

POKAGON BAND OF POTAWATOMI INDIANS

BURIAL FUND CODE

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POKAGON BAND OF POTAWATOMI INDIANS
BURIAL FUND CODE

Section 1. Title

This Code shall be known as the Burial Fund Code.

Section 2. Purpose

The purpose of this Code is to provide financial assistance with funeral and related expenses at the time of death of a Citizen, their Spouse, their non-Citizen Parents, their children five years of age and younger who were eligible for enrollment with the Band, and their Stillborn Children who would have been eligible for enrollment with the Band.

Section 3. Authority

Pursuant to the duties of the Tribal Council under Article IX, Section 1 of the Constitution and the authority of the Tribal Council, including those enumerated powers set forth in IX, Section 2 of the Constitution, the Tribal Council hereby establishes the Burial Fund Code.

Section 4. Definitions

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

- A. “Applicant”: an individual who is eligible, in accordance with section 7 of this Code, to apply and does apply for the Burial Benefit.

- B. “Band”: the Pokagon Band of Potawatomi Indians.

- C. "Burial Benefit": the benefit established in this Code to assist with the costs incurred for funeral, burial, gravestone, and related services for Citizens, their Spouses, their non-Citizen Parents, their children age 5 and younger who, at the time of their death, were eligible for enrollment, but not yet enrolled with the Band, and their Stillborn Children, who would have been eligible for enrollment with the Band.
- D. "Burial Fund": the fund established in this Code from which Burial Benefits are paid.
- E. "Citizen": a duly enrolled member of the Band. The term Citizen shall have the same meaning as the term "member" as used in the Constitution.
- F. "Code": this Burial Fund Code.
- G. "Constitution": the Constitution of the Band.
- H. "Director": the Director of the Department of Social Services.
- I. "Parent": the natural parent, adoptive parent or Step-Parent of a Citizen; provided that he or she has legal and physical custody of a Citizen, or if the Citizen is not a minor, then he or she had legal and physical custody while the Citizen was a minor.
- J. "Spouse": an individual who is lawfully married to a Citizen at the time of the individual's death. This includes the surviving spouse of a deceased Citizen who never remarried.
- K. "Step-Parent": the current legal spouse of a natural or adoptive parent of a Citizen, provided: (1) said person was the legal spouse of a natural or adoptive

parent of a Citizen, while the Citizen was a minor, and (2) said person had legal and physical custody of a Citizen while the Citizen was a minor.

- L. “Stillborn Child”: a Citizen’s natural child whose death occurs before expulsion, extraction, or delivery and whose death is required to be reported pursuant to applicable law; provided however, that the term “Stillborn Child” shall not include a fetus or child extracted for purposes of an abortion.
- M. “Treasurer”: the Tribal Council Treasurer.
- N. “Tribal Council”: the governing body of the Band established pursuant to Article X of the Constitution.

Section 5. Creation and Maintenance of a Burial Fund

- A. Tribal Council shall create a Burial Fund in the amount of one million dollars (\$1,000,000). This amount shall be funded with revenue the Band receives from the operation of the Four Winds Casino (“Casino”) within 30 days of the date of the official opening of the Casino or as soon thereafter as such funds become available. The Burial Fund shall be held in an interest bearing account approved by Tribal Council.
- B. The Burial Benefit shall be paid first from the interest earned by the Burial Fund and second from the principal of the Burial Fund.
- C. After the Burial Fund is initially funded, Tribal Council shall ensure that the Burial Fund maintains an average monthly balance of at least seven hundred fifty thousand dollars (\$750,000) at all times. In the event the Burial Fund balance falls below this amount, Tribal Council shall, as soon as possible, replenish the Burial Fund to maintain the stated minimum balance.
- D. The Finance Director shall promptly advise the Treasurer and Tribal Council anytime the Burial Fund requires additional funds to comply with subsection C.

Section 6. Eligibility for the Burial Benefit

- A. Upon the death of a person that meets the description in subsection B and upon submission and approval of all necessary documents under this Code, the Band shall pay, in accordance with the provisions of this Code, the Burial Benefit.
- B. Only the following decedents, who die after the effective date of this Code, shall be covered by the Burial Benefit:
 - 1. Citizens;
 - 2. Spouses of Citizens;
 - 3. Non-Citizen Parents of Citizens;
 - 4. Children age 5 and younger, of Citizens, who, at the time of their death, were eligible for enrollment with the Band; and
 - 5. A Stillborn Child of a Citizen who, had it been born alive, would have been eligible for enrollment with the Band.

Section 7. Application Procedures for Obtaining Burial Benefit

- A. Application for the Burial Benefit shall be made on a form provided by the Department of Social Services.
- B. An Applicant shall submit an application and all required documents to the Department of Social Services within 180 calendar days of the date of death of the person meeting the description in subsection 6(B).
- C. Only the decedent's spouse, parent, adult child, adult sibling, adult cousin, personal representative of the decedent's estate on behalf of the decedent's estate, or trustee of a trust established by the decedent on behalf of the trust established by the decedent, may apply for payment of a Burial Benefit; provided, however, that if the Band has knowledge of a decedent covered by the Burial Benefit in subsection 6(B)(1), but the Band is unable to locate a person eligible to apply for payment of a Burial Benefit, then the Band, via an employee of the Department of

Social Services, may apply for payment of a Burial Benefit for a decedent identified in subsection 6(B)(1).

- D. Only one application per person meeting the description in subsection 6(B) will be approved. In the event two or more of those eligible to apply for the Burial Benefit apply before any application has been approved, priority will be given to the first application received by the Department of Social Services.
- E. Applications shall be submitted in person, by U.S. mail, or by private courier, to the Department of Social Services.
- F. The Applicant shall provide the following information in a sworn statement on a form supplied by the Band: the Applicant's name and address; the name and address of the decedent; the decedent's eligibility status under subsection 6(B), the decedent's date of death, and the Applicant's relationship to the decedent.
- G. In addition to the Applicant's sworn statement in subsection 7(F), the following documents shall be provided with the application:
 - 1. A certified copy of the death certificate or fetal death record of the individual listed in subsection 6(B);
 - 2. A copy of the invoice from the funeral home handling the decedent's funeral, which names the individual responsible for payment; and
 - 3. A copy of the invoice from the monument company handling the decedent's monument, which names the individual responsible for payment.
- H. If the decedent was a Citizen under subsection 6(B)(1), the Department of Social Services shall verify the decedent's enrollment in the Band with the Enrollment Office.
- I. If the decedent was a Spouse under subsection 6(B)(2), the Applicant shall provide a certified copy of a marriage certificate and shall attest that the decedent

was lawfully married to a Citizen at the time of the decedent's death or, if the Citizen predeceased the decedent, that the decedent Spouse never remarried after the death of the Citizen. The Department of Social Services shall verify the Citizen's enrollment with the Enrollment Office.

- J. If the decedent was a non-Citizen Parent under subsection 6(B)(3), the Applicant shall provide a certified copy of a birth certificate identifying the decedent as a Parent of a Citizen. If the non-Citizen Parent divorced the other Parent while the Citizen was a minor, the Applicant shall also provide a court order demonstrating the non-Citizen Parent had legal and physical custody of the Citizen. In all other circumstances, the Applicant shall provide an affidavit from someone with direct personal knowledge that the decedent non-Citizen Parent had legal and physical custody of the Citizen throughout the period of time that the Citizen was a minor. If the Parent is a Step-Parent, the Applicant, in addition to providing a certified copy of a birth certificate of the Citizen to which the decedent was a Step-Parent, and the court order or affidavit regarding legal and physical custody, the Applicant shall provide a certified copy of a marriage certificate showing that the Step-Parent married the Citizen's Parent. The Applicant shall attest that the decedent was the legal spouse of a natural or adoptive parent of a Citizen, while the Citizen was a minor and that they remained lawfully married at the time of the decedent's death, or that the decedent is a widow or widower of the Parent identified in the marriage certificate and the decedent did not remarry prior to his or her death. The Department of Social Services shall verify the Citizen's enrollment with the Enrollment Office.
- K. If the decedent was a Child under subsection 6(B)(4), the Applicant shall provide a certified copy of a birth certificate of the Child and any other documents necessary to establish that the decedent, at the time of his or her death, was eligible for enrollment with the Band. The Band's Enrollment Code includes a requirement for a DNA test as part of the enrollment process, but solely for purposes of this Code, a DNA test is not required to establish eligibility for

enrollment with the Band. The determination with regard to the Child's eligibility for enrollment with the Band shall be made by the Enrollment Office. The Department of Social Services shall verify the Citizen's enrollment with the Enrollment Office.

- L. If the decedent was a Stillborn Child under subsection 6(B)(5), the Applicant shall provide a certified copy of the fetal death record and any other documents necessary to establish that the Stillborn Child, had it been born alive, was eligible for enrollment with the Band. The Band's Enrollment Code includes a requirement for a DNA test as part of the enrollment process, but solely for purposes of this Code, a DNA test is not required to establish eligibility for enrollment with the Band. The determination with regard to the Stillborn Child's eligibility for enrollment with the Band shall be made by the Enrollment Office. The Department of Social Services shall verify the Citizen's enrollment with the Enrollment Office.

Section 8. Processing Applications

- A. All applications shall be returned to and shall be processed by the Department of Social Services. A determination of whether an individual application fulfills the requirements of this Code and is eligible for the Burial Benefit shall be made by the Director or the Director's designee, pursuant to this Code. The decision of the Director or the Director's designee is final and there shall be no appeal.
- B. Any determination whether an individual is a Citizen, was a Citizen at his or her death, or was eligible for enrollment with the Band, shall be made by the Enrollment Office.
- C. Notwithstanding subsection 7(G)(3), a copy of the monument company invoice is not required to process or approve the application. However, payment for the

monument as provided in subsection 9(B) shall not occur until the Department of Social Services receives the monument company invoice. An Applicant has 180 calendar days from the date of death of the person meeting the description in subsection 6(B) to submit the monument company invoice to the Department of Social Services in order for payment to be made as provided in subsection 9(B).

- D. Upon approval of an application, the Department of Social Services shall forward a copy of the application, along with written notice of approval, to the Treasurer with a request for payment of the Burial Benefit.

If the application is not approved, the Director or the Director's designee shall so notify the Applicant, in writing, and shall state all of the reasons for denial of the Burial Benefit.

Section 9. Payment of Burial Benefit

Except as provided in sections 10 and 11, upon approval of the application and written notice of approval from the Director or the Director's designee to the Treasurer, the Band shall pay Burial Benefits up to \$10,000, subject to the requirements stated herein.

- A. The Band shall pay the lesser of the total amount stated on the funeral home or crematorium invoice or \$8,000. Such amount shall be paid by check in the following manner and priority: (1) To the funeral home or crematorium in the amount identified on the invoice as outstanding, and (2) To the individual identified on the invoice as responsible for payment in the amount identified on the invoice as paid. If the total amount stated on such invoice is less than \$8,000, then the difference between \$8,000 and the total amount stated on the invoice may be reallocated to increase to maximum amount allocated in subsection 9(B) and 9(C).
- B. The Band shall pay the lesser of the total amount stated on the monument company invoice or \$1,500. Such amount shall be paid by check in the following manner and priority: (1) To the monument company in the amount identified on

the invoice as outstanding, and (2) To the individual identified on the invoice as responsible for payment in the amount identified on the invoice as paid. All or a portion of the maximum amount allocated for a monument may be reallocated to increase the maximum amount allocated in subsection 9(A) or 9(C), as provided below:

- (i) If the total amount stated on the monument company invoice is less than \$1,500, then the difference between \$1,500 and the total amount stated on the invoice may be reallocated, or
- (ii) If the Applicant provides a copy of the crematorium invoice and certifies that the decedent was cremated and that there will be no burial of the decedent's cremated remains, then the \$1,500 may be reallocated.

- C. The Band shall pay the Applicant \$500 towards the cost of a funeral luncheon. Notwithstanding any reallocation under subsection 9(A) and 9(B) above, in no event shall the Band pay more than \$1,500 towards the cost of a funeral luncheon.
- D. Except as provided in section 11 of this Code, if the decedent's funeral or monument costs were prepaid by the decedent or prepaid for the decedent, then the Band shall not pay the Burial Benefits provided in this subsection 9(A) or 9(B).
- E. The Band shall not pay Burial Benefits for any amount identified on an invoice as paid in subsection 9(A)(2) and 9(B)(2) of this Code, if such amounts were paid:
 - 1. before the date of the decedent's death, and
 - 2. pursuant to a benefit or entitlement of the decedent (e.g., burial and memorial benefits offered by the U.S. Department of Veterans Affairs, etc.).

- F. The Band shall not pay the Burial Benefits provided in subsection 9(C) where the Band, pursuant to subsection 7(C), is the Applicant.

Section 10. Temporary Exception from Application Requirements

While funeral and other related services typically must be handled with urgency, the payment of Burial Benefits may be delayed when certain documents required to complete an application cannot be obtained. Accordingly, this section allows for a temporary exception from some of the application requirements in order to allow the payment of a portion of the Burial Benefit to be made prior to final approval of the application. If one or more documents required by this Code are unavailable at the time an application is filed, the Applicant may provide through a sworn statement on a form supplied by the Band the information that would otherwise be supplied by such documents. In addition, the sworn statement shall include a statement that the Applicant will submit certified copies of all required documents within 10 business days from the date the sworn statement is filed and that the Applicant will repay all Burial Benefits received if the Applicant fails to submit all required documents within 10 business days or if the Applicant is found by the Band to have knowingly submitted false information in either the sworn statement or the application or submitted fraudulent documentation in support of the application. Upon receipt of the sworn statement, the Department of Social Services shall process the application and pay the Burial Benefit as if the Applicant provided a certified copy of all necessary documents; *Provided* that the Band shall pay only those Burial Benefits described in subsection 9(C) until the Applicant has fulfilled all application requirements, including the submission of certified copies of all required documents, and the Department of Social Services has given final approval of the application.

Section 11. Reimbursement for Prepayment of Funeral and/or Monument Expenses

- A. If a Citizen prepaid the cost of his or her funeral and/or monument expenses via an irrevocable agreement with a funeral home or monument company on or before May 8, 2010, then the Band will, subject to the requirements of this section 11, reimburse the Citizen the cost of such prepaid expenses, in accordance with the dollar limitations provided in subsections 9(A) and 9(B) of this Code.
- B. The Citizen seeking reimbursement for such prepaid funeral and/or expenses, shall make application on a form provided by the Department of Social Services.
- C. The following documents shall be provided with an application for reimbursement of prepaid funeral and/or monument expenses:
 - (1) A copy of the irrevocable agreement with the funeral home and/or monument company, and
 - (2) Any other documents deemed necessary by the Director to verify the terms and amount of the prepayment.
- D. All applications for reimbursement of prepaid funeral and/or monument expenses shall be returned to and shall be processed by the Department of Social Services. The Department of Social Services shall verify the Citizen's enrollment with the Enrollment Office. Upon approval of an application for reimbursement of prepaid funeral and/or monument expenses, the Department of Social Services shall forward a copy of the application, along with written notice of approval, to the Treasurer with a request for the reimbursement of the prepaid funeral and/or monument expenses for the Citizen.
- E. If the application for reimbursement of prepaid expenses is not approved, the Director or the Director's designee shall so notify the Citizen, in writing, and shall state all of the reasons for denial of the reimbursement.
- F. If the Band reimburses a Band Citizen for the prepayment of funeral and/or monument expenses pursuant to this section 11, then upon the death of such Band

Citizen, he or she shall be deemed excluded from those decedents covered by the Burial Benefit in subsection 6(B) of this Code and ineligible for Burial Benefits provided in section 9 of this Code, but only to the extent such Citizen's funeral and/or monument expenses were previously reimbursed by the Band.

Section 12. Effective Date for Burial Benefits

Applicants who apply and are approved for Burial Benefits between the effective date of this Code and the establishment and funding of the Burial Fund shall not receive a Burial Benefit until after the Burial Fund is established and funded.

Section 13. Effective date of this Code

This Code shall become effective upon groundbreaking for the Casino following the acceptance of the land upon which the Casino is constructed into trust for the Band, by the U. S. Secretary of the Interior.

Section 14. Benefits Subject to the Availability of Funds

Payment of Burial Benefits under this Code shall be subject to the availability of funds in the Burial Fund.

Section 15. No Vested Right

Nothing contained in this Burial Fund Code, including any amendments, shall be construed so as to vest in any person any right or interest in any tribal gaming or other revenues, or assets. The Tribal Council reserves the right to amend, repeal or otherwise modify this Burial Fund Code or any ordinance, resolution or tribal code relating to this Burial Fund Code at any time in its sole discretion, subject to applicable tribal and federal law.

Section 16. No Waiver of Sovereign Immunity

Nothing in this Code is intended, or shall be construed to waive the sovereign immunity of the Band or any of its governmental officers, representatives, employees, or agents.

LEGISLATIVE HISTORY

THE POKAGON BAND BURIAL FUND CODE WAS ENACTED ON AUGUST 2, 2005 BY TRIBAL COUNCIL RESOLUTION NO. 05-08-02-02; ON FEBRUARY 18, 2008 BY THE ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 08-02-18-04 SECTIONS 4 AND 9 WERE AMENDED; ON MAY 8, 2010 BY THE ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 10-05-08-02, COMPREHENSIVE AMENDMENTS THROUGHOUT THE CODE WERE ENACTED; ON APRIL 25, 2011 BY THE ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 11-04-25-01, AMENDMENTS THROUGHOUT THE CODE WERE ENACTED; ON APRIL 9, 2012 BY THE ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 12-04-09-03, AMENDMENTS THROUGHOUT THE CODE WERE ENACTED; ON JANUARY 11, 2016, BY THE ADOPTION OF TRIBAL COUNCIL RESOLUTION 16-01-11-03, AMENDMENTS THROUGHOUT THE CODE WERE ENACTED; ON OCTOBER 13, 2021, BY TRIBAL COUNCIL RESOLUTION NO. 21-10-13-04, AMENDMENTS WERE ENACTED TO SECTIONS 7(K), 7(L), 9(A), 9(B), AND 9(C).