

**POKAGON BAND OF POTAWATOMI INDIANS  
POKAGON RIGHTS BOARD CODE**

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## CHAPTER 1

### **Short Title; Authority; Findings; Purpose; Construction; Severability; Effective Date; Governmental Immunity; and Definitions**

#### **Section 1.01 Short Title**

This Code shall be known and may be cited as the "Pokagon Rights Board Code."

#### **Section 1.02 Authority**

The Tribal Council enacts this Code pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a), (i), (k) and (l) of the Constitution; and the duties of the Tribal Council stated in Article IX, subsections 1(a), (c), (d) and (h) of the Constitution.

#### **Section 1.03 Findings**

The Tribal Council finds as follows:

(a) The Band is a sovereign, federally recognized Indian tribe, as reaffirmed by the Pokagon Restoration Act and is organized under the Constitution.

(b) Section 1300j(1) of the Pokagon Restoration Act acknowledges that the Band "is the descendent of, and political successor to, signatories of" a number of treaties with the United States.

(c) Article I, Section 1 of the Constitution recognizes that the "Band has certain rights as a sovereign nation [and that such rights include] the treaty rights between the Band and the United States, its states and municipalities, and all other sovereign nations."

(d) Article I, Section 2 of the Constitution acknowledges that Citizens "have the right to hunt, fish, trap, and gather wild animals and wild plants for use as food, medicine, clothing, and any other uses consistent with the usual rights of occupancy on land or bodies of water within the jurisdiction of the Band."

(e) Article I, Section 3 of the Constitution declares: "Nothing in this Article shall be construed as restricting the aboriginal rights or the treaty rights of the Band or . . . [Citizens]."

(f) The Band possesses aboriginal rights and treaty rights, which have never been extinguished or abandoned.

(g) The Band has a substantial interest in preserving and promoting its aboriginal rights and treaty rights and preserving and protecting sacred sites, including for future generations.

(h) An important component of preserving and promoting the Band's aboriginal rights and treaty rights and preserving and protecting sacred sites is to formally establish the Board and vest it with the powers, rights and obligations stated in this Code.

#### **Section 1.04 Purpose**

The purpose of this Code is to:

(a) establish the Board to assist the Tribal Council in preserving and promoting aboriginal rights and treaty rights, and preserving and protecting sacred sites.

(b) vest the Board with the powers, rights and obligations stated in this Code.

#### **Section 1.05 Construction**

(a) This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution; provided in the event of any inconsistency, the Constitution shall control.

(b) To the extent this Code conflicts with any provision of Pokagon Band law, the provisions of this Code shall govern.

(c) This Code shall be liberally construed in order to accomplish the purpose set forth in Section 1.04 of this Code.

#### **Section 1.06 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 1.07 Effective Date**

This Code shall become effective on the Effective Date.

#### **Section 1.08 Governmental Immunity**

The Board is an instrumentality of the Band government and shall be vested with all the rights, privileges, and immunities of the Band, including but not limited to the sovereign immunity of the Band from suit absent express consent from the Tribal Council. Board members and Alternate Members shall be deemed officers of the Band government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law with respect to officers of the Band.

## **Section 1.09 Definitions**

As used in this Code:

(a) “Alternate Member” means a person appointed to the Board to fulfill the duties of a Board member(s) in the absence of a Board member(s) only after being recognized and seated by the Chairperson of the Board.

(b) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign federally recognized Indian tribe.

(c) “Board” means the Pokagon Rights Board.

(d) “Board Officers” means the Chairperson, Secretary, and Treasurer of the Board.

(e) “Citizen” means a duly enrolled member of the Band.

(f) “Code” means this Pokagon Rights Board Code.

(g) “Committee Procedures Handbook” means the Band’s Committee Procedures Handbook.

(h) “Constitution” means the Band’s Constitution, which was adopted on November 1, 2005 and became effective on December 16, 2005.

(i) “Department of Natural Resources” means the Band’s Department of Natural Resources.

(j) “Effective Date” means the date of enactment of this Code by the Tribal Council.

(k) “Pokagon Restoration Act” means P.L. 103-323, codified at 25 U.S.C. 1300j(1)-(8), enacted September 21, 1994.

(l) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.

(m) “Tribal Council Procedures Act” means the Band’s Tribal Council Procedures Act.

## CHAPTER 2

### **Establishment of Board; Eligibility for Board; Alternate Members; Board Officers; Term of Appointment; Resignation from Board; Removal from Board; Vacancy on Board; Duration of Board; and Compensation**

#### **Section 2.01 Establishment of Board**

(a) The Tribal Council hereby establishes the Board which shall be composed of five (5) persons as follows:

- (1) four (4) Citizens; and
- (2) the Director of the Natural Resources Department.

(b) Consistent with Article X, subsection 5(c)(iv) of the Constitution, the Tribal Council Chairperson, or a Tribal Council member designated by the Tribal Council Chairperson, shall serve as an ex-officio, non-voting member of the Board, and the Chairperson's presence shall not be counted in determining whether a quorum exists.

(c) The Tribal Council shall appoint two (2) Alternate Members using the procedures stated in the Tribal Council Procedures Act.

#### **Section 2.02 Eligibility for Board**

In order to be eligible for appointment to the Board pursuant to Section 2.01(a)(1) or 2.01(c) of this Code, a Citizen shall:

- (a) be at least twenty-one (21) years of age; and
- (b) possess expertise, knowledge, skills, and professional and personal experience which will contribute to the fulfillment of the purposes and duties of the Board.

#### **Section 2.03 Alternate Members**

(a) Once recognized and seated by the Chairperson of the Board at any regular or special meeting, the votes and actions of the Alternate Members shall have the same authority as if they had been made by a Board member.

(b) In cases where a Board member arrives at any regular or special meeting after an Alternate Member has been recognized and seated, the Board member shall replace the Alternate Member.

(c) All actions regarding recognition and seating or replacement of Alternate Members shall be noted in the minutes.

(d) Alternate Board members shall have the right to attend regular and special meetings and to receive information to the same extent as Board members, and shall be bound by all requirements applicable to Board members.

#### **Section 2.04 Board Officers**

(a) The Tribal Council shall appoint one (1) of the Board members to serve as the Board Chairperson.

(b) The Board shall elect a Vice Chairperson, Secretary and Treasurer from among the Board members; provided the offices shall not be held by the same Board member.

(c) The term of each Board Officer position shall coincide with such person's term of appointment to the Board.

(d) The Board Officers shall perform the duties as set forth in the Committee Procedures Handbook.

#### **Section 2.05 Term of Appointment**

(a) The term of the Board members identified in subsection 2.01(a)(1) and 2.01(c) of this Code shall be three (3) years; provided, however, the terms of initial appointments shall be staggered pursuant to the requirements of the Tribal Council Procedures Act.

(b) The term of the Board member identified in subsection 2.01(a)(2) of this Code shall be coterminous with his or her employment by the Band as the Director of the Department of Natural Resources.

(c) The term of the Board member identified in subsection 2.01(b) of this Code shall be coterminous with his or her term of office.

(d) There shall be no limit on the number of terms that may be served on the Board, consecutively or otherwise.

(e) Appointment to the Board shall not confer any right or create any contract between the Board member and the Band.

#### **Section 2.06 Resignation from Board**

(a) A Board member serving on the Board pursuant to subsection 2.01(a) of this Code may resign from the Board by submitting a signed and dated letter of resignation to the Board

Chairperson or Board Secretary. The resignation shall be effective as of the date tendered unless provided otherwise in the resignation letter. The Board shall forward a copy of the resignation letter to the Tribal Council Chairperson.

(b) The Tribal Council Chairperson, or the Chairperson's designee serving on the Board, may resign by submitting a signed and dated letter of resignation to the Tribal Council Chairman or the Tribal Council Secretary, which resignation shall be effective as the date tendered unless provided otherwise in the resignation letter. A copy of the resignation letter shall be provided to the Board Secretary.

### **Section 2.07 Removal from Board**

Notwithstanding any other provision of Band law or the Committee Procedures Handbook, all Board members shall serve at the pleasure of the Tribal Council.

### **Section 2.08 Vacancy on Board**

(a) Upon a vacancy in a Board position identified in subsection 2.01(a)(1) or 2.01(c) of this Code, the Tribal Council shall fill any such vacancy pursuant to the requirements of the Tribal Council Procedures Act, including the requirement that any such vacancy be filled first by an Alternate Member.

(b) Upon a vacancy in the position of the Director of the Natural Resources Department, and correspondingly a vacancy on the Board, the Tribal Council shall appoint the successor Band employee to fill the vacancy on the Board.

(c) Upon a vacancy in the Board position identified in subsection 2.01(b) of this Code, the Tribal Council Chairperson shall endeavor to fill the vacancy as soon as practicable.

### **Section 2.09 Duration of Board**

The establishment of the Board shall commence on the Effective Date and shall continue until abolished by the Tribal Council.

### **Section 2.10 Compensation**

Board members may be compensated for service to the Board at rates established by the Tribal Council pursuant to the Committee Procedures Handbook.

## **CHAPTER 3**

### **Duties of Board; Authority of Board; Initiation of Board Duties; and Confidentiality**

#### **Section 3.01 Duties of Board**

Subject to the provisions of this Code, and in addition to all other requirements under Band law and the Committee Procedures Handbook, the Board shall:

- (a) research and investigate aboriginal rights, treaty rights and sacred sites;
- (b) compile and catalog information and documents related to aboriginal rights, treaty rights and sacred sites;
- (c) ensure that all information and documents related to aboriginal rights, treaty rights and sacred sites, which are obtained by the Board, are properly stored in a secure manner on Band land;
- (d) develop and submit to the Tribal Council a work plan in accordance with the Committee Procedures Handbook;
- (e) develop and submit to the Finance Board, with a copy to the Tribal Council, a budget in accordance with the Committee Procedures Handbook;
- (f) provide or submit to the Tribal Council the reports in accordance with the Committee Procedures Handbook;
- (g) make recommendations to the Tribal Council regarding aboriginal rights, treaty rights and sacred sites;
- (h) make recommendations to the Tribal Council regarding the hiring of consultants, including historians, to assist the Board in performing its duties; and
- (i) direct and monitor the progress and performance of such consultants as authorized by the Tribal Council.

#### **Section 3.02 Authority of Board**

(a) All rights, powers, or privileges not expressly delegated to the Board pursuant to this Code shall be reserved to and held by the Tribal Council.

(b) The authority of the Board shall be limited to taking action reasonably necessary to carry out the duties stated in Section 3.01 of this Code, including to:

- (1) access, possess and copy relevant documents and records; and
- (2) obtain assistance from Band employees in accordance with the Committee Procedures Handbook.

(c) Notwithstanding any other provision of this Code, the Board shall have no authority to:

- (1) enter into any contract, or any other binding agreement;
- (2) supervise or discipline any Band employee;
- (3) expend funds or commit any funds with respect to any matter, except in accordance with an approved budget and Band law; or
- (4) exercise any regulatory or legislative power of the Tribal Council.

### **Section 3.03 Initiation of Board Duties**

Only the Tribal Council shall have the authority to initiate the Board's fulfillment of the duties under Section 3.01 of this Code.

### **Section 3.04 Confidentiality**

No Board member shall use or disclose, for any purpose other than the performance of the Board member's official duties relating to the Board, any confidential information obtained in connection with participating on the Board.

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### **LEGISLATIVE HISTORY**

Pokagon Rights Board Code, enacted April 30, 2012 by Res. No. 12-04-30-03;  
On November 5, 2019, by Res. No. 19-11-05-02, Subsection 2.02(a) of the Code was amended; On December 1, 2021, by Res. No. 21-12-01-03, Subsections 2.01(c), 2.04(b), 2.05(a), and 2.08(a) of the Code were amended.