

**WAGANAKISING ODAWAK STATUTE 2022-\_\_\_**  
**ENJINAAKNEGENG**

**SECTION I. PURPOSE**

The purpose of this Statute is to set out the roles and functions of the Legal Department in accordance with the LTBB Constitution. This Statute repeals and replaces WOS 2014-008 Amending WOS 2011-008 Enjinaaknegeng; WOS 2011-008 Enjinaaknegeng; WOS 2007-009 Enjinaaknegeng; WOS 2012-006 The Office of Citizens Legal Assistance; WOS 2006-022 Office of the Legislative Services Attorney; and any other portion or portions of any and all Statutes that are inconsistent with this Statute.

**SECTION II. DEFINITIONS**

- A. “Constitution” or “Tribal Constitution”** means the Constitution of the Little Traverse Bay Bands of Odawa Indians as adopted on February 1, 2005, and any amendments thereto.
- B. “Department”** means Enjinaaknegeng, the Legal Department.
- C. “Executive”** means the Tribal Chairperson and Vice-Chairperson of the Executive Branch created under Article VIII of the Constitution, including their designees.
- D. “Tribal Citizen”** means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- E. “Tribal Council” or “Council”** means the elected body of the Little Traverse Bay Bands of Odawa Indians to carry out legislative powers under Article VII of the Constitution.
- F. “Tribe” or “LTBB”** means the Waganakising Odawa, also known as the Little Traverse Bay Bands of Odawa Indians.

### **SECTION III. LEGAL DEPARTMENT AUTHORITY**

**A.** In accordance with Constitution, the Legal Department is under the authority of Tribal Council, Article VII (D)(14), but shall be available to assist the Executive and Executive Departments as set forth in this Statute.

**B.** The Department shall be made up of a General Counsel, Legislative Services Attorney, and Citizens Legal Assistance Attorney.

### **SECTION IV. LEGAL DEPARTMENT DUTIES**

**A.** The General Counsel shall provide legal services, counsel and representation of LTBB on legal matters, as per contract and/or job description, which may include, but not limited to, negotiations with federal, state, local and tribal governmental entities, issues relating to economic development, reserved Treaty rights, Indian child welfare policy, litigation, and work with subordinate Tribal entities including Tribally Chartered Corporations, Enterprises, Executive Departments, and Executive Commissions, Committees and Boards.

**B.** The Legislative Services Attorney shall provide legal services to Tribal Council and Tribal Council Committees as per contract, statute, and/or job description which may include, but not limited to, assisting one or more Tribal Councilors or committee members with drafting of Resolutions, Statutes, Certified Motions, policies, procedures, Legislative Directives, Declarations, Special Tributes, agreements, proposals, legal memorandums, MOUs, leases and contracts; provide legal advice in order to promote and protect Tribal Sovereignty, Tribal Self-sufficiency, and Tribal Self-determination; provide representation of Tribal Council in negotiations and court; and provide advice and analysis of the Tribal Constitution, Tribal Codes, state and federal laws and regulations for the Tribe and Tribal Council.

**C.** In the event that the Tribal government, or any Legislative or Executive officials or staff are sued in their official capacity, General Counsel and/or Legislative Services Attorney shall defend such suits and ensure that Tribal Council receives proper notification, and shall raise sovereign immunity as a defense unless Tribal Council has taken an action to expressly waive sovereign immunity for the type of claim or specific case.

**D.** Assignments may be dispersed between General Counsel and Legislative Services Attorney based on allocation of resources and areas of expertise, as recommended by the Department and allocated by Tribal Council.

**E.** General Counsel and Legislative Services Attorney may also utilize outside attorneys and consultants within a budget adopted by Tribal Council within the scope of Tribal Council approved litigation or other approved activities. Any attorney contracts in excess of five-thousand dollars, (\$5,000) must be individually approved by Tribal Council.

**F.** General Counsel and Legislative Services Attorney will provide current updates to the Tribal Council on legal matters taken on behalf of the Tribe and any recommendations for final actions, that require Tribal Council approval under the Constitution, shall be presented to the Tribal Council prior to that action being taken.

**G.** Citizens Legal Assistance Attorney shall provide advice and assistance to Tribal Citizens on legal issues, provide legal guidance and draft documents, but cannot appear in Court on behalf of Tribal Citizens. The Citizens Legal Assistance Attorney shall maintain the attorney-client privilege relationship with respect to all communications between it and any Citizen it services and may assist with the following:

1. Estate Planning, including drafting of Wills, Power of Attorneys, Medical Power of Attorneys and Trusts;
2. Real Estate, including assisting with the purchase, sale, or transfer of real estate, including foreclosures or forfeitures;
3. Landlord/Tenant, assisting with evictions or any other issues with a landlord or tenant;
4. Divorce/Custody/Support, that may encompass child custody, visitation, or child support;
5. Probate of Estates, assisting with probating a Will in state or tribal court;

6. Criminal Matters shall be limited to explaining the legal process;
7. Civil Matters shall be limited to giving legal advice if the Tribal Citizen is involved in a civil lawsuit, including accusations of abuse or neglect of a child against a parent;
8. Paternity, DNA testing, Birth Certificates, includes establishing paternity, DNA testing, and making changes to birth certificates;
9. Guardianships and Conservatorships for minors or persons who are unable to care for themselves;
10. Driver's Licenses including license restored through the Secretary of State; and,
11. General legal advice can be given for any type of legal issue that a Tribal Citizen may have, except for issues that involve the Tribe.

**H.** The Citizens Legal Assistance Attorney may only provide procedural advice on matters that are criminal in nature, and matters involving the Tribe, Tribal Officials, Tribal Employees or other Tribal Citizens as a potential party in a dispute.

## **SECTION V. CONFIDENTIALITY AND ATTORNEY/CLIENT PRIVILEGE**

**A.** The attorney/client privilege to protect attorney work product, communications and information from unauthorized disclosure to any persons or entities outside of the Tribal government and governmental administration applies to any confidential communications between the Department and any branch of LTBB government, including elected and appointed officials, employees and agents.

**B.** Unless otherwise stated in an attorney contract and/or job description, the attorney/client privilege applies to the Tribe as a whole. Officials, staff and agents have no individual expectation of privacy or attorney-client confidentiality. Attorneys may share any pertinent legal

information with supervisors and Tribal Council.

C. Matters deemed confidential in a Tribal Council closed session shall not be disclosed to persons or entities not present in the closed session, including other branches of LTBB government and staff, unless otherwise directed by Tribal Council.

## **SECTION VI. STAFFING**

The Department shall begin operations with current attorneys and staff of the Legal Department, Legislative Services Attorney Office and Office of the Citizens Legal Assistance.

## **SECTION VII. BUDGET, PERSONNEL and ADMINISTRATIVE FUNCTIONS**

A. The Legislative Services Attorney, working with staff shall present the Department's budget in accordance with *WOS 2020-006 Tribal Government Budget Formulation and Modification Process*, or as amended.

B. The Legislative Services Attorney shall have administrative authority for the Legal Department, including approving expenditures, travel, and other matters related to the Department's budget.

C. The Legislative Services Attorney shall have supervisory authority over the Legal Department's administrative staff.

D. Attorney hiring, and/or employment contracts, and Paid Time Off (PTO) must be approved by the Tribal Council, in accordance with Constitution Article VII (D)(14) and Attorneys shall report directly to Tribal Council.

E. Carry-Over Reserve Funds

1. Unspent annual budgeted funds for the Department shall carry over to the following year. The Department, as directed by Tribal Council, may utilize the cumulated funds for

additional legal services or expense. Any carryover funds not expended will be carried to future years indefinitely unless otherwise re-appropriated by the Tribal Council. The Department shall provide reports quarterly or as otherwise requested by Tribal Council, on the status of the amounts and expenditures of these carry-over funds.

2. If Tribal Council makes a special appropriation for a distinct project or specific litigation, such specially appropriated funds will carry over as long as the original approved litigation or project is still ongoing. At the conclusion of all approved litigation or project costs the remaining specific appropriated funds will revert to General Fund-Funds Balance unless Tribal Council directs otherwise.

F. Under the supervision of the Legislative Services Attorney, administrative function for the Department will be through the Legislative Branch, as appropriate.

## **SECTION VIII. OTHER RELATED STATUTES**

See Waganakising Odawak Statute 2006-22, Office of Legislative Services Attorney; Waganakising Odawak Statute 2012-007, Office of Executive Services Attorney; 2012-006, Office of Tribal Citizens Legal Assistance; WOS 2020-006 Tribal Government Budget Formulation and Modification Process; or as amended.

## **SECTION IX. SAVINGS CLAUSE**

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

**SECTION X. EFFECTIVE DATE**

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

**CERTIFICATION**

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on March 17, 2022 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Kiogima	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Tamara Kiogima	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
William Ortiz	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Aaron Otto	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Melissa Pamp	<u>          </u>	<u>          </u>	<u>          </u>	<u>X</u>
Marty Van De Car	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Leroy Shomin	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Marcella Reyes	<u>          </u>	<u>          </u>	<u>          </u>	<u>X</u>
Emily Proctor	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>

Date: 03/17/22

Emily Proctor, Legislative Leader

Date: 03/17/22

Marcella Reyes, Secretary

Received by the Executive Office on \_\_\_\_\_ by \_\_\_\_\_

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

Date: \_\_\_\_\_

Regina Gasco-Bentley, Tribal Chairperson

Received by the Legislative Office \_\_\_\_\_

Date