT

8.01. Before proceeding with the erection, alteration, repair, moving, or removing of any building or part thereof, an owner or his authorized agent shall obtain a zoning permit from the Zoning Administrator. The applicant for a zoning permit must file with his request a set of plans and written specifications sufficient to clearly and fully indicate the nature of the contemplated work and the kind and quality of materials to be used therein, together with an estimated cost. Drawings shall clearly indicate the size of structural members, walls and openings, the position of the building on the site with reference to property and street lines and adjacent buildings, and such other information as may be necessary to provide for the enforcement of these regulations. It shall be the duty of all lot owners and/or lessees to have accurately located all corners and boundaries of their property prior to building thereon.

8.02. A record of such applications and plans shall be kept in the office of the Zoning Administrator for such period of time, as the Tribal Council deems necessary.

8.03. When the plans submitted have been found to conform with the requirements of this Statute, the Zoning Administrator shall issue a zoning permit. He shall inform the applicant that this zoning permit does not do away with the necessity for permits showing conformity with the Building Code, and other requirements of the Little Traverse Bay Bands of Odawa Indians, and that no construction shall be commenced until these other legal requirements have been fully met.

8.04. The Zoning Administrator shall inspect the building during construction and shall make a final inspection of all buildings after completion, before occupancy begins, upon receiving notice from the owner, contractor or his/her agent, that said building is ready for such final inspection.

8.05. Use variances can only be granted by the Tribal Council. Dimension variances that do not exceed established limits by over 10% may be granted at the discretion of the Zoning Administrator if such variance would not negatively impact the interests of the tribe as described in this Statute. All other dimension variances can only be granted by the Zoning Board.

(Source: WOS 2001-13, October 21, 2001, Section VIII)

10.309 ZONING BOUNDARIES

Unless otherwise specified, zone boundaries are section lines, subdivision lines, lot lines, centerlines of street rights-of-way, watercourses, ridges or rim rocks, or other readily recognizable or identifiable natural resources, or the extension of such lines.

(Source: WOS 2001-13, October 21, 2001, Section IX)

10.310 SITE PLANS AND ENERGY CONSERVATION GUIDELINES

10.01. Where required, site plans shall be prepared for submission to the Zoning Board. Contained on the site plan shall be scale drawings which locate buildings, streets, driveways, parking areas, utilities, power lines, landscaping, excavation, water wells, irrigation facilities, and all other physical structures or uses which physically change the land. Buildings and other improvements shall be located to minimize disturbance to existing natural landforms, trees, shrubs and other natural vegetation. For temporary uses, such as surface mining, an additional site plan shall accompany the application depicting the land reclamation plan.

10.02. Where practical, building construction, including homes, shall be designed and located to optimize energy conservation through solar access techniques. Consideration should be given to building orientation, window usage, landscaping, overhangs, shading devices, and use of skylights to provide natural lighting and heating.

(Source: WOS 2001-13, October 21, 2001, Section X)

10.311 COMMUNITY, SUBDIVISION AND HOMESITE DEVELOPMENT POLICY

The following Sections are intended to implement in part the following tribal policies: (1) Ensuring the orderly development of the Reservation. (2) Providing lands for tribal member homes.

11.01. Community, subdivision and Rural Housing Development Areas.

1. Development plans for community, subdivision, and rural housing areas established on the official zoning map shall be developed to provide home sites for tribal members on an orderly basis. The purposes of these plans are to encourage the orderly and efficient use of all Reservation lands; to protect public health and safety by controlling road and utility construction; to encourage design which compliments the Reservation's appearance and livability; to minimize conflicts between different land uses; to encourage cost-effective development conducive to energy efficiency in conservation; and to conserve range and agricultural lands.

2. All community, subdivision and rural housing plans shall be approved by the Tribal Council. Construction or development in accordance with an approved plan shall be a permitted use in the applicable zone.

3. Development plans may be required to include a firebreak area around the exterior boundaries of the planned area.

4. Subdivision and community names and street names shall be included in the plan to be approved by the Tribal Council.

5. Plans submitted to the Tribal Council shall include survey data and shall be shown on a scale drawing which identifies all streets, easements, lots, utility lines and lot sizes.

6. Submitted plans may include conditions relating to housing construction standards and conditions including color and height limitations needed to protect the Reservation's scenic resources, other requirements, controls and accessory building standards.

(Source: WOS 2001-13, October 21, 2001, Section XI)

10.312 ENFORCEMENT AND PENALTIES

12.01. Upon discovery of any nuisance as defined in Section III [WOTC 10.303], the Zoning Administrator shall issue a citation ordering abatement. If the responsible party fails to abate such nuisance, the Zoning Administrator shall submit the citation to the Tribal Prosecutor for enforcement in Tribal Court. Upon finding an existence of a nuisance as defined in Section III [WOTC 10.303], the Court shall order the nuisance abated. The Court is authorized to impose fines and/or jail time under its contempt powers if its orders are not complied with, and make such other orders as may be necessary to abate the nuisance.

12.02. The Zoning Administrator shall submit all other citations for violations of this Statute that cannot be resolved without action of the Court to the Tribal Prosecutor for enforcement in Tribal Court.

12.03. Any person who violates any provision of this Statute or who fails to comply with any of the regulatory measures or conditions of the Zoning Administrator or Zoning Board shall be subject to a civil fine not to exceed one hundred dollars ($100.00). Each day, such violation continues, shall be deemed a separate offense.

(Source: WOS 2001-13, October 21, 2001, Section XII)

10.313 APPEALS

13.01. Any person who claims to be aggrieved by a decision of the Zoning Administrator may appeal such decision to the Zoning Board. Within fourteen (14) days of the challenged decision, the person must file a written appeal to the Zoning Board including at a minimum:

1. A copy of the Zoning Administrator’s decision being challenged;

2. A clear and concise statement of the reason(s) the appellant believes the decision should be overturned by the Zoning Board; and

3. The relief requested from the Zoning Board.

The Zoning Board shall hear the appeal within sixty days (60) 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.

13.02. 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.

(Source: WOS 2001-13, October 21, 2001, Section XIII)

10.314 ZONING BOARD

14.01. The Tribal Council shall appoint a Zoning Board consisting of three (3) LTBB Tribal members over eighteen (18) years of age. Members of the Zoning Board shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, one person shall be appointed to a one (1) year term, one person shall be appointed to a two (2) year term, and one person shall be appointed to a three (3) year term. All appointments thereafter shall be for three (3) year terms. There shall be a Chairperson of the Zoning Board, who shall be selected by the members of the Board from the Board members for a one-year term. Upon enactment of this Statute, the Tribal Council shall serve as interim Zoning Board until the Zoning Board is appointed and sworn in.

14.02. Two members of the Zoning Board shall constitute a quorum.

14.03. Subject to the availability of funding and a budget approved by the Tribal Council, members of the Zoning Board may receive a stipend, mileage and expense reimbursement for attendance at properly called meetings at which a quorum is present.

14.04. The Zoning Board shall have the following duties:

1. Rule on variance applications in accordance with Section 7.05 (6) of this Statute.

2. Rule on applications for temporary building and uses in accordance with Section 7.05 (7).

3. Aid the Zoning Administrator in interpretation of this Statute and any regulations that may be adopted pursuant to it.

4. Hear and rule on appeals of decisions of the Zoning Administrator

(Source: WOS 2001-13, October 21, 2001, Section XIV)

10.315 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section 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.

(Source: WOS 2001-13, October 21, 2001, Section XV)

10.316 EFFECTIVE DATE

This Statute takes effect upon enactment [October 21, 2001].

(Source: WOS 2001-13, October 21, 2001, Section XVI)

Chapter 4. Building Code Adoption

10.401 PURPOSE

The purpose of this Statute is to protect and promote the health and safety of LTBB and its members through adoption of building, property maintenance, mechanical, and safety codes. This Statute repeals and replaces Waganakising Odawak Statutes 1997008, 1997009, 1997010, 1997011, 1997012, and 1997013.

(Source: WOS 2002-02, April 21, 2002, Section I)

10.402 ADOPTION OF CODES

A. The following codes are on file in the offices of the Tribal Planning Department:

1. International Building Code 2000
2. International Fire Code 2000
3. International Residential Code 2000
4. International Plumbing Code 2000
5. International Private Sewage Code 2000
6. International Mechanical Code 2000
7. International Fuel Gas Code 2000
8. International Energy Code 2000
9. International Property Maintenance Code 2000

B. General Fee Schedule: The fee for inspections under the Codes adopted hereunder shall be based on 6% of estimated project cost, or actual inspection costs plus indirect costs, whichever is less.

C. The Little Traverse Bay Bands of Odawa Indians adopts these Codes as Tribal law with the jurisdiction in each code inserted as Little Traverse Bay Bands of Odawa Indians, and the following modifications:

1. International Fire Code

   Section 109.3 Violations, page 11, paragraph 1, line 6: insert “civil infraction;” line 7: insert $2500.00.

   Section 111.4, Page 12, paragraph 1, line 5: insert $250.00 and $5000.00.

2. International Residential Code

   Section R301.2 regarding hurricane wind design standards is not applicable.

3. International Plumbing Code

   Section 106.6.2, Paragraph 1, line 3, Appropriate Schedule: insert “This schedule will be determined by the project.”

   Section 106.6.3, Paragraph 1, Numeral 2, Fee refunds: insert “100%,” numeral 3: insert “100%.”

   Section 108.4, Paragraph 1, line 7, Specify Offense: insert “Civil infraction,” line 8: insert “$2500.00.”

   Section 108.5, Paragraph 1, line 13, Amount: insert “$250.00," line 14: insert “$5000.00”

4. International Private Sewage Disposal Code

   Section 106.4.2, Paragraph 1, Fee Schedule: The fee schedule is set out in Section II (B) of this Statute.

   Section 106.4.3, Paragraph 1, numeral 2 and 3: insert “100% of the fee returned.”

   Section 108.4, Paragraph 1, Line 7: insert “civil infraction,” line 8: insert $100.00 for first offense and $250.00 for second offense.

   Section 108.5, Paragraph 1, line 13: insert $1000.00, line 14: insert $10,000.00
   Section 405.2.5, Paragraph 1, line 2: insert “start of construction,” line 3: insert “upon completion of construction.”

   Section 405.2.6, Paragraph 1, line 6: insert “date of construction.”

5. International Mechanical Code

Section 106.5.2, Paragraph 1, line 3, Fee Schedule of Mechanical Work): The fee schedule is set out in Section II (B) of this Statute.

Section 106.5.3, Paragraph 1, Specify Percentage: insert “100%”after numeral 2, and “75%” after numeral 3.

Section 108.4, Paragraph 1, line 7, Violations: insert “Civil infraction”, line 8: insert “$2500.00.”

Section 108.5, Paragraph 1, line 13, Stop work orders: insert “$250.00," line 14: insert “$5,000.00.”

6. International Fuel Gas Code

Section 106.5.2, Paragraph 1, line 13, Appropriate Schedule: The fee schedule is set out in Section II (B) of this Statute.

106.5.3, Paragraph 1, numeral 2 and 3, Fee Refunds: insert “100%”

108.4, Paragraph 1, line 6: insert “Civil infraction,” line 7: insert “$2500.00.”

7. International Electrical Code

Section 404.2, Paragraph 1, line 4 (fee schedule) insert the fee schedule as set out in Section II (B) of this Statute.

8. International Property Maintenance Code

Section 103.6, Page 2, Paragraph 1, line 4: insert “Based on 6% of estimated project cost, or actual inspection costs plus indirect costs, whichever is less.”

Section 303.14, Page 10, Paragraph 1, line 1 (Date): insert “May 1st through September 31st.”

Section 602.3, Page 17, Paragraph 1, Line 5 (Date): insert “September 31st through May 15.”

Section 602.4, Page 17, Paragraph1, line 3 (Date): insert “September 31st through May 15.”

(Source: WOS 2002-02, April 21, 2002, Section II)

10.403 SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute or the Codes adopted hereunder is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute or Code adopted hereunder, the entirety of the balance of the Statute or Code to remain in full and binding force and effect.

(Source: WOS 2002-02, April 21, 2002, Section III)

10.404 EFFECTIVE DATE

This Statute takes effect upon enactment.

(Source: WOS 2002-02, April 21, 2002, Section IV)

TITLE XI. HEALTH AND EDUCATION

Chapter 1. Health Commission

11.101 SHORT TITLE AND PURPOSE

A. Short Title. This Statute may be cited as the "Health Commission Act."

B. Purpose. The purpose of this Statute is to set up a Health Commission that will provide direction to Tribal Comprehensive Health Services based on community need.

(Source: WOS 1997004, April 20, 1997, Section I)

11.102 CREATION OF HEALTH COMMISSION

A. Creation of Commission. The Tribal Council hereby creates the Health Commission, which shall consist of seven (7) LTBB Tribal members at least eighteen years of age appointed by the Tribal Council. Members of the Tribal Council may be appointed to the Commission. Appointees shall be either knowledgeable concerning health delivery systems or recipients of services provided through the Comprehensive Health Center.

B. Term and compensation. Members of the Health Commission shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, three people shall be appointed to two (2) year terms, and four people shall be appointed to three (3) year terms. All appointments thereafter shall be for three (3) year terms. The Commission shall appoint separate individuals from

within the Commission to serve as Chairperson, Vice-Chairperson, Secretary and Treasurer for terms of (1) year. There shall be no limit on reappointment. The Tribal Council may determine and authorize compensation to be paid to members of the Commission based upon the Tribal Council's determination of the time required to be expended upon Commission duties and the qualifications of the appointed Commissioners.

C. Oath of Office. Immediately upon appointment, the Tribal Chairman shall administer the oath of office to the members of the Health Commission, which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this Statute.

D. Vacancies. In the event a vacancy occurs in the Health Commission, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office.

E. Removal. Commissioners may only be removed in accordance with the Tribal statute governing such removal.

(Source: WOS 1997004, April 20, 1997, Section II)

11.103 DUTIES OF THE HEALTH COMMISSION

The Health Commission shall have the following duties:

A. Develop proposed policies for the delivery of health services and recommend such policies to the Tribal Council for review and approval.

B. The Commission will be responsible for assisting the Health Department and/or Tribal Council in the preparation of the comprehensive health plan. The Commission will work jointly with the Tribal Health Director to assess health needs of the Indian Community and to prioritize services to assure the needs are fulfilled.

C. Periodically review the health contract budgets and services.

D. Receive notice of all Tribal Council and Tribal Administrative health related meetings where policies may be considered or adopted and attend such meetings whenever the Commission deems such attendance appropriate.

E. The Commission will be notified of all job openings within Comprehensive Health Care, and the Commission may appoint one of its members to the interview and selection team.

F. The Commission shall forward a copy of all of its minutes to the Tribal Council.

G. Engage in further health related activities as directed by the Tribal Council.

H. Prohibited Activities: The above duties do not include, and members of the Commission are prohibited from, all of the following:

1. Acting in an administrative or supervisory capacity with respect to any Comprehensive Health Center personnel or program.

2. Influencing application of established operating policies and procedures to cause benefit to any person, program, or agency who would otherwise not be so benefited.

3. Participating in any action of the Health Commission, which would constitute a conflict of interest under the Tribe's Personnel Policies and Procedures.

(Source: WOS 1997004, April 20, 1997, Section III)

11.104 STAFFING

The Tribal Council is authorized to assign administrative staff and staff with expertise in health delivery issues to assist the Commission.

(Source: WOS 1997004, April 20, 1997, Section IV)

11.105 MEETINGS, VOTING

A. Meetings. The Health Commission may meet as often as they deem necessary but must meet at least once each quarter.

B. Voting. Actions of the Health Commission shall be decided by a majority vote of those present at the meeting. The Chair is entitled to vote on all matters before the Commission. A quorum shall consist of four (4) members including the Chair. Provided, an action may be ratified by non-attending members. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax, and all ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

(Source: WOS 1997004, April 20, 1997, Section V)

11.106 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, paragraph, subsection or section 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.

(Source: WOS 1997004, April 20, 1997, Section VI)

Chapter 2. Education Commission

11.201 SHORT TITLE, PURPOSE AND DEFINITIONS

A. Short Title

This statute shall be entitled "The Waganakising Odawa Education Commission Act." Hereafter the term "Commission" shall mean "The Waganakising Odawa Education Commission" unless otherwise stated.

B. Purpose

This Statute shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To provide for the organization of the Commission.

2. To provide for the delineation of the duties of the Commission.

3. To provide for compensation for Commission members.

4. To provide for clarification regarding LTBB staff participation in Commission structure.

C. Definitions

As used in this Statute:

1. "LTBB" mean the Little Traverse Bay Bands of Odawa Indians or the Waganakising Odawa.

2. "HESP" means the Higher Education Scholarship program

3. "DE" means the Direct Employment program.

4. "AVT" means the Adult Vocational Training and Scholarship program.

5. "Education Department" means the Waganakising Odawa Education Department.

D. Repeal of Prior Statute

The Waganakising Odawa Education Commission Act (Waganakising Odawak Statute 1999012) and all amendments thereto, are hereby repealed as of the effective date of this Statute.

(Source: WOS 2002-008, September 8, 2002, Section I)

11.202 CREATION OF THE COMMISSION

A. Creation of the Commission

1. The Tribal Council hereby creates the LTBB Indian Education Commission.

2. The Commission shall be composed of not less than three (3) nor more than five (5) Little Traverse Bay Bands Tribal members who are at least eighteen (18) years of age, and are appointed by the Tribal Council.

3. Interested candidates shall submit a letter of interest and a current resume in writing to the Tribal Council.

B. Terms and Compensation

1. Members of the Education Commission shall serve for four (4) year staggered terms. Members may be reappointed for additional terms without limitation.

2. The Education Commission shall appoint separate individuals from within the Commission to serve as chairperson, vice-chairperson, secretary and treasurer for the term of two (2) years. There shall be no limit on reappointment for offices.

3. Subject to the availability of funding, and a budget approved by the Tribal Council, members of the Education Commission may receive a stipend, mileage and expense reimbursement for attendance at properly called meetings in accordance with Tribal statutes, regulations and policies.

C. Oath of Office

Within thirty (30) days of appointment, the Tribal Court shall administer the oath of office to the members of the Education Commission. The oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians, and to perform faithfully and diligently the duties and responsibilities set forth in this Statute.

D. Vacancies

In the event of a vacancy in the Education Commission, by virtue of death, resignation, or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office.

E. Removal

Commission members may be removed in accordance with the rules and procedures set forth in the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 2001-10). Cause

for initiating such removal will include three consecutive unexcused absences from Commission meetings.

(Source: WOS 2002-008, September 8, 2002, Section II)

11.203 DUTIES OF THE EDUCATION COMMISSION

The Education Commission shall have the following duties:

A. Review data for the following:

1. Higher Education Scholarship Program

2. Adult Vocational Training Scholarship Program

3. Direct Employment Program

4. All future Tribal education programs

B. The Education Commission shall assist the Education Department in the development and recommendation of all proposed plans and policies for Tribal Education programs that will provide for diverse educational opportunities for all LTBB members.

C. The Education Commission shall advise the Education Director in preparation of all proposals and documents that must be submitted to the Bureau of Indians Affairs or any other funding agency. The Education Commission shall review all proposals and documents prepared by the Education Director before submission to the Tribal Council.

D. The Education Commission shall advise in the development of all proposed rules and regulations for administering of Tribal Education Programs.

F. The Education Commission shall advise the Education Director in carrying out the program mandates and preparation of the annual Education Department budget.

G. The Education Commission shall hear appeals from Tribal members regarding education programs.

(Source: WOS 2002-008, September 8, 2002, Section III)

11.204 MEETINGS AND OFFICIAL ACTION

A. The Commission may meet as often as they deem necessary, but must meet at least once each quarter.

B. Actions of the Commission shall be decided by a majority vote of those present at the meeting. The Chairperson is entitled to vote on all matters before the Commission. A quorum shall consist of three (3) members including the Chairperson.

C. Phone polls may be conducted to vote on required business. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax. All ratification shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

(Source: WOS 2002-008, September 8, 2002, Section IV)

11.205 STAFF PARTICIPATION

A. The Education Director, or his or her designee, shall attend all Commission meetings.

B. LTBB Education Department staff shall not serve on the Commission.

C. In accordance with the LTBB Commissions, Boards and Committees Statute, LTBB staff members may serve on the Commission and be compensated by stipend if the Commission is not directly related to their employment, does not interfere with their work, and does not regularly meet during scheduled work hours. If the Commission meets during scheduled working hours and the staff member wishes to attend, the staff member must utilize vacation time upon prior approval of the individual's supervisor.

(Source: WOS 2002-008, September 8, 2002, Section V)

11.206 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section 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.

(Source: WOS 2002-008, September 8, 2002, Section VI)

11.207 EFFECTIVE DATE

This Statute shall take effect immediately upon enactment [September 8, 2002].

(Source: WOS 2002-008, September 8, 2002, Section VII)

Chapter 3. Michelle Chingwa Education Assistance Act

11.301 PURPOSE

This Michelle Chingwa Education Assistance Act is hereby enacted to enable present and future generations of Waganakising Odawak to obtain educational opportunities.

(Source: WOS 2003-06, June 8, 2003, Section I)

11.302 DEFINITIONS

A. "BIA Scholarship" means the portion of unmet need fulfilled by the Bureau of Indian Affairs scholarship program run by the Education Department.

B. "Educational Institution" means the school, college, university, or organization that is providing the educational opportunity.

C. "Education Department" means the Tribe's Education Department

D. "FAFSA" means the Free Application for Federal Student Aid.

E. "SAR" means student aid report, either federal or institutional.

F. "Total Cost of Attendance" means the Total Cost of Attendance calculated or published by the Financial Aid office of the educational institution for which aid is being applied.

G. The "Tribe" shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2003-06, June 8, 2003, Section II)

11.303 EDUCATIONAL ASSISTANCE GRANTS

This Education Assistance Act shall be funded by the Enterprise Fund General Welfare line item of the Enterprise fund with a minimum budget of $1,000,000.00 per LTBBOI fiscal year except the first year, 2003, which shall be funded with $500,000.00. The program shall be administered by the Education Department. The program shall fund grants to attend colleges and universities. These grants shall not be used to supplant other funding sources, except student loans.

College Grants:

A. Priority shall be given to students in second or later year of a multiple year program with first come first served policy for freshmen.

B. College grants shall be provided for only accredited college or university attendance.

C. "Total Student Expenses" shall be calculated by the educational institution to include tuition, fees, books, supplies, room & board, transportation, personal, and other expenses, this calculation shall be based on the FAFSA and SAR.

D. Aid for undergraduate students shall be calculated by subtracting awards and student resources with the exception of family and student contribution from total student expenses (total student expenses – awards – student resources except student and parent contribution) not to exceed $8,500.00 per year.

E. Aid for graduate students shall be the lesser of the two following calculations: first by subtracting awards and student resources with the exception of family and student contribution from total student expenses (total student expenses – awards – student resources except student and parent contribution) or $250 per credit hour which ever is less not to exceed $8,500.00 per year.

F. Each grant shall have an annual cap of $8500 and shall be distributed in two equal installments each semester directly to the student.

(Source: WOS 2003-06, June 8, 2003, Section III)

11.304 ELIGIBILITY

To be eligible for this scholarship the student must:

A. Be an enrolled member of the Tribe and;

B. Be enrolled in the educational institution for which the aid is needed and;

C. Maintain a 2.0 overall GPA;

D. Have applied for other available financial aid (i.e. the Michigan Indian Tuition Waiver, Pell Grant, BIA Scholarship).

11.305 EFFECTIVE

AUGUST 15, 2003

(Source: WOS 2003-06, June 8, 2003, Section IV)

TITLE XII. CORPORATIONS, BUSINESSES AND COMMERCIAL TRANSACTIONS

Preamble and General Definitions

The purpose of the Little Traverse Bay Bands of Odawa Indians' Tribal Comprehensive Business Codes is to establish the policy which the Tribe, its entities, private businesses and individuals may use to conduct business activities within its territorial and governmental jurisdiction. The policies shall apply to each of the Codes contained in Statute, The LTBB Odawa Tribal Comprehensive Business Codes. The provisions of this Statute shall be applied to promote its underlying purposes and policies.

The LTBB Tribal Court has jurisdiction to adjudicate matters arising from this Statute.

The Tribe recognizes that a strong Reservation economy must include both tribal and private sector development. It is the policy of LTBB to promote both tribal and private sector development within the

exterior boundaries of the Reservation and elsewhere within the jurisdiction of the Tribe for Indian and non-Indian businesses. It is the policy of the Tribe to facilitate and enhance job stability, career opportunities and use of inherent Tribal powers to create and maintain a sound business environment within the Tribe's jurisdiction. Consistent with these goals, it is the policy of the Tribe to promote the least restrictive and most cost effective business environment.

It is the policy of the Tribe that, without waiving any authority over business activities, LTBB shall neither knowingly and unnecessarily obstruct or hinder, nor unreasonably interfere with private sector businesses that operate in accordance with the provisions of this Statute and any other LTBB or applicable law.

Nothing in this Statute shall be construed as creating a claim for monetary or injunctive relief against the Tribe or its officers and employees.

It is the policy of the Tribe to allow the use of tribal land, natural and financial resources and opportunities for the promotion of economic benefits to create jobs, expand business opportunities and secure business independence in order to achieve the goals prescribed in this Statute, consistent with applicable regulations and statutes, enacted now or hereafter.

Under this Statute, the Tribe may entertain proposals from private sector business interests for privatizing Tribal Governmental activities. If approved, the Tribe will enter into a contractual agreement with such business interests for carrying out such contracted services.

The Tribe authorizes businesses operating pursuant to the Tribe's Comprehensive Business Codes to apply for grants and other programs for which the Tribe is eligible, and that the Tribe does not express an interest in applying for, and operate such programs within the Tribe's jurisdiction.

Nothing in this Code shall be construed as a waiver by the Tribe of its authority or jurisdiction over businesses operating within its jurisdiction.

As used in this Statute, unless intended otherwise by the context used, the following means:

1.01 "Jurisdiction" means the jurisdiction of the Little Traverse Bay Bands of Odawa Indians, whether within or without the exterior boundaries of the Reservation, as defined in the Tribal Constitution.

1.02. "Reservation" means the territory of the Little Traverse Bay Bands of Odawa Indians Reservation as presently and hereafter existing, as defined in the Tribal Constitution.

1.03. "Tribe" and "LTBB" mean the Waganakising Odawak, also known as the Little Traverse Bay Bands of Odawa Indians.

1.04. "Statute" means Statute xx, The LTBB Odawa Tribal Comprehensive Business Codes.

1.05. "Business Codes" means The LTBB Odawa Tribal Comprehensive Business Codes.

1.06. "Tribal Council" means the LTBB Odawa Tribal Council.

1.07. "Tribal Court" means the LTBB Odawa Tribal Court.

1.08. "Tribal Constitution" means the Interim Constitution of the LTBB Odawa Tribe or any Tribal Constitution adopted thereafter.

1.09. “Tribal Law” means the Tribal Constitution, all laws now or hereafter duly enacted by the Tribal Council, and the Tribal common law pronounced and established by the Tribal Court.

1.10. “Tribal Member” means an individual duly enrolled in the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2003-07, August 3, 2003, Preamble)

Chapter 1: Corporations Code

12.101 PART ONE: GENERAL PROVISIONS

1.101. Short Title.
This Chapter shall be known and may be cited as the Corporations Code
1.102. Scope.
The provisions of this Chapter shall apply to all corporations authorized herein and formed under the laws and sovereign power of the Tribe, whether before or after the enactment of this Code, and more specifically prescribed in Parts 2, 3 and 4 of Chapter One of the this Code. The Tribal Department of Commerce established in this Code shall have such authority as prescribed individually and collectively in Tribal Comprehensive Business Codes.
1.103. Purpose and Construction.

(a) The purposes of this Chapter 1 are:

(1) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;

(2) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;

(3) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and

(4) to simplify, clarify and modernize the laws applicable to businesses created under the sovereign powers of the Tribe.

(b) The provisions of this Chapter shall be applied to promote its underlying purposes and policies.

1.104. Definitions.
In the Parts of this Chapter:

(a) "Articles" means the articles of incorporation, charter or other documents evidencing the creation of a corporate entity pursuant to sovereign powers.

(b) "Close Corporation" means a corporation, the shares of which are not publicly traded and are subject to restrictions on transfer.

(c) "Controlled" as used in reference to corporations controlled by the Tribal Council, includes any corporation where the majority of its board of directors is chosen by the Tribal Council, as well as entities of the Tribe without boards of directors.

(d) "Deliver" means delivery by mail, facsimile, overnight express, courier, hand delivery and service by process.

(e) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or the incurrence of indebtedness by a corporation to or for the benefit of its shareholders

in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; or otherwise.
(f) "For-Profit Corporation" means a corporation of which the income is distributable for the benefit of its shareholders, and whose assets, upon dissolution, are distributable to its shareholders.
(g) "Non-Profit Corporation" means a corporation in which no part of the income of the corporation is distributable to any person by reason of that person's status as a member, director, officer or employee, except for reasonable wages for work performed.
(h) "Notice" means written notice unless oral notice is reasonable under the circumstances.
(i) "Quorum" means the number of members of a board or other body that must be present in order to make the board or other body competent to transact business in the absence of the other members.
(j) "Shares" means the units into which the proprietary interests in a for-profit corporation are divided.
(k) "Shareholder" means the person in whose name shares are registered in the records of the corporation.
(l) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

1.105. Tribal Department of Commerce.

(a) The Tribal Department of Commerce is hereby established and shall oversee implementation of the Tribal Comprehensive Business Codes. The Tribal Council may direct an already existing Department to serve as the Department of Commerce unless and until the workload necessitates a separate Department. The Department of Commerce shall implement this Chapter, amendments thereto and the policies of the Tribal Council.
(b) The Director of Commerce shall oversee the operations of the Department of Commerce and shall have authority to perform functions that are necessary and proper in order to administer and enforce the provisions of these Codes, including but not limited to the power:

(1) To review and approve applications for incorporation and grant certificates of incorporation under Parts 2, 3 and 4 and any amendments to the Tribal Comprehensive Business Codes;
(2) To review and approve amended articles of incorporation and issue certificates of amendment;
(3) To review and approve proposed articles of dissolution and to dissolve corporations administratively;
(4) To accept for filing such other notices, reports and other documents from corporations;
(5) To furnish, on request, copies of articles of incorporation, notices, reports and other non-confidential documents to the public upon the payment of reasonable fees;
(6) To issue requests for filings from corporations in accordance with the provisions of these Codes;
(7) To supervise the orderly dissolution of corporations formed under Tribal law;
(8) To participate in actions in Tribal Court or any other court of competent jurisdiction for the enforcement of any of the provisions of the Tribal Comprehensive Business Codes;
(9) To promulgate regulations pursuant to these Codes, formulate recommendations to submit to the Council for revisions of or amendments to the Comprehensive Business

Codes, and take other actions necessary for the administration of the provisions of the Comprehensive Business Codes;

(10) Upon approval by the Tribal Council, to enter into agreements or contracts with Indian tribes, businesses, and other parties to implement the Tribal Comprehensive Business Codes.

(11) To establish an escrow account for the deposit of any assets of a dissolved corporation that should be transferred to an individual in accordance with 3.166.

1.106. Status of Corporations.

(a) For the sole purposes of LTBB and federal taxation, regulatory jurisdiction and civil jurisdiction, the following corporate entities shall be entitled to all of the privileges and immunities of members of federally recognized Indian tribes:

(1) All for-profit corporations formed under Tribal laws that are at least 51% owned by Indians who are members of federally recognized tribes.

(2) All non-profit corporations formed under Tribal law that have as their primary purpose the benefit of Tribal members, individuals who reside within the Reservation or any group of people comprised primarily of members of federally-recognized Indian tribes.

(b) If a corporation's principal place of business is located on the reservation and the corporation is incorporated both under Tribal law and the laws of any state, then Tribal law and the Tribal charter documents shall take precedence over any conflicting state laws and charter documents in any dispute concerning the status of the corporation or the rights and obligations of any persons with respect to the corporation.

(c) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of corporations formed under Tribal law.

1.107. Reporting Requirements.

The Director of Commerce may deliver to any corporation subject to the provisions of the Tribal Comprehensive Business Codes, such requests to inspect documents as may be reasonably necessary or proper to enable the Director to ascertain whether such corporation is complying with all of the provisions of the Codes. Such requests for inspection shall be answered within 30 days after mailing, and the answers shall be full and complete and shall be under oath.

1.108. Jurisdiction of Tribal Court.

(a) To the maximum extent consistent with due process of law, all corporations formed under Tribal law and all directors, officers and shareholders of such corporations, regardless of citizenship or Tribal membership shall be subject to the jurisdiction of the Tribal Court in all actions which arise out of the acts, omissions or participation of such persons in connection with the affairs of such corporations in accordance with these Codes.

(b) This section shall not be construed as a waiver of sovereign immunity.

1.109. Registered Agent.

At the time of incorporation all corporations formed under Tribal law shall appoint a person, known as a Registered Agent, to accept the service of judicial process on the corporation. The name and address of the Registered Agent shall appear in the initial Articles of said corporation. All corporations shall notify the Director of Commerce of any change in the name or address of the corporation's registered agent. All corporations formed under Tribal law are hereby deemed to consent to the appointment of the Director of Commerce as their agent for the acceptance of service of process in the event the corporation shall have failed to notify the Director of Commerce of any change in the name or the address of its registered agent. In such cases, service upon the Director of Commerce shall be

deemed to be service on such corporation within 10 days thereof, provided, the Director of Commerce shall mail notice of such service to any incorporator, director, officer or shareholder of the corporation to the most recent address noted in the files of the Director of Commerce.

1.110. Liability of Shareholders or Members.

No shareholder or member of any corporation formed under Tribal law, including those formed pursuant to Parts 2, 3 and 4 of Chapter One of the Tribal Comprehensive Business Codes, shall be liable to any creditor of the corporation by reason of his or her status as a shareholder or member, except insofar as said shareholder or member may be indebted to the corporation for unpaid loans or indebtedness for the purchase of shares.

1.111. Corporate Name.

(a) The name of any for-profit corporation shall contain the words, "Corporation", "Incorporated ", or "Limited", or shall contain an abbreviation of one of such words.

(b) The name of any non-profit corporation may contain the words "Incorporated", "Corporation", "Limited", "Association", "Fund", "Society", "Club", "Foundation", or “A Non-profit Corporation," or shall contain an abbreviation of one of such words.

(c) No corporation formed under Parts 2, 3 and 4 of this Chapter One shall use any corporate name which is the same as, or deceptively similar to, any other corporation formed pursuant to the sovereign powers of the Tribe.

(d) No for-profit or non-profit corporation that is privately owned or controlled shall use any name or make any representation that implies that it is a subdivision or enterprise of the Tribe.

1.112. Fees.

The Director of Commerce shall be charged with determining and collecting fees as per a published schedule available upon request through the Department of Commerce:

(a) for filing an application for incorporation and proposed articles of incorporation;

(b) for filing an application for an amendment to the articles of incorporation;

(c) for filing a statement of change of name or address of registered agent;

(d) for filing any other statement or report of a corporation;

(e) for furnishing a certified copy of any document, instrument report or other paper relating to a corporation;

(f) for furnishing a certificate as to the status of a corporation or as to the existence or non-existence of facts relating to corporations;

(g) for copies to any person or group, a charge; and

(h) for furnishing a LTBB Odawa Tribal Business License in accordance with this Statute.

(Source: WOS 2003-07, August 3, 2003, Part One)

12.102 PART TWO: TRIBAL CORPORATIONS

2.101. Scope.

The provisions of this Chapter shall apply to each Tribal corporation, as defined in Section 2.103 of this Part of the Tribal Comprehensive Business Codes, formed under Tribal law, whether before or after the passage of this Chapter. The provisions of the Tribal Comprehensive Business Codes apply to tribal corporations operating pursuant to this Code where not inconsistent with the provisions contained herein.

2.102. Purpose and Construction.

(a) The purposes of this Part are:

(1) to establish a uniform system of creation and regulation of Tribal corporations for economic purposes;
(2) to preserve the sovereign immunity and protect the credit of the Tribe;
(3) to address the status of Tribal sovereign immunity with respect to Tribal corporations, as required by economic and governmental necessity;
(4) to provide for insulation of Tribal corporations from shifts of tribal politics;
(5) to provide stability and increase the stature of Tribal corporations in the commercial world; and
(6) to ensure that Tribal corporations comply with Tribal law.

(b) The provisions of this Statute shall be liberally construed and applied to promote its underlying purposes and policies.

2.103. Definitions.

In addition to the definitions provided in the Preamble and General Definitions of this Statute the following terms, whenever used or referred to in this Statute, shall have the following respective meanings, unless different meanings clearly appear from the context:

(a) "Charter" means the charter of a Tribal corporation, and includes approved articles of incorporation.

(b) "Tribal Corporation" means any for-profit businesses and non-profit organizations formed by the Tribal Council and wholly owned by the Tribe under this Part of these Codes.

2.104. Status of a Tribal Corporation.

(a) For purposes of taxation, regulatory jurisdiction and civil jurisdiction, a Tribal corporation created by Tribal law shall be entitled to all of the privileges and immunities of the Tribe.

(b) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of a Tribal corporation formed under Tribal law.

2.105. Preexisting Tribal Corporations.

A Tribal corporation or entity whose existence precedes passage of this Code shall continue to exist and to perform its several functions and shall be deemed to be a Tribal corporation subject to these Codes if it (a) was created by the Tribal Council; (b) is wholly-owned by the Tribe; and (c) is either a non-profit organization or a for-profit business. The Department of Commerce and its Director will coordinate the effort to bring such preexisting Tribal corporations or entities into compliance with these Codes

2.106. Sovereign Immunity and Waiver.

(a) Sovereign Immunity of Tribal Corporation.

A Tribal corporation is clothed by federal law with all the privileges and immunities of the Tribe, including sovereign immunity from suit in any state, federal or tribal court, except as specifically limited by the Tribal corporation charter. Nothing in this Statute shall be deemed or construed to be a waiver of sovereign immunity of a Tribal corporation from suit or to be a consent of the Tribal corporation or the Tribe, to the jurisdiction of the United States or of any state with regard to the business or affairs of the Tribal corporation or to any cause of action, case or controversy, except as provided herein.

(b) Waiver of Sovereign Immunity of the Tribal Corporation.

Tribal corporations may effectuate limited waivers of sovereign immunity for conducting day-to-day business if the waivers are made in accordance with either of the following methods:

(1) Tribal Council may expressly authorize a limited waiver of sovereign immunity on a case-by-case basis through a specific resolution.

(2) Within the text of the Tribal Corporation's organizational documents, the Tribal Council may authorize the Tribal Corporation to waive its sovereign immunity pursuant to transactions or agreements that the Tribal Corporation may execute in the course of its ordinary business affairs.

(3) Any waivers of sovereign immunity made pursuant to (1) or (2) above shall only expose the assets owned or held by the Tribal corporation and shall not subject other Tribal assets to liability. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Tribal Corporation. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Tribal Corporation subject thereto. Neither the power to sue and be sued provided in the charter of the Tribal corporation, nor any express waiver of sovereign immunity by resolution of the corporation's board of directors or the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon any property of the Tribal corporation other than property specifically pledged or assigned, or any property of the Tribe, or a consent to suit with respect to any land within the exterior boundaries of the Reservation or consent to the alienation, attachment or encumbrance of any such land.

(c) Sovereign Immunity of the Tribe.

All inherent sovereign rights of the Tribe as a federally recognized Indian tribe with respect to the existence of the Tribal corporation are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in a tribal entity charter shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe or to be a consent of the Tribe to the jurisdiction of the United States or of any state with regard to the business affairs of the Tribal corporation or the Tribe or any cause of action, case or controversy, except as provided herein.

(d) Credit of the Tribe.

Nothing in a Tribal corporation charter, nor any activity of any Tribal corporation, shall implicate or in any way involve the credit of the Tribe, except as provided in Section 2.107.

(e) Inclusion in Charter.

The provisions of subsections (a)-(d) of this Section shall be included in the charter of each Tribal Corporation by effect of this Code.

2.107. Assets of a Tribal Corporation.

A Tribal corporation shall have only those assets of the Tribe formally assigned to it by the Tribal Council, together with whatever assets it acquires from other sources. No activity of a Tribal Corporation or any indebtedness incurred by it shall implicate or in any way involve any assets of Tribal members or the Tribe not assigned in writing to the Tribal Corporation.

2.108. Tribal Corporation Charter.

The charter for a Tribal corporation formed under this Statute shall set forth:

(a) The name of the Tribal Corporation.

(b) The purposes for which the Tribal Corporation is organized.

(c) Provisions for establishment of a governing body and determining membership thereof, if applicable.

(d) The powers of the Tribal Corporation.

(e) The provisions of Section 2.106 providing for sovereign immunity and waivers thereof.

(f) Provisions and bylaws directing management of the Tribal corporation and regulation of its affairs.

(g) Provisions designed to insulate the Tribal Corporation from shifts of tribal politics.
(h) Provisions, if applicable, describing the Tribal Corporation's use of tribal attorneys or other attorneys approved by the Tribal Council.
(i) A statement of the Tribal Corporation's duration.

2.109. Liability of Members of Governing Body of Tribal Corporations.

No member of the governing body or officers of any Tribal corporation formed under Tribal law shall be liable to any creditor of the Tribal corporation by reason of his or her status or service as a member or officer, or by reason of acts done in the course of his or her official duties.

2.110. Disposition of Assets.

Upon dissolution of a Tribal Corporation, its assets shall be distributed at the direction of the Tribal Council, or its designee, as follows:

(a) Any property held upon an express condition requiring its return, transfer or other disposition shall be distributed accordingly;
(b) Any property or assets required to be distributed or transferred in any manner according to federal law shall be distributed or transferred accordingly;
(c) Claims of creditors of the Tribal Corporation approved by the Tribal Council shall be paid accordingly from the assets or funds of the corporation; and
(d) Remaining assets shall be transferred to another Tribal Corporation, to the Tribe, or distributed or transferred as the Tribal Council directs.

2.111. Amendment of Tribal Corporation Charter.

Any Tribal corporation charter formed under Tribal law may be amended only by the Tribal Council.

2.112. Multiple-year and Long Term Leases and Permits For Tribal Corporations.

(a) In order to facilitate the creation and maintenance of business and employment opportunities for Tribal corporations, the Tribe, Tribal members and Reservation residents, the Tribal Council may issue multiple-year and long term leases and permits for use of Tribal financial and natural resources, property, or may enter into other agreements with Tribal corporations as provided by Tribal laws and regulations.
(b) The contents of leases and permits issued pursuant to this section shall include provisions for:
(1) The date by which the resource will become available;
(2) For permits and leases for resources that require annual quantities, the date each year by which such quantities will become available;
(3) The total volume of resources covered by the lease or permit by total or annual amounts;
(4) If applicable, the price of the resource covered by the lease and permit; and
(5) Applicable environmental considerations that may be made part of the lease or permit.

(Source: WOS 2003-07, August 3, 2003, Part Two)

12.103 PART THREE: FOR-PROFIT CORPORATIONS CODE

3.101. Scope of Code.

(a) Unless otherwise provided, the provisions of this Code apply to all for-profit corporations formed under Tribal law. Only close corporations may be formed under the provisions set forth in this Code. This Code shall allow all individuals, whether Indian or non-Indian, to participate in the formation, management and ownership of any corporation created under this Code, unless provided for otherwise in the corporation's organizational documents.

(b) Any individual, Indian or non-Indian, as defined in Chapter One, Part One of the Tribal Comprehensive Business Codes, over the age of 18 years who wishes to incorporate a for-profit business may apply to the Director of Commerce for the issuance of a certificate of incorporation under this Code, provided that the articles of incorporation shall provide that all of the issued shares of the corporation are to be subject to one or both of the following restrictions on transfer of shares:

(1) A shareholder must offer to the corporation or to one or more shareholders of the corporation or to any person who is a member of any class designated by the corporate charter or to any combination of the foregoing, a prior opportunity to acquire such shares; or

(2) The corporation, or the holders of shares of a particular class of the corporation must consent to any proposed transfer of the shares.

(c) The Tribal Council retains the authority to issue corporate charters for business corporations not eligible to be formed under this Code.

(d) The provisions of this Code shall be applied to promote its underlying purposes and policies.

3.102. Definition of Terms Used in this Code

In addition to the definitions provided in the Preamble and General Definitions and Part One of this Code, the following definitions apply in this Part:

(a) "Corporation" means a corporation formed under this Part 3 of this Code;

(b) "Director" means a member of a group elected or otherwise authorized to govern the affairs of the corporation, and includes trustees, governors, regents, and other similar terms;

(c) "Member" means (without regard to what a person is called in the articles or bylaws) any person who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors. A person is not a member solely by virtue of any of the following:

(1) any rights such person has as a member of the staff or student body of any school or college to vote for a director;

(2) any rights such person has to designate a director or directors; or

(3) any rights such person has as a director.

3.103. General Powers of Business Corporations.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation the power:

(a) to sue and be sued, complain and defend in its corporate name, except that nothing in this Part shall limit the application of Section 2.106 of the Tribal Corporations Code;

(b) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing of affixing it or in any other manner reproducing it;

(c) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe, for managing the business and regulating the affairs of the corporation;
(d) to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
(e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
(f) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of any other entity;
(g) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
(h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
(i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other entity;
(j) to conduct its business, structure and restructure its operations, locate offices, and exercise the powers granted by this Code within or without the Reservation;
(k) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
(l) to make donations for the public welfare or for charitable, scientific, or educational purposes;
(m) to transact any lawful business that will aid government policy;
(n) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business affairs of the corporation;
(o) to cease its corporate activities and surrender its corporate franchise.

3.104. Defense of Ultra Vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss of damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance or such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) In a proceeding by the Director of Commerce, as provided in this Code, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

3.105. Articles of Incorporation.

(a) The articles of incorporation for any corporation formed under this Code shall set forth:

(1) The name of the Corporation.

(2) The period of duration, which may be perpetual or for a stated term of years.

(3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Code.

(4) The aggregate number of shares that the corporation shall have authority to issue, and if such shares are divided into classes, the number of shares in each class.

(i) If the shares are divided into classes, the designation of each class and a statement to the preference, limitation and relative rights in respect of the shares of each class.

(ii) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(5) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(6) The name and address of its initial registered agent and the address of its principal office.

(7) A description of any election to operate without a board of directors under Section 3.122 of this Code.

(8) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; provided, however, that it all persons who have agreed to purchase shares shall enter into a written agreement under Section 3.122 of this Code to operate the corporation without a board of directors, that fact shall be recited in the articles of incorporation and the names and addresses of the persons who are to be voting shareholders shall be listed instead.

(9) The name and address of each incorporator.

(10) One or more of the restrictions on the transfer of shares described in Section 3.101 of this Code and all other restrictions on the transfer of shares.

(11) The following notice, conspicuously displayed:

THIS IS A CLOSE CORPORATION FORMED PURSUANT TO THE LTBB ODAWA TRIBAL COMPREHENSIVE BUSINESS CODES, TITLE XX. THE RIGHTS OF SHAREHOLDERS IN THIS CORPORATION MAY DIFFER MATERIALLY FROM THE RIGHTS OF SHAREHOLDERS IN OTHER CORPORATIONS. COPIES OF DOCUMENTS, WHICH RESTRICT TRANSFERS AND AFFECT VOTING AND OTHER RIGHTS MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.

(b) In addition to the provisions required under this section, the articles of incorporation may also contain provisions not inconsistent with Tribal law regarding:

(1) The direction of the management of the business and the regulation of the affairs of the corporation;

(2) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders;

(3) The par value of any authorized shares of class of shares; and

(4) Any other provision that this Code requires or permits to be set forth in the corporation's bylaws.

(c) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Code.

3.106. Filing of Articles of Incorporation.

Duplicate originals of the articles of incorporation shall be delivered to the Director of Commerce. If the Director of Commerce finds that the articles of incorporation conform to this Code, he/she shall, when all the fees have been paid in accordance with this Code:

(a) Endorse on each of such originals the word "Filed" and the effective date of the filing thereof.

(b) File one of such originals.

(c) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original articles of incorporation affixed thereto shall be returned to the incorporators or their representatives.

3.107. Effect of Filing the Articles of Incorporation — Certificate of Incorporation.

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Code, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

3.108. Organization Meeting of Directors.

After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation for the purpose of adopting bylaws not inconsistent with this Code, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting if each director signs an instrument that states the action so taken.

3.109. Authorized Shares.

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, relative rights and special voting rights as deemed appropriate for the shares of any class to the extent not inconsistent with the provisions of the Tribe. Unless otherwise provided in the articles of incorporation, such shares shall carry preemptive rights.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.

(c) Having preference over other class or classes of shares as to the payment of dividends.
(d) Having preference in the assets of the corporation over any other class of shares or classes of shares upon the voluntary or involuntary liquidation of the corporation.
(e) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

3.110. Certificates Representing Shares.

(a) Shares of a corporation may or may not be represented by certificates. Unless this Code or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.
(b) At a minimum each share certificate must state on its face:
(1) the name of the issuing corporation and that it is organized under the laws of the Tribe;
(2) the name of the person to whom issued; and
(3) the number and class of shares and the designation of the series, if any, the certificate represents.
(c) If the issuing corporation is authorized to issue different classes of shares of different series within a class, then the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate must state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.
(d) Each share certificate (1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and (2) must bear the corporate seal or its facsimile.
(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.
(f) No certificate shall be issued for any share until the consideration established for its issuance shall have been received by the corporation.
(g) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by this section.

3.111. Subscription for Shares.

A subscription for shares of a corporation to be organized shall be in writing and shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all subscribers consent to the revocation of such subscription.

3.112. Determination of Price -- Payment for Shares.

(a) The powers granted in this section are subject to restriction by the articles of incorporation.
(b) Shares may be issued at price determined by the board of directors, or the board may set a minimum price or establish a formula or method by which the price may be determined.
(c) Consideration for shares may consist of cash, promissory notes, services performed, contracts for services to be performed, or any other tangible or intangible property. If shares are issued for other than cash, the board of directors shall determine the value of the consideration.
(d) Shares issued when the corporation receives the consideration determined by the board are validly issued, fully paid, and non-assessable.

(e) A good faith judgment of the board of directors as to the value of the consideration received for shares is conclusive.

(f) The corporation may place shares issued for a contract for future services of a promissory note in escrow, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed or the note is paid. If the services are not performed or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

3.113. Expenses of Organization, Reorganization and Financing.

The reasonable charges and expenses of organization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares assessable.

3.114. Stockholder's Liability -- Consideration for Shares.

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or were to be issued, except that he or she may become personally liable by reason of his or her own acts or conduct.

3.115. Stated Capital; Determination of Amount.

(a) The consideration received by a corporation for its shares shall constitute stated capital. If the shares have been assigned a par value, the consideration received shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus

(b) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

(c) Dividends shall not be paid out of stated capital.

3.116. Payment of Deficits Out of Capital Surplus or Earned Surplus.

A corporation may, by resolution of its board of directors, apply any or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

3.117. Insolvent Corporation Prohibited From Purchasing Its Own Shares.

No purchase of or payment for its own shares shall be made by a corporation at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

3.118. Shares Transfer Restrictions.

(a) Except as otherwise provided in the articles of incorporation, no interest in shares of a corporation formed under this Code may be transferred, by operation of law or otherwise, whether voluntary or involuntary.

(b) Subsection (a) above shall not apply to a transfer:

(1) to the corporation or to any other holder of the same class of shares;

(2) to members of the holder's immediate family, or to a trust, all of whose beneficiaries are members of the holder's immediate family. A holder's immediate family shall include his or her spouse, parents, lineal descendants (including any adopted children and stepchildren) and spouse of any lineal descendants, and brother and sisters;

(3) which has been consented to in writing by all of the holders of the corporation's common shares having voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as a result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger, consolidation or a share exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor.

3.119. Offer to Sell Shares.

(a) Any person desiring to transfer shares in a transaction that is prohibited by Section 3.117 (a) and is not exempt under Section 3.117 (b) shall obtain a written offer from a third party who meets the requirements in paragraphs (1) and (2) of this subsection to purchase such shares for cash and shall deliver written notice of the third party offer to the corporation's registered office stating the number and kind of shares, the offering price, the other terms of the offer, and the name and address of the third party offeror. No transfer shall be made to a third party unless:

(1) the third party is eligible to become a qualified shareholder under the provisions of any federal, state or Tribal tax statute that the corporation has elected to be subject to and the third party shall agree in writing not to take any action to terminate the election without the approval of the remaining shareholders;

(2) the transfer to the third party will not result in the imposition of the personal holding company tax or any similar Tribal, state or federal penalty tax on the corporation.

(b) The notice specified in subsection (a) shall constitute an offer to sell the shares to the corporation on the terms of the third party offer. Within 20 days after the corporation receives the notice, the corporation shall call a special meeting of shareholders which shall be held not more than 40 days after the call, for the purpose of determining whether to purchase all (but not less than all) of the offered shares. Approval of action to purchase shall be by affirmative vote of the holders of a majority of the shares entitled to vote excluding the offered shares. With the consent of all the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation, in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.

(c) Written notice of the acceptance of the shareholder's offer shall be delivered or sent to the offering shareholder at the address specified in his notice to the corporation, or in the absence of any specification, at his last known address as reflected in the records of the corporation, within 75 days after receipt of the shareholder's offer. Notice sent by U.S. mail shall be timely if it is deposited in the mail prior to midnight of the 75th day following the date the offer from the shareholder was received by the corporation. If the notice contains terms of purchase different from those contained in the shareholder's notice, the different terms shall be deemed a counter-offer and unless the shareholder wishing to transfer his or her stock accepts in writing the counter-offer, or the shareholder and the purchaser(s) otherwise resolve by written agreement the differences between the offer and counter offer within 15 days of receipt by the shareholder of the notice of acceptance, the notice containing the counter offer shall be ineffective as an acceptance.

(d) If a contract to sell is created under subsection (c), the shareholder shall make delivery of all the certificates for the stock so sold, duly endorsed, within 20 days of receipt of the notice of acceptance, or in the case of un-certificated securities, shall within the 20 day period deliver to the corporation the required instruction requesting that the transfer be made. Breach of any of the terms of the contract shall entitle the non-breaching party to any remedy at law or equity allowed for breach of a contract, including, without limitation, specific performance.

(e) If the offer to sell is not accepted pursuant to subsections (c) and (d), the shareholder shall be entitled to transfer to the third party offeror all (but not less than all) of the offered shares within 120 days after delivery of the shareholder's notice specified in subsection (c) in accordance with the terms specified in the shareholder's notice.

3.120. Transfer of Shares in Breach of Transfer Restrictions.

Any attempted transfer of shares in a corporation formed under this Code in violation of any transfer restriction binding on the transferee shall be ineffective. Any attempted transfer of share in a corporation formed under this Code in violation of any transfer restriction not binding on the transferee because the notice required by Sections 3.104(d)(2) of this Statute has not been given shall give the corporation the option, exercisable by notice and payment within 30 days after presentation of the shares for registration in the name of the transferee, to purchase the shares from the transferee for the same price and terms.

3.121. Sale of Assets.

Unless otherwise provided in the articles of incorporation, a sale, lease, exchange, or other disposition, not made in the usual and regular course of its business, of all, or substantially all, the property and assets, with or without the good will, of a corporation formed under this Code shall require the affirmative vote of all of the holders of outstanding shares of each class of shares of the corporation, whether or not otherwise entitled to vote thereon.

3.122. Election Not to Have a Board of Directors.

(a) A corporation formed under this Code may operate without a board of directors if the articles of incorporation contain a statement to that effect. In this case, the following shall apply:

(b) All corporate powers shall be exercised by and the business affairs of the corporation shall be managed under the direction of the shareholders of the corporation, and all powers and duties conferred, or imposed upon the board of directors by this Code shall be exercised by the shareholders.

(c) No liability that would otherwise be imposed on the directors shall be imposed on a shareholder by virtue of any act or failure to act unless the shareholder was entitled to vote on the action.

(d) Any requirement that an instrument filed with any government agency contain a statement that a specified action has been taken by the board of directors shall be satisfied by a statement that the corporation is formed under this Code having no board of directors and that the action was duly approved by the shareholders.

(e) The shareholders by resolution may appoint one or more shareholders to sign any documents as "Designated Directors".

(f) Unless the articles of incorporation otherwise provide, any action requiring director approval or both director and shareholder approval shall be sufficiently authorized by shareholder approval and any action otherwise requiring a vote of the majority or greater percentage of the board of directors shall require the affirmative vote of the holder of a majority, or such greater percentage, of the shares entitled to vote thereon.

(g) Any amendment to the articles of incorporation to include provisions authorized by Section 3.122(a) must be approved by the holders of all the shares of the corporation whether or not they are otherwise entitled to vote thereon, or all the subscribers to such shares, or the incorporators, as the case may be. Any amendment to the articles of incorporation to delete the election must be approved by the affirmative vote of the holders of all of the shares of the corporation whether or not they are otherwise entitled to vote thereon.

3.123. Agreements among Shareholders.

(a) The shareholders of a corporation formed under this Code may by unanimous action enter into one or more written agreements to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relations among the shareholders of the corporation.

(b) Any agreement authorized by this section shall be valid and enforceable according to its terms notwithstanding the elimination of the board of directors, any restriction on the discretion or powers of the board of directors, or any proxy or weighted voting rights given to directors and notwithstanding that the effect of the agreement is to treat the corporation as if it were a partnership or that the arrangement of the relations among the shareholders or between the shareholders and the corporation would otherwise be appropriate only among partners.

(c) If the corporation has a board of directors, the effect of an agreement authorized by this section restricting the discretionary powers of the directors shall be to relieve the directors of, and impose upon the person or persons on whom such discretion or powers are vested, the liability for acts or omissions imposed by law upon directors to the extent that the discretion of powers of the directors are controlled by the agreement.

(d) Any election not to have a board of directors in an agreement authorized by this section shall not be valid unless the articles of incorporation contain a statement to that effect in accordance with Section 3.122 of this Code.

(e) A shareholder agreement authorized by this section shall not be amended except by the unanimous written consent of the shareholders unless otherwise provided in the agreement.

(f) Any action permitted by this section to be taken by shareholders may be taken by the subscribers to shares of the corporation if no shares have been issued at the time of the agreement authorized by the section.

(g) Provisions otherwise required to be stated in corporate bylaws may be contained with equal effect in a shareholder's agreement.

(h) This section shall not prohibit any other agreement among two or more shareholders not otherwise prohibited by law.

3.124. Shareholders' Right to Inspect Records.

(a) A corporation shall keep at least the following records:

(1) Minutes of all shareholders, meetings and board of director's meetings;

(2) Appropriate accounting records;

(3) Names and addresses of all shareholders and the number and class of shares held;

(4) Current articles of incorporation, bylaws and shareholders' agreements described in Section 3.123;

(5) Resolutions adopted by the board of directors.

(b) Upon five days written notice, a shareholder of the corporation is entitled to inspect and copy records referred to in Section 3.124(a) above, subject to the following requirements:

(1) The shareholder's demand must be made in good faith and for a proper purpose;

(2) The shareholder must describe with reasonable particularity his or her purpose and the records he or she desires to inspect;
(3) The records must be directly connected with his or her purpose;
(4) The corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents made for the shareholder; provided, however, that the charge may not exceed any estimates of such costs provided to the shareholder.

(c) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he or she represents.

(d) A corporation may take reasonable steps to prevent the dissemination of trade secrets, propriety information or other commercially sensitive information to persons other than shareholders.

3.125. Annual Meeting.

A corporation formed under this Code may establish in its articles of incorporation or bylaws, or in a shareholders' agreement authorized by Section 3.123, a date at which an annual meeting of shareholders shall be held, if called, and if not so established the date shall be the first business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request thereof is delivered to the corporation by any shareholder not less than 30 days before the date specified for the meeting.

3.126. Special Meetings of Shareholders.

(a) A corporation shall hold a special meeting of shareholders:

(b) If authorized by the board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(c) If the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting describing the purposes for which it is to be held.

(d) Special shareholders' meetings may be held on or off the Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.

(e) Only business within the purposes described in the notice sent to shareholders may be conducted at a special shareholders' meeting.

3.127. Notice and Meeting of Shareholders.

(a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders meeting no fewer than 10 or more than 60 days before the meeting. Unless this Code or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting. Notice shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each shareholder.

(b) If an annual or special shareholders' meeting is adjourned to a different date, time and place, notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

3.128. Shareholder Sale Option at Death.

(a) If the articles of incorporation of a corporation formed under this Code provide that this section shall apply to the corporation, then the executor or administrator of the estate of any deceased shareholder shall, subject to any directions in the deceased shareholder's last will and testament, have the right to require the corporation to elect either to purchase or cause the

purchase of all, but not less than all, of the shares of the decedent pursuant to Section 3.128(d)-(f), or to be dissolved.
(b) A modification of the provisions in this section shall be valid if it is set forth or referred to in the articles of incorporation.
(c) Any amendment to the articles of incorporation to provide that this section shall apply to, delete or modify the provisions of this section shall be approved by the unanimous vote of the holders of each class of shares of the corporation affected by the proposed deletion on modification, whether or not they are otherwise entitled to vote thereon; but if the corporation has no shareholders at the time of the proposed amendment, by the unanimous vote of all the subscribers of all of the incorporators, as the case may be.
(d) A person exercising rights under this section shall, within six months after the death of the beneficial owner of shares, deliver a written notice to the corporation's registered office specifying the number and class of all shares beneficially owned by the deceased shareholder and stating that an offer by the corporation to purchase such shares is being solicited pursuant to this section. Within 20 days after receipt of the notice, the president of the corporation shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to offer to purchase the shares. Approval of an action to offer to purchase the shares shall be by affirmative vote of the holders of a majority of shares entitled to vote, excluding the shares covered by the notice. With the consent of all the shareholders entitled to vote for approval, the corporation may allocate some or all of the shares to one or more shareholders, or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or such proportion as shall be agreeable to those desiring to purchase. Written notice of any offer to purchase approved by the shareholders, or that no offer to purchase was approved, shall be delivered or sent to the person exercising his or her rights under this section within 75 days after delivery of the notice soliciting the offer to purchase. Any offer to purchase shall be accompanied by copies of the corporation's end of year balance sheets, and profit and loss statements for the preceding two accounting years and any available interim balance sheet and profit and loss statement.
(e) To the extent the price and other terms for purchasing shares of a transferring shareholder by the corporation or remaining shareholders are fixed or are to be determined pursuant to provisions in the articles of incorporation, the bylaws of the corporation, or by written agreement, those provisions shall be binding, except that in the event of a default in any payment due, Section 3.128(h) shall apply and the person exercising his or her rights under this section shall have the right to petition for dissolution of the corporation. Any offer to purchase shall be accepted or rejected in writing within 15 days.
(f) If an offer to purchase is rejected, or if no offer to purchase is made, the person exercising rights under this section may commence an action in the Tribal Court. The jurisdiction of the court shall be plenary and exclusive. The corporation shall be made a party defendant in such action and shall, at its expense, give notice of the commencement of the action to all of its shareholders and such other persons as the court may direct. The court shall proceed to determine the fair value of the shares of the person exercising the rights under this section by considering the going concern values of the corporation, any agreement among the same or all of the shareholders fixing a price or specifying a formula for determining the value of the corporation's shares for any purpose, the recommendations of any appraiser appointed by the

court, any legal constraints on the ability of the corporation to acquire the shares to be purchased, and other relevant evidence. The court shall then enter an order requiring the corporation to cause the purchase of the shares at fair value and on the other terms so determined or to give such person the right to have the corporation dissolved.

(g) Upon the petition of the corporation, the court may modify its decree to change the terms of payment if it finds that the changed financial or legal ability of the corporation or other purchasers of the shares to complete the purchase justifies a modification. Any person making a payment in order to prevent or insure against any default by any purchaser shall be entitled to recover the excess payment from the defaulting person.

(h) If the corporation or other purchaser fails for any reason to make any payment specified in the court decree within 30 days after the due date for such payment, the court shall, upon the petition of the person to whom the payment is due and in the absence of good cause shown by the corporation, enter a decree dissolving the corporation.

(i) If the fair value of the shares as determined by the court does not materially exceed the last offer made by the corporation prior to the commencement of an action brought pursuant to subsection (f) and the court finds that the failure of the person exercising rights under this section to accept the corporation's last offer was arbitrary, baseless, or not otherwise in good faith, the court may assess all or a portion of the costs and expenses of the action against such person.

(j) If the fair value of the shares as determined by the court materially exceeds the amount of the last offer made by the corporation prior to the time a petition was filed pursuant to subsection (f) and the court finds that the corporation's last offer was arbitrary, baseless, or was otherwise not made in good faith, the court may assess all or a portion of the costs and expenses of the action against the corporation.

(k) Expenses assessable under subsections (i) and (j) shall include reasonable compensation for and reasonable expenses of any appraisers appointed by the court, and the reasonable fees and expenses of counsel for and experts employed by any party.

(l) Except as provided in subsections (i) and (j), the legal costs of an action filed pursuant to subsection (f) shall be assessed on an equal basis between the corporation and any party exercising rights under this section, and all other fees and expenses shall be borne by the party incurring the fees and expenses.

(m) Any shareholder may waive his or her and his or her estate's and heirs' rights under this section by a signed writing.

(n) This section shall not be construed to prohibit any other agreement not prohibited by law that provides for the purchase of shares of the corporation, nor shall it prevent a shareholder from enforcing any other remedy he or she may have.

3.129. Actions by Shareholders of Close Corporations.

(a) Any shareholder of record, the beneficial owner of share held by a nominee, or the holder of voting trust certificates of a corporation formed under this Code may file a petition in the Tribal Court for relief on the grounds that:

(b) The directors or those in control of the corporation have or will have conducted the business and affairs of the corporation in a manner which is not in good faith and which is unfair or oppressive as to the petitioner. Such conduct shall include, but shall not be limited to, unfairly depriving the shareholder of the benefit of his or her investment in preference to other shareholders by failing to pay dividends that in good faith ought to be paid, or using the payment of wages as an unfair device to divert income from the petitioner; or

(c) Conditions exist that would be grounds for judicial dissolution of the corporation under Section 3.163.

(d) In determining whether one or more of the conditions specified in subsection (a) above exist, the court shall give due consideration to the strict fiduciary duty that shareholders of corporations formed under this Code owe to one another. Such fiduciary duty shall include good faith, fairness and loyalty.

(e) The jurisdiction of the Tribal Court shall be plenary and exclusive. If the Tribal Court finds that one or more of the conditions specified in subsection (a) exist, it shall grant such relief as in its discretion it deems appropriate, including, without limitation, orders granting one or more of the following types of relief:

(1) Canceling, altering or enjoining any resolution or other act of the corporation;

(2) Directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action;

(3) Canceling or altering any provision contained in the articles of incorporation or by-laws of the corporation;

(4) Removing from office any director or officer, or ordering that a person be appointed a director of officer;

(5) Requiring an accounting with respect to any matters in dispute;

(6) Appointing a custodian to manage the business and affairs of the corporation;

(7) Appointing a provisional director who shall have all the rights, powers, and duties of a duly elected director and shall serve for the term and under conditions established by the Tribal Court;

(8) Ordering the payment of dividends;

(9) If the Tribal Court finds the relief specified in paragraphs (1) through (8) is or would be inadequate or inappropriate, ordering that the corporation is liquidated and dissolved unless either the corporation or one or more of the remaining shareholders has purchased all of the shares of another shareholder at their fair value by a designated date, with the fair value and terms of the purchase to be determined as provided by Section 3.129(e). In the event the share purchase is not consummated and the corporation is dissolved and liquidated, any shareholder whose shares were to be purchased shall have the same rights and priorities in the assets of the corporation as would have been the case had no purchase been ordered by the Tribal Court.

(10) Awarding damages to any aggrieved party in addition to or in lieu of any other relief granted.

(11) In determining whether to enter a judgment under paragraph (9), the Tribal Court shall take into consideration the financial condition of the corporation but shall not refuse to order liquidation solely on the grounds that the corporation has earned surplus or current operating profits.

(f) If the Tribal Court determines that any party to a proceeding brought under this section has acted arbitrarily, capriciously, or otherwise not in good faith, it may award reasonable expenses, including attorneys, fees and the costs of any appraisers of other experts, to one or more of the other parties.

(g) If the Tribal Court orders relief pursuant to subsection (e)(9), the court shall:

(1) Proceed to determine the fair value of the shares to be purchased, considering the going concern values of the corporation, any agreement among the same or all of the shareholders fixing a price or specifying a formula for determining the value of the

corporation's shares for any purpose, the recommendations of any appraiser appointed by the Tribal Court, any legal constraints on the ability of the corporation to acquire the shares to be purchased, and other relevant evidence.

(2) Enter a decree specifying the identity of the purchaser and the terms of the purchase found to be proper under the circumstances, including such provisions as are deemed proper concerning payment of the purchase price in two or more installments, payment of interest on the installments, subordination of the obligation to the rights of other creditors of the corporation, security for the deferred purchase price, and a covenant not to compete or other restriction on the selling shareholder.

(3) Order that the selling shareholder shall, concurrently with the payment of the purchase price, or in the event of an installment purchase concurrently with the payment of the initial payment called for in the order make delivery of all his or her shares and from that date have no rights or claims against the corporation or its directors, officers, or shareholders by reason of his or her having been a director, officer, or shareholder of the corporation, except the right to receive the unpaid balance of the amount awarded under this section and any amounts due under any agreement with the corporation for the remaining shareholders that are not terminated by the court's order.

(4) Order that if the purchase is not completed in accordance with the court's decree, the corporation shall be liquidated.

(h) Except as otherwise provided in subsection (g), the rights of a shareholder to file a proceeding under this section are in addition to and not in lieu of any other rights or remedies the shareholder may have.

(i) No shareholder shall be eligible to file an action under this section until he or she shall have exhausted all non-judicial remedies for resolution of the issues in dispute.

3.130. Limited Liability.

The failure of a corporation to observe usual corporate formalities or requirements relating to the exercise of its corporate powers or the management of its business and affairs shall not be grounds for imposing personal liability on the shareholders for obligations of the corporation.

3.131. Duties of Board of Directors.

Unless the election under Section 3.122 of this Code to operate without a board of directors has been made, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitations set forth in the articles of incorporation.

3.132. Qualifications of Directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. Directors and shareholders shall have no residency requirements. A director shall be at least 18 years of age.

3.133. Terms of Directors.

(a) The terms of the initial directors of the corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless the articles of incorporation provide that their terms be staggered.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he or she continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

3.134. Removal of Directors by Shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(c) A director may be removed by the shareholders only at a meeting called for that purpose and the meeting notice must state that the purpose or one of the purposes, of the meeting is removal of the director.

3.135. Removal of Directors by Judicial Proceeding.

(a) The Tribal Court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class if the court finds that:

(1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation; and

(2) removal is in the best interest of the corporation.

(b) If the Tribal Court removes the director it may bar the director from reelection for a period prescribed by the Tribal Court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

3.136. Meetings.

(a) The board of directors may hold regular or special meetings on or off the Reservation.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

3.137. Action without Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Code to be taken at the board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

3.138. Notice of Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice to directors of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meting unless required by the articles of incorporation, bylaws or the provisions of this Code.

3.139. Waiver of Notice.

(a) A director may waive any notice required by this Code, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by Subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her unless that director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

3.140. Quorum and Voting.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of the board of directors consists of a majority of the number of directors.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no less than one-third of the number of directors.

(c) If a quorum is present when a vote is taken, the affirmative majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action unless:

(1) he or she objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting business at the meeting;

(2) his or her dissent or abstention from the action is noted in the minutes of the meeting; or

(3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

3.141. General Standards for Directors.

(a) A director shall discharge his or her duties as a director, including duties as a member of a committee:

(1) in good faith;

(2) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, professionals or other experts the director deems to be reliable and competent in the matters presented; or

(3) a committee of the board of directors of which he or she is not a member if the director believes the committee merits confidence.

(c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director, of any failure to take any action, if he or she performed the duties of office in conjunction with this section.

3.142. Director Conflict of Interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. Any conflict of interest transaction is voidable by the corporation because of the director's interest in the transaction unless any one of the following is true:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

(2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

(3) the transaction was fair to the corporation.

(b) For the purposes of this section, a director of the corporation has an indirect interest in the transaction if:

(1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction; or

(2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(c) For the purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

(d) For the purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of shareholders to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, is counted in determining whether a transaction is approved under other sections of this Code. A majority of shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

3.143. Liability for Unlawful Distributions.

(a) Unless he or she complies with the applicable standards of conduct described in Section 3.142, a director who votes for or assents to a distribution made in violation of this Code or the articles of incorporation is personally liable to the corporation for the amount of distribution that exceeds what could have been distributed without violating this Code or the articles of incorporation.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contributions:

(1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in Section 3.141; and

(2) from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this Code or the articles of incorporation.

3.144. Officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the board and shareholder, meetings and for authenticating records of the corporation.

(d) An individual may simultaneously hold more than one office in the corporation.

(e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of director to prescribe the duties of other officers.

3.145. Standards of Conduct for Officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the officer believes to be reliable and competent in the matters presented; or

(2) legal counsel, public accountants, professionals or other experts the officer deems to be reliable and competent in the matters presented;

(c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of office in conjunction with this section.

3.146. Resignation and Removal of Officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If the resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

3.147. Indemnification of Corporate Agents.

(a) A corporation may indemnify any person who was a party or is threatened to be made a party to any threatened pending or completed action, suit, or proceeding, whether civil, criminal,

administrative or investigative by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partner, joint venture, trust, or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation or, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) No indemnification shall be made pursuant to this section with respect to any proceeding in which such person shall have been adjudged to be liable to the corporation.

(c) No person shall be indemnified under this section with respect to any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her capacity, in which he or she have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

3.148. Mandatory Indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

3.149. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Code.

Amendment of Articles of Incorporation.

3.150. Resolution of Proposed Amendment.

The board of directors shall adopt a resolution setting forth a proposed amendment to the articles of incorporation and directing that it be submitted to a vote at a meeting of the shareholders, which may be either an annual or a special meeting. Any number of amendments may be submitted to shareholders and voted upon by them at one meeting.

3.151. Notice of Proposed Amendment.

Written notice setting forth a proposed amendment to the articles of incorporation or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of the annual meeting.

3.152. Vote of Shareholders Meeting.

At the meeting described in Section 3.151 a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. Except as otherwise provided in this Statute, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon. If any class of shares is entitled to vote thereon as a class pursuant to Section 3.153, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon, unless a greater majority is required by the provisions of this Code.

3.153. Classes of Shares Entitled to Vote.

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class;

(b) Increase of decrease the par value of the shares of such class;

(c) Effect an exchange, reclassification or cancellation of all or parts of the shares of such class;

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;

(e) Change the designations, preferences, limitations or relative rights of the shares of such class;

(f) Change the shares of such class, with or without par value, into the same or a different number of shares, with or without par value, of the same class or another class or classes;

(g) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class;

(h) In the case of a preferred or special class of shares, divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

(i) Limit or deny the existing preemptive rights of shares of such class;

(j) Cancel or otherwise affect dividends on the shares of such class that have accrued but have not been declared.

3.154. Articles of Amendment.

(a) Articles of amendment shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 3.144 of this Code for authenticating corporate records, and shall set forth:

(1) The name or the corporation;

(2) The amendment so adopted;

(3) The date of the adoption of the amendment by shareholders;

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon in each such class;

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively;

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is affected and a statement expressed in dollars, of the amount of stated capital as changed by the amendment.

(8) The articles of amendment shall be sent to the Director of Commerce with fees as provided in this Statute. If the Director of Commerce approves the amendments, he or she shall issue a certificate of amendments.

Dissolution

3.155. Dissolution By Board of Directors and Shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with Section 3.127. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of director (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, in order for the proposal to dissolve to be adopted it must be approved by a majority of all the votes entitled to be cast on that proposal.

3.156. Shareholder Option to Dissolve The Corporation.

(a) Unless a shareholder's agreement or the articles of incorporation provide otherwise, any shareholder of a corporation formed under this Code has an option to have the corporation dissolved at will. Whenever any such option to dissolve is exercised, the shareholder exercising the option shall give written notice thereof to all other shareholders. The corporation or one or more shareholders of the corporations may offer to purchase the shares at their fair market value from the person exercising the option to dissolve. If the parties cannot agree on the price for the shares or other terms of the sale, any party may bring an action in Tribal Court to oversee the terms of the sale, utilizing the procedures set forth in Section 3.129(e) of this Code. If no such written offer to purchase is received within 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if the required number of shareholders having voting power had consented pursuant to Section 3.155.

(b) Unless the articles of incorporation otherwise provide, an amendment to the articles of incorporation to include or delete a provision authorized by subsection (a) shall be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote thereon; all of the subscribers; or all of the incorporators, if the corporation has no subscribers or shareholders.

3.157. Articles of Dissolution.

(a) At any time dissolution is authorized, the corporation may dissolve by delivering to the LTBB Director of Commerce for filing articles of dissolution setting forth:

(1) the name of the corporation;

(2) the date dissolution was authorized;

(3) if dissolution was approved by the shareholders:

(i) the number of votes entitled to be cast on the proposal to dissolve; and

(ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(4) if voting by voting groups was required, the information required by subparagraph (3) must be separately provided for each voting group entitled to vote separately on the proposal to dissolve.

(5) if the dissolution resulted from the exercise of an option to dissolve authorized by Section 3.156 a copy of the notice required by that section shall be attached.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

3.158. Effect of Dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) collecting its assets;

(2) disposing of its properties that will not be distributed in kind to its shareholders;

(3) disposing property of the Tribe in accordance with the appropriate procedures;

(4) discharging or making provisions for discharging of its liabilities;

(5) distributing its remaining property among its shareholders according to their interests; and

(6) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) transfer title of the corporation's property;

(2) transfer title of the Tribe's property that was controlled by the corporation;

(3) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(4) subject its directors of officers to standards of conduct different from those prescribed in Section 3.141 and 3.145;

(5) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

(6) prevent commencement of a proceeding by or against the corporation in its corporate name;

(7) abate or suspend a proceeding pending by or against the corporation in its corporate name; or

(8) terminate the authority of the registered agent of the corporation.

3.159. Known Claims against Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedures prescribed in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution within 90 days of its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive a claim; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) if the claimant was given written notice under subsection (b), and does not deliver the claim to the dissolved corporation by the deadline;

(2) if the claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 180 days from the effective date of the rejection notice.

(d) For the purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

3.160. Unknown Claims against a Dissolved Corporation.

(a) A dissolved corporation may also publish notice and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located, and in a newspaper of general circulation on the Reservation;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsections (a) and (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under Section 3.159;

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent that his or her pro-rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

3.161. Grounds for Administrative Dissolution.

The Director of Commerce may proceed under Section 3.162 to administratively dissolve a corporation if:

(a) the corporation's period of duration stated in the articles of incorporation expires;

(b) responses to requests under Section 3.107 of this Code show that the corporation has been inactive for a period of at least one year, and there are no plans to reactivate the corporation in the future; or

(c) requests under Section 3.107 of this Code have not been answered by any persons to whom they were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Commerce shall notify each person failing to answer such requests of its intent to commence such a proceeding.

3.162. Procedure For and Effect of Administrative Dissolution.

(a) If the Director of Commerce determines that one or more grounds exist under Section 3.161 for dissolving a corporation, it shall serve the corporation with written notice of its determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Director of Commerce that each ground determined by the Director of Commerce does not exist within 60 days after service of the notice is perfected, the Director of Commerce shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Commerce shall file the original of the certificates and serve a copy on the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 3.158 and notify claimants under Sections 3.159 and 3.160.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

3.163. Grounds for Judicial Dissolution.

The Tribal Court may dissolve a corporation:

(a) in a proceeding brought on behalf of the Director of Commerce or other agency or official of the Tribe if it is established that:

(1) the corporation obtained its articles of incorporation through fraud; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(1) the directors are deadlocked in the management of the corporate affairs; the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(2) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(3) the shareholders are deadlocked and have failed for a period that includes at least two consecutive annual meeting dates to elect successors to directors whose terms have expired;

(4) the corporate assets are being misapplied or wasted; or

(5) the shareholder has duly exercised an option described in Section 3.156 of this Code to dissolve the corporation, and the corporation has failed to proceed with filing articles of dissolution or winding up corporate affairs as required by this Code.

(c) in proceeding by a creditor if it is established that:

(1) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(2) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

3.164. Procedure for Judicial Dissolution.

(a) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(b) The Tribal Court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the Tribal Court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

3.165. Decree of Dissolution.

(a) If after a hearing the Tribal Court determines that one or more grounds for judicial dissolution described in Section 3.163 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the court shall deliver a certified copy of the decree to the Director of Commerce, who shall file it.

(b) After entering the decree of dissolution, the Tribal Court shall direct the windup and liquidation of the corporation's business and affairs in accordance with Section 3.158 and the notification of claimants in accordance with Sections 3.159 and 3.160.

3.166. Deposit with Department of Commerce.

Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or shareholder of the corporation who cannot be found, is a minor, or who is not competent to receive them shall be reduced to cash and deposited into an escrow account for safekeeping established by the Director of Commerce. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Director of Commerce shall pay to the individual the amount due.

(Source: WOS 2003-07, August 3, 2003, Part Three)

12.104 PART FOUR: NON-PROFIT CORPORATIONS CODE

4.101. Scope of Code

(a) Unless otherwise provided, the provisions of this Code apply to all non-profit corporations formed under Tribal law, except those corporations that are controlled by the Tribal Council.

(b) Any non-profit corporation not organized under the Tribal Comprehensive Business Codes shall not be entitled to any of its protections and benefits except as may be directed by the Tribal Council on a case-by-case basis.

4.102. Definition of Terms Used in this Code

In addition to the definitions provided in the Tribal Comprehensive Business Codes Preamble and Part 1 of this Code, the following definitions apply in this Part:

(a) "Corporation" means a non-profit corporation formed under Tribal law, except for those non-profit corporations controlled by the Tribal Council;

(b) "Director" means a member of a group elected or otherwise authorized to govern the affairs of the corporation, and includes trustees, governors, regents, and other similar terms;

(c) "Member" means (without regard to what a person is called in the articles or bylaws) any person who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors. A person is not a member solely by virtue of any of the following:

(1) any rights such person has as a member of the staff or student body of any school or college to vote for a director;

(2) any rights such person has to designate a director or directors; or

(3) any rights such person has as a director.

(d) "Mutual Benefit Corporation" means any corporation, including any non-profit cooperative, which is not a public benefit corporation.

(e)"Public Benefit Corporation" means:

(1) any corporation, which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section;
(2) any corporation, unless its articles of incorporation provide that it is a mutual benefit corporation, which is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals; or
(3) any corporation organized primarily for a public purpose and which is designated in its articles of incorporation as a public benefit corporation.

4.103. Purposes and Powers of Non-Profit Corporations

(a) Every corporation incorporated under Tribal law has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.
(b) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation the power:
(1) to sue and be sued, complain and defend in its corporate name, except that nothing in this Part shall limit the application of Section 2.106 of this Statute.
(2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
(3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe, for managing and regulating the affairs of the corporation;
(4) to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
(7) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 4.104 of this Code;
(9) to be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
(10) to conduct its business, locate offices, and exercise the powers granted by this Code within or outside the Reservation and the State of Michigan;
(11) to elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
(12) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
(13) to make donations for public welfare or for charitable, scientific, or educational purposes and for the purposes not inconsistent with law, that furthers the corporate mission;
(14) to impose dues, assessments, admission and transfer fees upon its members;

(15) to establish conditions for admission to membership, admit members and issue memberships;
(16) to carry on a business;
(17) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation;
(18) to cease its corporate activities and surrender its corporate franchise.

4.104. Limitations.

(a) A corporation:

(1) shall not have or issue shares of stock;
(2) shall not pay dividends or make any disbursement of income to its members, directors or officers;
(3) shall not loan money or credit to its officers or directors;
(4) may pay compensation only up to a reasonable amount to its members, directors, officers or agents for services rendered; and
(5) may confer benefits upon its members only in conformity with its purposes.

(b) A mutual benefit corporation, unless its articles of incorporation or bylaws provide otherwise:

(1) upon dissolution or final liquidation may make distributions to its members as permitted by this Code, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income; and
(2) may periodically pay refunds to members for fees or dues actually paid which are in excess of the losses, expenses and debts of the corporation, and such refunds shall not be deemed to be dividends or distributions of income.

(c) A public benefit corporation shall, upon dissolution, have its assets distributed for one or more purposes listed in the definition of “Public Benefit Corporation" contained in Section 4.102 of this Code, or to the federal government, or to a state, tribe or other local government, for a public purpose, or shall be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

4.105. Limitations on Private Foundations.

(a) A corporation which is a private foundation as defined in Section 509(a) of the Internal Revenue Code of 1954, as amended, (“IRC”):

(1) Shall distribute such amounts for each taxable year at such time and in such manner as to avoid subjecting the corporation to tax under Section 4942 of the IRC;
(2) Shall not engage in any act of self-dealing as defined in Section 4941(d) of the IRC;
(3) Shall not retain any excess business holdings as defined in Section 4943(c) of the IRC;
(4) Shall not make any taxable expenditure as defined in Section 4944 of the IRC;
(5) Shall not make any taxable expenditure as defined in Section 4945(d) of the Code;

(b) All references in this Section to sections of the IRC shall be to such sections of the Internal Revenue Code of 1954 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

4.106. Defense of Ultra Vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to

do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or director against the doing of any act or acts or the transfer of real or personal property by or to the corporation. If any unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) In a proceeding by the Director of Commerce, as provided in this Chapter, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

4.107. Articles of Incorporation.

(a) Articles of incorporation shall set forth:

(1) a corporate name for the corporation that satisfies the requirements of this Code;

(2) One of the following statements:

(i) This corporation is a Public Benefit Corporation.

(ii) This corporation is a Mutual Benefit Corporation.

(3) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(4) the names and addresses of the individuals who are to serve as the initial directors;

(5) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(6) the name and address of each incorporator;

(7) whether or not the corporation will have members; and

(8) provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) provisions not inconsistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(2) any provision that under this Code is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this Code.

4.108. Filing of Articles of Incorporation.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Director of Commerce. If the Director of Commerce finds that the articles of incorporation are in order he or she shall, when all the fees have been paid as in this Code described:

(1) Endorse on each original the word "Filed," and the effective date of the filing.

(2) File one original.

(3) Issue a certificate of incorporation to which the other original shall be affixed.

(b) The certificate of incorporation together with the original affixed articles of incorporation shall be returned to the incorporators or their representative.

4.109. Effect of Filing the Articles of Incorporation -- Certificate of Incorporation.

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Code, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

4.110. Organization Meeting of Directors.

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. Unless all directors waive notice, the directors calling the meeting shall give at least three days' notice of the meeting by mail to each director, which notice shall state the time and place of the meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting, if each director signs an instrument that states the action so taken.

Members

4.111. Admission of Members.

(a) A corporation is not required to have members.

(b) A corporation may admit any person as a member. The articles or bylaws shall establish criteria or procedures for admission; provided, however, that no person shall be admitted as a member without his or her consent.

(c) Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

4.112. Differences in Rights and Obligations of Members.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. Members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

4.113. Transfers.

(a) Except as set forth in or authorized by the articles or bylaws, no member of a Mutual Benefit Corporation may transfer a membership or any rights arising from membership.

(b) No member of a Public Benefit Corporation may transfer a membership or any rights arising from membership.

(c) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

4.114. Resignation.

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any previously accrued obligations the member may have to the corporation, unless the organizational documents provide otherwise.

4.115. Termination.

(a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure that is fair and reasonable under the circumstances and is carried out in good faith.

(b) A procedure is fair and reasonable when it provides for written notice to the member of the reasons for the proposed expulsion, suspension or termination, and provides a reasonable opportunity for the member to be heard by the person or persons authorized to decide the matter prior to the proposed action.

(c) A procedure that departs from any procedures set forth in the corporate bylaws for the expulsion, termination or suspension of members or membership rights is not fair and reasonable, unless special circumstances warrant such a departure.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

4.116. Purchase of Memberships.

(a) A Public Benefit Corporation may not purchase any of its memberships or any rights arising from membership.

(b) A Mutual Benefit Corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws.

(c) A Mutual Benefit Corporation shall not purchase its memberships unless after the purchase is completed:

(1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) the corporation's total assets would at least equal the sum of its total liabilities.

4.117. Annual Meeting of Members.

A corporation with members shall establish in its articles of incorporation or by-laws a date at which an annual meeting of members shall be held, if called, and if not so established, the date shall be the second business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request is delivered to the corporation by any voting member not less than 30 days before the date specified for the meeting.

4.118. Special Meetings of Members.

(a) A corporation shall hold a special meeting of members:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if at least 10 percent of all the members entitled to vote on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting, describing the purposes for which it is to be held.

(b) Special meetings of members may be held on or off of the Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.

(c) Only business within the purposes described in the notice sent to members may be conducted at a special meeting of members.

4.119. Notice of Members' Meetings.

(a) A corporation shall notify its members of the date, time and place of each annual and special meeting no fewer than 15 nor more than 60 days before the meeting. Unless this Code or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

(b) Notice of members' meetings shall be given by mail, facsimile or telephone, using the most recent address or telephone number supplied to the corporation by each member; provided, however, that if it is consistent with the corporation's articles or bylaws, notice may be given by posting and publishing notices instead of mailing, faxing or telephoning if the directors determine in good faith that notice so given is reasonably calculated to actually inform all voting members of the meeting.

(c) If annual or special members' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

4.120. Waiver of Notice.

(a) A member may waive any notice required by this Code, the articles, or bylaws before or after the date and time stated in the notice. Except as provided in subsection (b) below, the waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting, which is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

4.121. Action by Written Ballot.

Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual or special meeting of members may be taken by a vote without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

4.122. Voting Rights of Members in General.

(a) Each member shall have no more than one vote with respect to any matter he or she is entitled to vote upon according to the corporation's bylaws or articles.

(b) Cumulative voting for directors shall be allowed if provided for in the corporation's bylaws or articles.

(c) The bylaws or articles of a corporation may provide for any reasonable method to fill individual positions on its board of directors, including but not limited to: voting by all members; voting among members living in a particular community; voting among any other class of members; appointment by the Tribal Council or any other person or entity; and voting among persons who are not considered "members" under Section 4.102 of this Code.

4.123. Inspection of Corporate Records.

(a) A corporation shall keep at least the following records:

(1) minutes of all members' meetings and board of directors' meetings and actions of members or of the board of directors without a meeting;

(2) appropriate accounting records;
(3) detailed records of the source and use of any money donated to a public benefit corporation;
(4) names and addresses of all members and the class of voting rights held by each;
(5) current articles of incorporation and bylaws;
(6) resolutions adopted by the board of directors.

(b) Upon five days written notice, the Director of Commerce or his or her duly authorized representative or a member of the corporation is entitled to inspect and copy the records referred to in subsection (a) above. In the case of inspection by a member, the right is subject to the following requirements:

(1) the member's demand must be made in good faith and for a proper purpose;
(2) the member must describe with reasonable particularity his or her purpose and the records he or she desires to inspect; and
(3) the records must be directly connected with his or her purpose.

(c) the corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents; provided, however, that in the case of copies made for a member, the charge may not exceed any estimates of such costs provided to the member.

(d) A member's agent or attorney has the same inspection and copying rights as the member he or she represents.

(e) A corporation may take reasonable steps to prevent the dissemination of trade secrets, proprietary information or other commercially sensitive information to persons other than corporate members or representatives of the Director of Commerce.

4.124. Limitations on use of Membership Lists.

(a) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
(2) used for any commercial purpose; or
(3) sold to or purchased by any person.

(b) This section shall not be construed to limit the use of membership lists by the Director of Commerce or other tribal officials in the course of any official investigation of the operation of a corporation.

4.125. Duties of Board of Directors.

(a) Except as provided in subsection (b) below, the board of directors shall exercise all corporate powers and manage the affairs of the corporation.

(b) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of directors, and the directors shall be relieved to that extent from such duties and responsibilities.

4.126. Qualifications of Directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of the Reservation or a member of the corporation unless the articles of incorporation or bylaws so prescribe. A director shall be an individual who is least 18 years of age.

4.127. Terms of Directors.

(a) If the corporation has members:

(1) the terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected; and

(2) the terms of all other directors expire at the next annual members' meeting following their election, unless the articles of incorporation provide that their terms are staggered or are longer than one year in duration.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) Except as provided in the articles or bylaws:

(1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) the term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(e) Despite the expiration of a director's term he or she continues to serve until a successor is elected or appointed and qualifies or until there is a decrease in the number of directors.

4.128. Removal of Elected Directors.

(a) The members may vote to remove one or more directors with or without cause.

(b) If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him or her.

(c) A director may be removed by the members only at a meeting called for that purpose and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(d) An entire board of directors may be removed under subsections (a)-(c).

(e) The board of directors of a corporation may, without cause, remove a director who has been elected by the board by the vote of a two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws.

(f) If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

4.129. Removal of Designated or Appointed Directors.

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Appointed Directors:

(1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary;

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

4.130. Removal of Directors by Judicial Proceeding.

(a) The Tribal Court may remove a director of the corporation from office in a proceeding commenced by the corporation, or by at least 33 percent of the members or in an action brought on behalf of the Director of Commerce, if the Tribal Court finds that:

(1) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation or that the director received a loan of the corporation's money or credit; and

(2) removal is in the best interest of the corporation.

(b) If the Tribal Court removes the director it may bar the director from reelection for a period prescribed by the Tribal Court.

(c) If either the corporation's members or the Director of Commerce commences a proceeding under subsection (a), the corporation shall be made a party defendant.

4.131. Vacancy on Board.

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the members, if any, may fill the vacancy if the vacant office was held by a director elected by a specific voting class, only members of the class are entitled to vote to fill the vacancy if it is filled by the members;

(2) the board of directors may fill the vacancy; or

(3) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date, by reason of a resignation or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

4.132. Meetings.

(a) The board of directors may hold regular or special meetings on or off the Reservation.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of any means of communication by which the participating directors may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

4.133. Action without Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Code to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting, vote and may be described as such in any document.

4.134. Notice of Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws or the provisions of this Code.

4.135. Waiver of Notice.

(a) A director may waive any notice required by this Code, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless that director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

4.136. Quorum and Voting.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of a majority of the number of directors.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no less than one-third of the number of directors.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(1) he or she objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting business at the meeting;

(2) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

4.137. General Standards for Directors.

(a) A director shall discharge his or her duties as a director, including duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, professionals or other experts the director deems to be reliable and competent in the matters presented; or

(3) a committee of the board of directors of which he or she is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property, and notwithstanding that the corporation may be a trustee with respect to the property.

(e) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

4.138. Director Conflict of Interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (b) or (c).

(b) A transaction in which a director of a Public Benefit Corporation has a conflict of interest may be approved:

(1) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(2) before or after it is consummated, by obtaining approval of the:

(i) Director of Commerce; or

(ii) Tribal Court in an action of which the Director of Commerce is given notice.

(c) A transaction in which a director of a Mutual Benefit Corporation has a conflict of interest may be approved if the following apply:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction, or

(2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(e) For purposes of subsections (b) and (c), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (b) and (c) if the transaction is otherwise authorized, approved, or ratified as provided in subsections (b) or (c).

(f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (d)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this Code. For the purpose of taking action under this section, a quorum constitutes a majority of the voting members entitled to be counted in a vote on the transaction, whether or not present.

(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

4.139. Liability for Unlawful Payments.

(a) Unless he or she complies with the applicable standards of conduct described in Section 4.137, a director who votes for or assents to any payment of money by the corporation to a member, officer or director made in violation of Section 4.104 of this Statute or the articles of incorporation is personally liable to the corporation for the amount of the payment that exceeds what could have been distributed without violating this Code or the articles of incorporation.

(b) A director held liable for an unlawful payment under subsection (a) is entitled to contribution:

(1) from every other director who voted for or assented to the payment without complying with the applicable standards of conduct described in section 4.137; and

(2) from each member, officer or director who received an unlawful payment, for the amount of the unlawful payment, whether of not he or she accepted the payment knowing it was made in violation of this Code or the articles of incorporation.

4.140. Officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

(e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

4.141. Standards of Conduct for Officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) legal counsel, public accountants, professionals or other experts the officer deems to be reliable and competent in the matters presented.

(c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

4.142. Resignation and Removal of Officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

4.143. Indemnification of Corporate Agents.

(a) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partner, joint venture, trust or other enterprise, against expenses including attorney fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.

(c) No person shall be indemnified under this section in respect of any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

4.144. Mandatory Indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

4.145. Advance for Expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to a proceeding in advance of final disposition of the proceeding if the following apply:

(1) the director or officer furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in section 4.143;

(2) the director or officer furnishes the corporation a written undertaking, executed personally or by a surety or guarantor, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Section.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director or officer but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 4.147.

4.146. Court-Ordered Indemnification.

Unless limited by a corporation's articles of incorporation, a director or officer of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding, to the Tribal Court or to another court of competent jurisdiction. On receipt of an application the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines:

(a) the director or officer is entitled to mandatory indemnification under Section 4.144, in which case the court shall also order the corporation to pay the director's or officer's reasonable expenses incurred to obtain court-ordered indemnification; or

(b) the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 4.143 or was adjudged liable as described in Section 4.143(b) or (c), but if the director or officer was adjudged so liable indemnification is limited to reasonable expenses incurred.

4.147. Determination and Authorization of Indemnification.

(a) A corporation may not indemnify a director or officer under Section 4.143 unless authorized in the specific case after a determination has been made that indemnification is permissible in the circumstances because the director or officer has met the standard of conduct set forth in Section 4.143.

(b) The determination shall be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time party to the proceeding;

(2) if a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(ii) if a quorum of the board cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board (in which selection directors who are parties may participate);

(4) by the members of a Mutual Benefit Corporation, but directors who are at the time parties to the proceedings may not vote on the determination.

(c) Authorization of identification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if special legal counsel makes the determination, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

(d) A director or officer of a Public Benefit Corporation may not be indemnified until 20 days after written notice is given to the Director of Commerce of the proposed indemnification.

4.148. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Code.

4.149. Amendments to Bylaws and Articles of Corporations without Members.

If a corporation has no members, its board of directors may adopt one or more amendments to the corporation's bylaws and articles, subject to any approvals required by the articles or bylaws. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with Section 4.134. The notice must also state that a purpose of the meeting is to consider a proposed amendment to the articles or bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. In addition to any requirements in the bylaws or articles concerning voting on proposed amendments, the amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

4.150. Amendments to Bylaws and Articles of Corporations with Members.

(a) If the corporation has members, then:

(1) Unless this code, the articles, bylaws or the board of directors (acting pursuant to subsection (b)(2)) require a greater vote or voting by class, an amendment to a corporation's articles or bylaws to be adopted must be approved:

(i) by the board if the corporation is a Public Benefit Corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(ii) by the members by two-thirds of the votes cast or by a majority of the voting power, whichever is less; and

(iii) in writing by any person or persons whose approval is required by a provision of the articles or bylaws.

(b) If the board initiates an amendment to the articles or bylaws, or board approval is required by subsection (a) to adopt an amendment, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(c) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with Section 4.119. The notice must state that a purpose of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(d) If the board seeks to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

4.151. Approval by Third Persons.

The articles or bylaws may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article or bylaw provision may only be amended with the approval in writing of such person or persons.

4.152. Articles of Amendment.

(a) A corporation amending its articles shall prepare articles of amendment, which shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 4.140 of this Code for authenticating corporate records, and shall set forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) the date of each amendment's adoption;

(4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors;

(5) if approval by members was required, the number of memberships out standing and the total number of votes cast for and against the amendment.

(6) if approval of the amendment by some person or persons other than the members or the board is required pursuant to section 4.151, a statement that the approval was obtained.

(b) The articles of amendment shall be sent to the Director of Commerce with the fees as provided in this Code. If the Director of Commerce approves the amendments, he or she shall issue a certificate of amendment.

4.153. Dissolution of Corporations without Members.

(a) The board of directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Director of Commerce articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with Section 4.134. The notice must also state that a purpose of the meeting is to consider dissolution of the corporation.

(c) Dissolution shall be approved by a vote of a majority of the directors in office at the time the transaction is approved.

(d) The directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

4.154. Voting on Dissolution by Directors and Members.

(a) Unless this Code, the articles, bylaws or the board of directors or members (acting pursuant to subsection (b)) require a greater vote, dissolution is authorized if it is approved:

(1) by the board;

(2) by the members, if any, by two-thirds of the votes cast or a majority of the members, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by Section 4.151 for an amendment to the articles or bylaws.

(b) The board may condition its submission of the proposed dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 4.119. The notice must also state that a purpose of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(d) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(e) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

4.155. Distributions by Public Benefit Corporations.

(a) A Public Benefit Corporation shall give the Director of Commerce written notice that it intends to dissolve 10 days before the time it delivers articles of dissolution to the Director of Commerce. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a Public Benefit Corporation as part of the dissolution process until twenty days after it has given written notice as required by subsection (a) to the Director of Commerce or until the Director of Commerce has consented in writing to, or indicated in writing that it will take no action with respect to, the transfer or conveyance, whichever is earlier.

(c) Prior to the expiration of the 20-day period described in subsection (b), the Director of Commerce may bring an action in Tribal Court to challenge the planned distribution of assets, and the Tribal Court may enjoin any distribution pending the outcome of the action.

(d) When all or substantially all of the assets of a Public Benefit Corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Director of Commerce a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

4.156. Articles of Dissolution.

(a) Subject to any waiting period prescribed by Section 4.155, at any time after dissolution is authorized, the corporation may dissolve by delivering to the Director of Commerce articles of dissolution setting forth:

(1) the name of the corporation;

(2) the date dissolution was authorized;

(3) a statement that dissolution was approved by a sufficient vote of the board;

(4) if approval of members was not required, a statement to that effect;

(5) if approval by members was required, the number of memberships outstanding and the total number of votes cast for and against dissolution.

(6) if approval of dissolution by some person or persons other than the members, the board or the incorporators is required pursuant to Section 4.154(a)(3), a statement that the approval was obtained; and

(7) the effective date of the articles of dissolution.

(b) After its articles of dissolution have been accepted for filing by the Director of Commerce, a corporation is dissolved upon the effective date stated in its articles of dissolution.

4.157. Effect of Dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) preserving and protecting its assets and minimizing its liabilities;

(2) discharging or making provision for discharging its liabilities and obligations;

(3) disposing of its properties that will not be distributed in kind;

(4) returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(5) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(6) if the corporation is a Public Benefit Corporation and no provision has been made in its articles or bylaws for distribution of assets upon dissolution, then subject to any contractual or legal requirement, its assets must be transferred in accordance with section 4.104(c);

(7) if the corporation is a Mutual Benefit Corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, then assets shall be transferred to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and

(8) doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) transfer title to the corporation's property;

(2) subject its directors or officers to standards of conduct different from those prescribed in sections 4.137 and 4.141;

(3) change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

(4) prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) abate or suspend a proceeding pending by or against the corporation in its corporate name; or

(6) terminate the authority of the registered agent of the corporation.

4.158. Known Claims against a Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution within 90 days of its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim, and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;

(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 180 days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

4.159. Unknown Claims against Dissolved Corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claim against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located and in a newspaper of general circulation on the Reservation;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under Section 4.158;

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributes.

4.160. Grounds for Administrative Dissolution.

The Director of Commerce may proceed under Section 4.161 to dissolve a corporation administratively if:

(a) the corporation's period of duration stated in its articles of incorporation expires;

(b) responses to the requests under the Tribal Comprehensive Business Codes of this Chapter show that the corporation has been inactive for a period of at least one year, and there are no plans to reactive the corporation in the future; or

(c) request under the Tribal Comprehensive Business Codes have not been answered by any of the persons to whom they were directed for a period of 120 days after becoming due; provided,

however, that 30 days before commencing a proceeding under this subsection, the Director of Commerce shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

4.161. Procedure for and Effect of Administrative Dissolution.

(a) If the Director of Commerce determines that one or more grounds exist under Section 4.160 for dissolving a corporation, he or she shall serve the corporation with written notice of his or her determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Director of Commerce that each ground determined by the Director of Commerce does not exist within 60 days after service of the notice is perfected, the Director of Commerce shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Commerce shall file the original of the certificate and serve a copy on the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 4.157 and notify claimants under Sections 4.158 and 4.159.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

4.162. Grounds for Judicial Dissolution.

(a) The Tribal Court may dissolve a corporation:

(1) in a proceeding brought on behalf of the Director of Commerce or other agency or official of the Tribe if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse, the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes.

(2) in a proceeding by members holding 25 per cent of the voting power, or by a director, or by any person specified in the articles, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked and have failed for a period that includes at least two consecutive annual meeting dates to elect successors to directors whose terms have, or otherwise would have, expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a Public Benefit Corporation and is no longer able to carry out its purposes;

(3) in a proceeding by a creditor if it is established that;

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the court shall consider whether:

(1) there are reasonable alternatives to dissolution;

(2) dissolution is in the public interest, if the corporation is a Public Benefit Corporation;

(3) dissolution is the best way of protecting the interests of members, if the corporation is a Mutual Benefit Corporation.

4.163. Procedure for Judicial Dissolution.

(a) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(b) The Tribal Court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(c) A person who brings an involuntary dissolution proceeding for a public benefit corporation shall forthwith give written notice of the proceeding to the Director of Commerce, who may intervene.

4.164. Receivership or Custodianship.

(a) The Tribal Court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The Tribal Court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic, Tribal or foreign business or nonprofit corporation as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The Tribal Court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver

(i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the Tribal Court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and

(ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) During a receivership the Tribal Court may re-designate the receiver a custodian, and during a custodianship may re-designate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) From time to time during the receivership or custodianship the Tribal Court may order compensation paid and reimbursements made to the receiver or custodian and to his or her

counsel and accountant from the assets of the corporation or proceeds from the sale of the assets.

4.165. Decree of Dissolution.

(a) If after a hearing the Tribal Court determines that one or more grounds for judicial dissolution described in section 4.162 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the Tribal Court shall deliver a certified copy of the decree to the Director of Commerce, who shall file it.

(b) After entering the decree of dissolution, the Tribal Court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 4.157 and the notification of claimants in accordance with Sections 4.158 and 4.159.

4.166. Deposit with Depart of Commerce.

Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or shareholder of the corporation who cannot be found, is a minor, or who is not competent to receive them shall be reduced to cash and deposited into an escrow account for safekeeping established by the Director of Commerce. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Director of Commerce shall pay to the individual the amount due.

(Source: WOS 2003-07, August 3, 2003, Part Four)

12.105 PART FIVE: SAVINGS CLAUSE

In the event that any phrase, part, provision, paragraph, subsection or section of this Statute found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, part, provision, paragraph, subsection or section 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.

(Source: WOS 2003-07, August 3, 2003, Part Five)