

**POKAGON BAND OF POTAWATOMI INDIANS  
MARRIAGE CODE**

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## CHAPTER 1

### **Title; Purpose; Authority; Severability; Applicability; and Definitions**

#### **Section 1.01 Title**

This Code shall be known and may be cited as the Pokagon Band Marriage Code.

#### **Section 1.02 Purpose**

The purpose of this Code is to establish procedures for Marriage within the Band's Reservation and the recognition of Marriages performed outside of the Band's Reservation.

#### **Section 1.03 Authority**

The Tribal Council enacts this Code pursuant to the duties under Article IX, subsection 1(a) of the Constitution and the authority of the Tribal Council under Article IX, subsection 2(a) of the Constitution.

#### **Section 1.04 Severability**

If any provision of this Code, or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

#### **Section 1.05 Applicability**

This Code shall apply to all Marriages performed within the Band's Reservation in which one or both parties are a Citizen.

#### **Section 1.06 Definitions**

The following terms, whenever used or referred to in this Code, shall have the following respective meanings:

- (a) "Band" or "Pokagon Band" means the Pokagon Band of Potawatomi Indians.
- (b) "Citizen" means a duly enrolled member of the Band.
- (c) "Code" or "Marriage Code" means this Pokagon Band Marriage Code.
- (d) "Constitution" means the Constitution of the Band, as amended.

- (e) “Council” or “Tribal Council” means the elected governing body of the Pokagon Band established under Article X of the Constitution.
- (f) “Court Clerk” or “Tribal Court Clerk” means the clerk of the Pokagon Band Tribal Court.
- (g) “Court” or “Tribal Court” means the Pokagon Band Tribal Court.
- (h) “Court of Appeals” means the Pokagon Band Court of Appeals.
- (i) “HIV” means the human immunodeficiency virus.
- (j) “Marriage” is a civil contract between two (2) persons, regardless of their sex, creating a union to the exclusion of all others.
- (k) “Reservation” means, pursuant to 25 U.S.C. § 1300j-5 of the Pokagon Restoration Act or other applicable federal law, (i) all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band; and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Band’s reservation. The term Reservation includes any rights-of-way running through the Reservation.
- (l) “Solemnize” means to perform a Marriage ceremony or to enter into a Marriage publicly before witnesses pursuant to this Code, as applicable.

## **CHAPTER 2**

### **Eligibility to Marry; Application for a Marriage License; HIV Test and Educational Information; Filing an Application for a Marriage License; Review of Application for Marriage License; and Issuance of a Marriage License**

#### **Section 2.01 Eligibility to Marry**

Any person seeking to marry pursuant to this Code must:

- (a) Freely consent to the Marriage and have the mental capacity to consent;
- (b) Be a Citizen or seeking to marry a Citizen;
- (c) Be at least eighteen (18) years of age;
- (d) Not currently be married or otherwise in a civil union relationship that provides substantially the same rights, benefits and responsibilities as a Marriage; and
- (e) Not be related to the proposed spouse by blood in any of the following degrees:

- (1) Parent;
  - (2) Child;
  - (3) Grandparent;
  - (4) Grandchild;
  - (5) Brother, half-brother;
  - (6) Sister, half-sister;
  - (7) Aunt;
  - (8) Uncle;
  - (9) Nephew;
  - (10) Niece;
  - (11) Cousin in the first degree; or
  - (12) Cousin in the second degree;
- (f) Be tested for HIV;
- (g) Receive written educational materials from the Band regarding HIV, prenatal care, and the transmission and prevention of venereal disease; and
- (h) Complete and return an application for a Marriage license pursuant to the requirements of this Code.

## **Section 2.02 Application for a Marriage License**

(a) Any person seeking to marry pursuant to this Code shall obtain an application for a Marriage license from the Tribal Court Clerk. The application for a Marriage license shall be on a form provided by the Tribal Court and shall, at a minimum, require the following of each person seeking to be married:

- (1) Full name, including any maiden or previous names;
- (2) Address;
- (3) Date of birth;
- (4) Parent's full names (if known);
- (5) Parent's birthplace (if known);
- (6) Whether the person was previously married and, if married, when and how such Marriage was terminated;
- (7) Pokagon Band enrollment number, if any;

(8) Expressly consent to the personal jurisdiction of the Pokagon Band, the Tribal Court, and the Court of Appeals, and that the person waives all available defenses against such jurisdiction;

(9) Affirm that the person is not currently married;

(10) Affirm that the person has the mental capacity to enter into Marriage;

(11) Affirm that the person is not related to the other within the degree prohibited by subsection 2.01(e);

(12) Affirm that the person has, in accordance with the requirements of this Code, taken an HIV test and received educational materials regarding prenatal care, and the transmission and prevention of HIV and of venereal disease; and

(13) The contents of the completed application shall be sworn to under oath.

(b) The application shall also contain a notice to the persons seeking to marry informing them that the Code prohibits the issuance of a Marriage license earlier than three (3) business days from the date a completed application is filed with the Court.

(c) Any person who applies for a Marriage license under this Code shall be deemed to have given consent to the personal jurisdiction of the Band, the Tribal Court, and the Court of Appeals, and to have waived all available defenses against such jurisdiction.

### **Section 2.03 HIV Test and Educational Information**

Each person seeking Marriage pursuant to this Code, shall, prior to the issuance of a Marriage license, take an HIV test at their own expense and shall obtain from the Band, at the Band's expense, educational materials regarding prenatal care, and the transmission and prevention of HIV and of venereal disease; provided, however, that such persons are not required to disclose the results of any HIV test to the Band.

### **Section 2.04 Filing an Application for a Marriage License**

A completed application for a Marriage license shall:

(a) Be filed with the Tribal Court, in person, by U.S. mail, or by private courier; and

(b) Be accompanied by:

(1) Proof of the age of each person, which may be provided by birth certificate, driver's license, state or tribal photo identification, or passport;

(2) Written certification by a health provider or laboratory that each person has taken an HIV test;

(3) Written certification by a Pokagon Band health provider that he or she has provided each person with educational materials regarding prenatal care, the transmission and prevention of HIV and of venereal disease; and

(4) Any filing fee that may be established by the Tribal Court.

## **Section 2.05 Review of Application for Marriage License**

(a) Review. The Tribal Court Clerk shall make a determination of whether an application for a Marriage license is complete; provided, however, that any such determination whether a person is a Citizen shall be made by the Band's Enrollment Office. The Court Clerk shall approve or deny an application for a Marriage license not later than three (3) business days of the filing of the application.

(b) Approval of the Application. No Marriage license shall be issued by the Tribal Court Clerk unless the persons applying for the Marriage license meet the criteria provided in Sections 2.01 and 2.04 of this Code. If the Tribal Court Clerk determines that the application is complete and that the persons identified in the application are eligible to marry under this Code, the Court Clerk shall issue a Marriage license to the parties; provided, however, that no Marriage license shall be issued earlier than three (3) business days from the date the application was filed with the Tribal Court.

(c) Rejection of the Application. The Tribal Court Clerk shall reject an application for a Marriage license and provide written notice of such rejection to the persons applying for the Marriage license, if:

(1) The application for a Marriage license is incomplete;

(2) Neither person applying for the Marriage license is a Citizen; or

(3) The Court Clerk determines that such persons are not otherwise eligible to marry under this Code.

## **Section 2.06 Issuance of a Marriage License**

(a) By the Tribal Court. All Marriage licenses issued pursuant to this Code shall be issued by the Tribal Court on a form provided by the Tribal Court, which at a minimum, shall contain the following:

(1) A statement that the Marriage license is valid for thirty (30) days from the date of issuance stated on thereon;

(2) Provisions for the signatures of the person solemnizing the Marriage, the parties to the Marriage, and two witnesses to the Marriage ceremony;

(3) A provision for the date and location of Marriage; and

(4) A statement that the fully executed Marriage license must be filed with the Tribal Court within ten (10) days from the date of the solemnization of the Marriage.

(b) A Marriage license shall be valid for thirty (30) days from the date of issuance by the Tribal Court.

(c) The parties intending to marry pursuant to this Code shall be responsible for presenting the Marriage license to the person solemnizing the Marriage.

### **CHAPTER 3**

#### **Authority to Solemnize a Marriage; Solemnizing the Marriage; Completion of Marriage License; Return of the Marriage License; Issuance of the Certificate of Marriage; and Marriage Records.**

##### **Section 3.01 Authority to Solemnize a Marriage**

Only the following persons are authorized to Solemnize a Marriage performed pursuant to this Code:

(a) A Native American medicine person or traditional spiritual leader;

(b) A person or member of the clergy recognized by his or her religion as having the authority to perform a Marriage; and

(c) A judge of the Pokagon Band Tribal Court or the Court of Appeals.

##### **Section 3.02 Solemnizing the Marriage**

(a) Location. A Marriage performed pursuant to this Code must be Solemnized within the Band's Reservation.

(b) Review of the Marriage License. Prior to solemnizing the Marriage, the person performing the ceremony shall review the Marriage license and determine:

(1) that the persons seeking to be married are the persons named in the Marriage license; and

(2) that, as of the solemnization of the Marriage, the Marriage license remains valid in accordance with the thirty (30) day time constraints of subsection 2.06 (b) of this Code.

(c) Ceremony and Witnesses. A Marriage ceremony preformed pursuant to this Code need not take any particular form, however, the persons seeking to marry must declare, in the presence of the person solemnizing the Marriage, and at least two (2) witnesses who are at least eighteen (18) years of age, that they wish to marry each other.

### **Section 3.03 Completion of Marriage License**

Following the Marriage ceremony, the Marriage license shall be signed by the following persons:

(a) The person who Solemnized the Marriage ceremony, who shall also indicate the date and location of the ceremony;

(b) Two (2) witnesses to the Marriage ceremony, who are at least eighteen (18) years of age; and

(c) The persons married at the ceremony.

### **Section 3.04 Return of the Marriage License**

Following the Marriage ceremony pursuant to Section 3.02 of this Code, and the execution of the Marriage license pursuant to Section 3.03 of this Code, the Marriage license shall be filed with the Tribal Court by the person who Solemnized the Marriage not later than ten (10) days from the date of the Marriage.

### **Section 3.05 Issuance of the Certificate of Marriage**

(a) The Tribal Court Clerk shall, within ten (10) business days of the filing of a Marriage license, examine the Marriage license to insure that it conforms to the requirements of this Code.

(b) If the Tribal Court Clerk determines that the Marriage license conforms to the requirements of this Code, the Court Clerk shall approve the license and issue a certificate of Marriage to the parties.

(c) If the Tribal Court Clerk determines that the Marriage license does not conform to the requirements of this Code, the Court Clerk shall not approve the Marriage license or issue a certificate of Marriage and shall provide written notice of such to the persons seeking the certificate of Marriage.

### **Section 3.06 Marriage Records**

(a) The Tribal Court shall maintain the application for a Marriage license, the Marriage license, and a copy of the certificate of Marriage as permanent records of the Pokagon Band.

(b) Should any party to any Marriage performed pursuant to this Code desire a certificate of Marriage be filed in another jurisdiction, such party may obtain a certified copy of the certificate of Marriage from the Tribal Court upon request and payment of any fee charged by the Court.

(c) The records of the application for a Marriage license, the Marriage license, and certificate of Marriage maintained by the Tribal Court, or a copy of such records duly certified by the Tribal Court Clerk shall be presumptive evidence of the fact of the Marriage.

## **CHAPTER 4**

### **Recognition of Marriages Performed In Other Jurisdictions; Irregularity; and Marriage Between Non-Citizens**

#### **Section 4.01 Recognition of Marriages Performed in Other Jurisdictions**

The Pokagon Band shall recognize as valid and binding any Marriage, which was Solemnized in compliance with the laws of another jurisdiction.

#### **Section 4.02 Irregularity**

Any Marriage performed pursuant to this Code by someone not eligible to Solemnize a Marriage shall be void; provided, however, that if one or both of the parties to the Marriage had no knowledge of such person's ineligibility and participated in the Marriage with the belief that they were lawfully joined in Marriage, then the Marriage shall not be void.

#### **Section 4.03 Marriage Between Non-Citizens**

Any Marriage occurring on the Band's Reservation between non-Citizens must occur pursuant to the laws of the state in which the Band's Reservation, where the marriage will occur, is located.

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## **LEGISLATIVE HISTORY**

Marriage Code, enacted March 9, 2013 by Tribal Council Res. No. 13-03-09-01 and pursuant to the enacting resolution, the Marriage Code shall become effective 60 days after enactment; Amended March 9, 2013 by Tribal Council Res. No. 13-03-09-02.