



**The Grand Traverse Band of
Ottawa and Chippewa Indians**

Legal Department

2605 N. West Bay Shore Drive • Peshawbestown, MI 49682 • (231) 534-7601 • FAX 231-534-7600

MANDATORY 30-DAY POSTING

MEMORANDUM

TO: Tribal Membership
FROM: GTB Legal Department
RE: Amendments to Title 6, Chapters 1 and 2
DATE: March 18, 2021

Please post the attached proposed amendments to the above referenced ordinance that was approved for posting by Tribal Council at a Tribal Council Regular Session on March 18, 2021. Due to Covid-19 and the GTB Building closures, this posting is being made available on the GTB website at: http://www.gtbindians.org/legal_department.asp under the 30-Day Notice link so it can be reviewed by tribal membership for 30 days. This is an opportunity for tribal members to provide comments, if any, about this proposed ordinance. Your comments will be provided to Tribal Council prior to the adoption of this ordinance. This posting will end on April 18, 2021 and can be removed at that time.

Any comments regarding the above referenced should be directed to the GTB Legal Department either by writing to the GTB Legal Department, 2605 N.W. Bayshore Dr., Peshawbestown, MI 49682, or by telephone (231) 534-7601, or by e-mail, to Mary.Kelley@gtbindians.com.

Posting Sites:

http://www.gtbindians.org/legal_department.asp

Attachment



The Grand Traverse Band of Ottawa and Chippewa Indians

2605 N. West Bay Shore Drive • Peshawbestown, MI 49682-9275 • (231) 534-7750

Certification of Tribal Council Action Regular Session of March 17, 2021

I hereby certify as the Tribal Council Secretary that the foregoing Motion was Approved and Adopted at the Regular Session of the Grand Traverse Band of Ottawa & Chippewa Indians Tribal Council

30-day Posting of Amendments to Title 6, Chapters 1 and 2

Motion made by Tribal Council Treasurer Swallows and Supported by Tribal Council Member Kewaygoshkum to approve the 30-day posting for the amendments to Title 6, Chapters 1 and 2.

6-FOR; 0-AGAINST; 0-ABSENT; 0-ABSTAINING

Motion Carries

Theresa M. Pelcher, GTB Tribal Council Secretary



**The Grand Traverse Band of
Ottawa and Chippewa Indians**

2605 N. West Bay Shore Drive • Peshawbestown, MI 49682 • (231) 534-7750

TRIBAL COUNCIL RESOLUTION

Resolution #21-39.3331

To amend Title Six, Chapter One “Sovereign Immunity Waiver” for the substitution of the term “Gaming Commission” for the term “Section 17 Economic Development Corporation”

WHEREAS: The Grand Traverse Band of Ottawa and Chippewa Indians (GTB) was restored to its former status as an Indian tribe having a government-to-government relationship with the United States by action of the Department of the Interior effective May 27, 1980, *see* 45 Fed. Reg. 18321-18322 (March 25, 1980); and

WHEREAS: GTB is organized under a Tribal Constitution approved by the Secretary of the Interior on March 29, 1988; and

WHEREAS: GTB has a full Tribal Council currently consisting of David M. Arroyo, Tribal Chairman; Mark L. Wilson, Vice Chair; Theresa M. Pelcher, Secretary; Donna M. Swallows, Treasurer; Robert Kewaygoshkum, Councilor; Tina A. Frankenberger, Councilor; and Brian S. Napont, Councilor; and

WHEREAS: The Tribal Council, in its legislative capacity, has enacted a tribal law entitled “Sovereign Immunity Waiver” by Tribal Resolution Number #94-12.176 (October 18, 1994); and

WHEREAS: The principal purpose of the “Sovereign Immunity Waiver” enactment in 1994 was to create a limited waiver of sovereign immunity for an independent GTB Tribal Court cause of action in tort, under the terms of the Chapter, for patrons of the “Gaming Enterprise Site”; and

WHEREAS: In 1994, the “Gaming Enterprise Site” was then operated by the “Gaming Commission”; and

WHEREAS: Subsequent Tribal Council then enacted 18 GTBC Chapter 500, Sections 501-503, (Gaming Code adopted by Tribal Council on October 1, 1993, as amended by Tribal Council on April 22, 1997, and as amended by Tribal Act #98-16.635, (August 31, 1998), which delegated the operation of the Gaming Enterprise Site to the federally chartered Section 17 Indian Reorganization Act Grand Traverse Band Economic Development Corporation; and

WHEREAS: Subsequent to the legislative enactment and amendments of the “18 GTBC Chapter 500”, conforming amendments were not enacted in Title 6 Chapter One Sovereign Immunity”.

NOW THEREFORE BE IT RESOLVED: that the Tribal Council, by this Resolution, enacts conforming amendments for all references to “Gaming Commission” in Title 6 Chapters 1 and 2

by replacing “Gaming Commission” with “Grand Traverse Band Economic Development Corporation” as delineated in the attached amended text, which for purposes of reading a Strike Through lines means the text taken out and the highlighted text means the text inserted.

BE IT FURTHER RESOLVED that, incorporated as part of this Resolution, the attached amended ordinance shall be posted for tribal membership review and comment for 30 days, pursuant to the Legislative Procedures Act, 1 GTBC § 106

BE IT FURTHER RESOLVED that, in accordance with 1 GTBC § 108(c), the effective date of this new section is thirty (30) days after tribal membership review and comments; and at that time, official approval of the resolution will take place.

APPROVED:

ADOPTED:

David M. Arroyo, Tribal Chairman

Theresa M. Pelcher, Secretary

CERTIFICATION

As Secretary of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians, I hereby certify that the above Resolution was approved and adopted at a Regular Session of the Tribal Council held in Peshawbestown, Michigan, on [after 30-day posting is completed], 2021, by a vote of:

___ FOR, ___ AGAINST, ___ ABSTAINING, and ___ ABSENT.

ATTEST:

Theresa M. Pelcher, Secretary

**TITLE 6
SOVEREIGN IMMUNITY**

Chapter 1 - Sovereign Immunity Waiver

§ 101 - Short Title

This ordinance shall be known as the Grand Traverse Band of Ottawa and Chippewa Indians Sovereign Immunity Waiver Ordinance.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994; amended by Tribal Act #21-39.3331 on [enter date of adoption].

§ 102 - Definitions

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

- (a) “Grand Traverse Band of Ottawa and Chippewa Indians Gaming Enterprise” means the Grand Traverse Band ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation created by the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Resolution ~~#98-16.635, (August 31, 1998)~~94-12-155 including its officers, employees and directors.
- (b) “Gaming Enterprise site” means EDC gaming sites to include by specific entity or “doing business as” and locations of Turtle Creek Casino, Leelanau Sands Casino, and the The Lodge motel, Eagle Town Market and other convenience stores~~that area of the Grand Traverse Band of Ottawa and Chippewa Indians Reservation which has have~~ been opened to the general public for purposes of gaming or which is used by employees of the Gaming Enterprise during the course of their employment provided that such area is covered by the liability insurance of the Gaming Enterprise.
- (c) “Grand Traverse Band of Ottawa and Chippewa Indians” means the federally-recognized Indian tribe of that name.
- (d) “Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council” means the governing body of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (e) “Claim” means a petition for an award under this ordinance. A claim may be filed with respect to any injury as defined in this ordinance and which is expressly covered by the liability insurance of the Gaming Enterprise without regard to any deductible amount contained in the insurance policy.
- (f) “Person” means any individual, firm, partnership, corporation, or association.

- (g) “Dangerous Condition” means a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent acts or omissions of the Gaming Enterprise in constructing or maintaining such facility.
- (1) For the purpose of this subsection, a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered.
 - (2) A dangerous condition shall not exist solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of natural physical condition.
 - (3) Nothing in this section shall preclude an accumulation of water, snow or ice from being found to constitute a dangerous condition when the Gaming Enterprise fails to use existing means available to it for the removal of such accumulation and when the Gaming Enterprise had notice of such accumulation and reasonable time to act.
- (h) “Employee” means a part- or full-time employee or an agent or contractor of the Gaming Enterprise, when acting during the course and within the scope of their employment. This term includes officers and directors of the Gaming Enterprise when they are acting to fulfill their duties to the Gaming Enterprise. This does not include agents or representatives of the United States or of the State of Michigan or any of their political subdivisions.
- (i) “Injury” means death, harm to a person, or damage to or loss of property which, if inflicted by a person under Michigan state law or Tribal law, would constitute a tort and which is expressly covered by the liability insurance of the Gaming Enterprise without regard to any deductible amount contained in the insurance policy.
- (j) “Award” means money damages which the Tribal court determines are payable to compensate for any injury recognized under this ordinance.
- (k) “Actual damages” means the ascertainable loss of money or property sustained as a result of an injury, provided that such injury is covered by the liability insurance of the Gaming Enterprise without regard to any deductible amount contained in the insurance policy.
- (l) “Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court” means the judicial branch of the Tribe including, but not limited to, the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation Division and such other divisions as the Tribal Council may establish by resolution.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 103 - Effective Date of Ordinance

This ordinance shall become effective immediately upon approval by the Tribal Council.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 104 - Limited Waiver of Sovereign Immunity

- (a) The sovereign immunity of the Tribe shall continue except to the extent that it is expressly waived by this ordinance. Members of the Tribal Council remain immune from suit for actions taken during the course and within the scope of their duties as members of the Tribal Council.
- (b) The ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation may be sued solely in the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court. The Tribe has not waived the immunity of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation from suit in state or federal court.
- (c) The sovereign immunity of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation is waived in the following instances:
 - (1) Injuries proximately caused by the negligent acts or omissions of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation;
 - (2) Injuries proximately caused by the condition of any property of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation provided the claimant establishes that the property was in a dangerous condition;
 - (3) Injuries proximately caused by the negligent acts or omissions of Tribal security officers arising out of the performance of their duties during the course and within the scope of their employment.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 105 - Limitation on Awards

- (a) No rule of law imposing absolute or strict liability shall be applied in any claim for injuries under this ordinance.
- (b) No award or other judgment imposing punitive or exemplary damages shall be applied in any claim for injuries under this ordinance.
- (c) No award for loss of consortium shall be applied in any claim for injuries under this ordinance.
- (d) No award for pain and suffering or mental anguish shall be applied except where such award does not exceed fifty percent (50%) of the actual damages sustained and provided

that any such award is expressly covered by the liability insurance of the Gaming Enterprise without regard to any deductible amount contained in the insurance policy.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 106 - Volunteers

Volunteers duly authorized by the Tribe or ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation, in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities from suit as the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 107 - Employee Actions Outside the Scope of Employment

- (a) This ordinance does not immunize employees of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation from individual liability for the full measure of the recovery applicable to a claimant if it is established that their conduct exceeded the scope of their employment or authority.
- (b) Claims for individual liability arising out of conduct which is found to exceed the scope of employment and which arise on the Gaming Enterprise site shall be heard only in the Tribal court.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 108 - Liability for Expenses

If the Tribal court determines that the injuries claimed arose from an act or omission of an employee of the Gaming Enterprise which was willful and wanton or otherwise outside the scope of employment or authority of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation, then the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation may request and the court may order the individual defendant named in the claim to reimburse the Gaming Enterprise for such costs and attorney fees which may have been incurred in the defense of such employee.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 109 - Extent of Liability

- (a) In any claim concerning a single occurrence, the maximum amount of any award under this ordinance, including damages, court costs, interest, and any other costs shall be:

- (1) For any injury to one person, an amount which is in accordance with the terms of the liability insurance policy of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation applicable to such claim.
- (2) For any injury to two or more persons, an amount in accordance with the terms of the liability insurance policy of the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation applicable to such claim.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 110 - Notice Requirement

- (a) Claims brought under this ordinance must be preceded by a written notice filed with the Tribal court by the claimant or the claimant's representative within one hundred and eighty (180) days after the claim accrues.
- (b) The notice shall contain the following:
 - (1) The name and address of the claimant and the name and address of the claimant's attorney, if any;
 - (2) A concise statement of the factual basis of the claim including the date, time, place, and circumstances of the act, omission, or condition complained of;
 - (3) The name of any Gaming Enterprise employee involved, if known;
 - (4) A concise statement of the nature and the extent of the injury claimed to have been suffered;
 - (5) A statement of the amount of monetary damages that is being requested; and
 - (6) When the claim is one for death by negligent act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin of the deceased.
- (c) All claims must be filed along with a proof of compliance with this subsection.
- (d) The Tribal court clerk shall, within five (5) days of the filing, refer all claims for less than five thousand dollars (\$5,000.00) in actual damages to the Grand Traverse Band ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation for resolution on an informal basis.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 111 - Limitation on Presentation of Claim

- (a) All claims shall be filed within one hundred and eighty (180) days of the date on which they accrued.
- (b) Claims brought under this ordinance shall be deemed to accrue on the date when the injury is sustained.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 112 - Application of State Law

Any claim brought under this ordinance shall be determined by the Tribal Court in accordance with the Tribal law and the principles of law applicable to similar claims arising under the laws of the State of Michigan.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 113 - Attachment Prohibition

Neither execution nor attachment shall issue against the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation, Gaming Enterprise, or the Tribe in any claim for injury or proceedings initiated under this ordinance.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 114 - Severability

- (a) If any part of this ordinance is invalidated by the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court, all valid parts that are severable from the invalid part remain in effect.
- (b) If a part of this ordinance is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 115 - Attorney Fees and Expenses

- (a) The prevailing party in a tort action shall be entitled to recover attorney fees and expenses from the losing party.
- (b) The prevailing party's attorney fees and expenses shall then be remitted to the Tribal government to fund the operations and costs of the Tribal Court in accord with the rules and regulations applicable to the Tribal budgetary process.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

§ 116 - Miscellaneous

- (a) In construing this ordinance, the present tense includes the past and future tenses, and the future tense includes the present tense.
- (b) When reference is made to any portion of this ordinance, the reference shall apply to all amendments made hereafter.
- (c) All Tribal ordinances or other laws inconsistent with this ordinance are hereby repealed. To the extent that this ordinance provides other than any other Tribal law governing tort claims against the ~~Gaming Commission~~Grand Traverse Band Economic Development Corporation, this ordinance shall govern.
- (d) Section headings shall be used only for reference to format and not in construing this ordinance.

History: Tribal Act #94-12.176, enacted by Tribal Council on October 18, 1994.

**Chapter 2 - Waiver of Sovereign Immunity and Jurisdiction
in Commercial Transactions****§ 201 - Purpose and Authority**

The purpose of the Chapter is to provide for the waiver of sovereign immunity in those Economic Development Corporation commercial transactions for which such waiver is necessary and beneficial to the Tribe. This chapter is enacted in accordance with the authority contained in the GTB Constitution in Article IV, Section (1)(c).

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 202 - Findings and Declarations

The Tribal Council hereby finds and declares that:

- (a) The Tribe and Tribal members benefit from commercial transactions conducted within the mainstream of the local and national economy, and the Tribe has become increasingly successful and sophisticated in such commercial transactions.
- (b) Tribal sovereign immunity, an aspect of Tribal sovereignty, is an important protection for Tribal assets and resources, but it can at times be an impediment to commercial transactions. Many potential business partners of the Tribe are reluctant to enter into contracts unless Tribal sovereign immunity is waived, thereby allowing recourse in the event of tribal default or breach of contract. The Tribe finds it necessary and desirable to

waive its sovereign immunity from time to time in a prudent and limited manner in order to consummate business transactions of benefit to the Tribe and its members.

- (c) Federal courts, spurred by recent decisions of the United States Supreme Court, have been enforcing a requirement that a party exhaust its Tribal Court remedies for actions against the Tribe or Tribal members arising on the reservation before availing themselves of federal or state court. As with Tribal sovereign immunity, however, many potential business partners are reluctant to enter commercial transactions with the Tribe if they believe their remedy upon breach or default is limited to Tribal Court. Because of this reluctance, the Tribe finds it necessary and desirable from time to time to waive Tribal Court jurisdiction over particular commercial transaction.
- (d) The Tribe has the authority to waive its sovereign immunity, provided it does so knowingly in express terms. Likewise, the Tribe has the constitutional authority to define the jurisdiction of the Tribal Court, and it can waive Tribal Court jurisdiction in a way that is contractually binding in the future if it does so in clear and unmistakable terms. The Tribe possesses the necessary experience, expertise and sophistication to determine when such waivers are in the best interests of the Tribe.
- (e) The Tribe has chartered and will continue to charter subordinate Tribal entities, such as Economic Development Corporation which functions autonomously for the most part within their spheres of authority. This Tribal entity is of economic benefit to the Tribe and will often have a need of authority to waive their own immunity to facilitate commercial transactions.
- (f) Any waiver of Tribal Court jurisdiction or sovereign immunity made in strict accordance with this Chapter is hereby declared to be in the best interests of the Tribe and its members. Such waiver does not infringe upon Tribal sovereignty, but instead is an affirmative expression and exercise of such sovereignty.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 203 - Definitions

As used in this Chapter:

- (a) “Tribal Council” means the Tribal Council of the Grand Traverse Band, the Tribe’s governing body duly elected pursuant to the Tribal Constitution.
- (b) “Charter” means the organic document of a Tribal entity and includes the Economic Development Corporation Charter, 15 GTB § 202, and any approved articles of incorporation.
- (c) “Tribal Entity” means any entity created and owned by the Tribe for economic or governmental purposes and any entity that is controlled by the Tribal Council. For purposes of this Chapter, an entity shall be deemed to be controlled by the Tribal Council if a majority of the persons serving on the body that governs the entity are chosen by the

Tribal Council or are required to be members of the Tribal Council. Entities governed by the Chapter include, but are not limited to, the Economic Development Corporation, and other organizations entitled or denominated “authority,” “enterprise,” “corporation,” “agency,” “commission,” or terms of like import; provided, however, that committees of the Tribal Council may not be deemed Tribal entities for purposes of the Chapter.

- (d) “Tribal Court” means the Grand Traverse Band Tribal Court established by GTB Const. Art. V.
- (e) “Tribe” means the Grand Traverse Band of Ottawa and Chippewa Indians.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 204 - Sovereign Immunity of Tribe

The sovereign immunity of the Tribe, including sovereign immunity from suit in any state, federal, or tribal court, is hereby expressly reaffirmed unless such immunity is waived in accordance with 15 GTBC § 216. A “sue and be sued” clause or other authorization of a Tribal entity to waive its own sovereign immunity may not constitute authorization for waiver of the immunity of the Tribe itself. Except for a charter provision expressly authorizing a Tribal entity to waive the sovereign immunity of the Tribe itself, such as that contained in the Economic Development Corporation Charter, 15 GTBC § 217, nothing in a Tribal entity charter may be deemed or construed to be a waiver of the sovereign immunity of the Tribe of the consent of the Tribe to suit in any forum.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 205 - Waiver of Sovereign Immunity of Tribe

- (a) The sovereign immunity of the Tribe may be waived:
 - (1) By resolution of the Tribal Council expressly waiving the sovereign immunity of the Tribe and consenting to suit against the Tribe in any forum designated in the resolution; provided, that such waiver may not be general but must be specific and limited as to duration, grantee, transaction, property or funds of the Tribe subject to the waiver, court having jurisdiction and applicable law. Such waiver must be strictly construed and may be effective only to the extent expressly provided and must be subject to any conditions or limitations set forth in the resolution; or
 - (2) By a Tribal entity exercising authority expressly delegated to such entity in the charter or specially by resolution of the Tribal Council; provided, that such waiver must be made in strict conformity with the provisions of the charter or resolution governing such delegation.

- (b) No express waiver of sovereign immunity by resolution may be deemed a consent to the levy of any judgment, lien or attachment upon property of the Tribe other than the property specifically pledged, assigned or identified in the resolution.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 206 - Sovereign Immunity of Tribal Entity

A Tribal entity is endowed by federal law and the provisions of this Chapter with all the privileges and immunities of the Tribe, except as specifically limited in the charter of the Tribal entity. This includes sovereign immunity from suit in any state, federal, or tribal court.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 207 - Waiver of Sovereign Immunity of Tribal Entity

- (a) The sovereign immunity of a Tribal entity may be waived:
 - (1) By a “sue and be sued” clause or other express waiver in the charter of the Tribal entity; or
 - (2) By express resolution of the governing body of the Tribal entity.
- (b) Waivers of sovereign immunity by resolution may be granted only when necessary to secure a substantial advantage or benefit to the Tribal entity of the Tribe. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property or funds of the Tribal entity subject to the waiver, court having jurisdiction and applicable law.
- (c) Neither a “sue or be sued” clause nor an express waiver of sovereign immunity by resolution of the Tribal entity may be deemed a consent to the levy of any judgment, lien or attachment upon the property of the Tribal entity other than the property specifically pledged, assigned or identified in the resolution, or of any property of the Tribe.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 208 - Waiver of Sovereign Immunity for Proprietary Contracts

- (a) Notwithstanding any other provisions of the Chapter, 15 GTBC § 218, the Tribe hereby waives its sovereign immunity, as well as the sovereign immunity of the Grand Traverse Band Economic Corporation, for any contract claim brought in accordance with this section, provided:
 - (1) The claim arises from an express, written contract signed by all parties to the contract;

- (2) The claim is brought by a party to the contract or a party expressly made a third-party beneficiary under the terms of the contract;
 - (3) The contract was entered into by the Grand Traverse Band Economic Development Corporation or a Tribal Business Enterprise, as defined in 15 GTBC Chapter 2, Part 1, subordinate to the Grand Traverse Band Economic Development Corporation; and
 - (4) The contract was entered into in the performance of a proprietary function, which means any activity conducted primarily for the purpose of producing a pecuniary profit for the Tribe, the Grand Traverse Band Economic Development Corporation, or a Tribal Business Enterprise excluding, however, any activity normally supported by a government unit by taxes or fees.
- (b) Notwithstanding 15 GTBC § 202, the Tribe may not be subjected to suit under this section for:
- (1) Any claim sounding in tort, as that term is defined in 6 GTBC § 115(a).
 - (2) Any claim arising from or based upon employment.
 - (3) Any claim founded upon a provision of:
 - (A) A constitution, statute, or regulation of the United States or any State;
 - (B) A code or ordinance of the Tribe or of any local unit of government; or
 - (C) The Constitution and Bylaws of the Tribe.
 - (4) Any claim for exemplary, punitive, or consequential damages.
 - (5) Any suit based upon a contract that contains provisions concerning sovereign immunity and consent to suit. For any such contract, the contractual provisions relating to sovereign immunity supercede the application of this section.
- (c) The waiver extends solely to funds contained in the Grand Traverse Band Economic Development Corporation accounts, as defined in 15 GTBC § 266.
- (d) The waiver of sovereign immunity contained in this section does not apply to any claim unless notice of the claim has been presented to the Tribe in writing within 180 days after such claim accrues, or within 90 days after the claim has been discovered or should have been discovered in the exercise of reasonable diligence, whichever is later. Notice must be served personally, by certified mail, return receipt requested, or by any other courier or delivery service for which a return receipt is obtained, upon the Tribal Council Secretary, Grand Traverse Band of Ottawa and Chippewa Indians, 2605 N. West Bayshore Drive, Peshawbestown, Michigan 49682. The notice must identify the contract upon which the

complaint is based, the nature of the claim, and the relief requested. Service of a suit based upon the claim satisfies the notice requirement.

- (e) The Tribe and the Grand Traverse Band Economic Development Corporation consent to suit in any court of competence jurisdiction for suits based upon contract claims arising under this section; provided, that this consent does not preclude objections to venue, *forum non conveniens*, or subject matter jurisdiction.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 209 - Waiver of Tribal Court Jurisdiction

- (a) The Tribal Council may waive by resolution the jurisdiction of the Tribal Court over any claim or cause of action that arises out of a commercial transaction involving the Tribe, a Tribal entity, or a Tribal member, if all of the following conditions are met:
- (1) The commercial transaction is specifically identified in the resolution; and
 - (2) The resolution contains factual findings supporting the conclusions that:
 - (A) The waiver is in the best interests of the Tribe, the Tribal entity or the Tribal member; and
 - (B) The transaction could not be consummated without such waiver.
- (b) Any waiver of Tribal Court jurisdiction made in accordance with this section must be presumed to constitute a waiver of Tribal Court jurisdiction in clear and unmistakable terms and may not constitute an infringement upon Tribal sovereignty.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 210 - Vesting of Contractual Rights

Any waiver of sovereign immunity or of Tribal Court jurisdiction by resolution as provided in this Chapter may be incorporated in the contract documents governing the transaction involved. When so incorporated, it is the intent and purpose of the Tribe that there is created a vested contractual right to the waiver that cannot be impaired or abrogated by the later repeal or amendment of this Chapter or of the resolution creating the right. The repeal or amendment of this Chapter or of any resolution containing a waiver of sovereign immunity or Tribal Court jurisdiction adopted in conformity with this Chapter, or any other Tribal action inconsistent with the waiver may not repeal, modify, abrogate or impair any provision or a contract containing a waiver of sovereign immunity of Tribal Court jurisdiction incorporated in such contract pursuant to this section.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

§ 211 - Applicability and Effective Date

This Chapter shall take effect immediately upon its enactment by resolution of the Tribal Council. It shall have prospective application only and may not apply to or limit any waiver made by the Tribe or a Tribal entity acting within the scope of its authority prior to the effective date of this chapter.

History: Adopted at a regular session of the Economic Development Corporation July 15, 2003, Resolution #03-021. Adopted by Tribal Act #03-21.1273 enacted by poll of Tribal Council on July 28, 2003.

Chapter 3 - Notice Ordinance**§ 301 - Findings and Purpose**

- (a) Findings.
 - (1) The Tribe has a compelling interest in protecting Tribal sovereignty and jurisdiction; and
 - (2) Tribal sovereignty and jurisdiction may be questioned in cases in the Tribal Court in which the Tribe or any agency, officer, or employee thereof is not a party; and
 - (3) With adequate, timely, and uniform notice of cases in the Tribal Court that question Tribal sovereignty and jurisdiction, the Tribe can effectively assess whether and how to participate in such cases.
- (b) Purpose. The purpose of this Ordinance is to provide the Tribe with adequate, timely, and uniform notice of any and all cases in the Tribal Court that question Tribal sovereignty and jurisdiction and in which the Tribe or any agency, officer, or employee thereof is not a party.

History: Tribal Act #03-21.1318, enacted by Tribal Council on December 17, 2003.

§ 302 - Notice Required

- (a) Party To Give Notice. Any party that questions Tribal sovereignty or jurisdiction in any action or proceeding in the Tribal Court will give notice in writing to the head of the Tribal Legal Department of the action or proceeding. Notice required under this Ordinance does not authorize a party to name the Tribe or any agencies, officers, or employees thereof, as a party to any action or proceeding.
- (b) Notice By Tribal Court. The Tribal Court shall be required to always provide notice to the Tribal Legal Department of any action or proceeding that questions Tribal sovereignty or jurisdiction.

History: Tribal Act #03-21.1318, enacted by Tribal Council on December 17, 2003.

§ 303 - Manner and Timing of Notice

- (a) Advance Notice. Notice required under this Ordinance will be made not less than sixty (60) days before Tribal sovereignty or jurisdiction is questioned in any action or proceeding.
- (b) Proof of Notice Filed with the Court. Any party giving notice under this Ordinance will simultaneously file proof with the Tribal Court that notice has been given as required by this Ordinance.

History: Tribal Act #03-21.1318, enacted by Tribal Council on December 17, 2003.

§ 304 - Tribal Participation Following Notice

- (a) Amicus Curiae. Upon timely motion or application, the Tribe may appear as amicus curiae (friend of the court) in any action or proceeding that questions Tribal sovereignty or jurisdiction.
- (b) Information Sharing and Consultation. In any action or proceeding in the Tribal Court that questions Tribal sovereignty or jurisdiction in which the Tribe does not intervene or appear as amicus curiae, the Tribe may nevertheless share important knowledge with any party involved in the action or proceeding. This could include assistance in responding to formal discovery requests or acting as an informal consultant.
- (c) No Participation. The Tribe may determine that it is in the best interest of the Tribe not to intervene, appear as amicus curiae, or otherwise participate in an action or proceeding in the Tribal Court that questions Tribal sovereignty or jurisdiction.
- (d) The Tribal Council shall have a twenty-one (21) day response period consistent with rules of civil procedure.

History: Tribal Act #03-21.1318, enacted by Tribal Council on December 17, 2003.

§ 305 - Failure To Give Notice

- (a) Failure to Give Notice Jurisdictional or Waiver of Rights. The failure of a party to give notice as required by this Ordinance does not deprive the Court of jurisdiction and is not a waiver of any rights otherwise timely asserted. Any notice given under this Ordinance is not a substitute for, or a waiver of, any other pleading requirement under Tribal law.
- (b) Late Notice. If the Court or a party discovers that notice to the Tribe under this Ordinance should have been but has not been given, the Court or party will promptly give notice in writing to the Tribe as required by this Ordinance. The Court may stay the action or proceeding at any stage to allow compliance with this Ordinance. If final judgment has

already been entered, the Tribe may motion or apply for rehearing as of right and the Court will entertain promptly any motions or applications for rehearing by the Tribe.

- (c) Civil Sanctions. The Court may impose civil sanctions on any party for failure to give notice as required by this Ordinance, and may use other reasonable means to cure any significant harm caused by failure to give notice as required by this Ordinance.

History: Tribal Act #03-21.1318, enacted by Tribal Council on December 17, 2003.