

POKAGON BAND OF POTAWATOMI INDIANS

HEALTH AND SAFETY ACT

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CHAPTER 1

Short Title; Authority; Purpose; Scope and Applicability; Definitions; Effective Date; Construction of Act; and Severability

Section 1.01 Short Title

This act shall be known and may be cited as the "Pokagon Band Health and Safety Act" (as referred to herein, this "Act").

Section 1.02 Authority

The Tribal Council enacts the Pokagon Band Health and Safety Act pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsection 2 (a) of the Constitution and in accordance with the duties the Tribal Council stated in Article IX, subsections 1(a) and 1(c) of the Constitution of the Pokagon Band of Potawatomi Indians ("Constitution").

Section 1.03 Purpose

The purpose of this Act is to ensure the preservation of the public health, the protection of the environment and the safety of construction activities and existing improvements located on Pokagon Band Reservation lands. Accordingly, except as otherwise expressly stated, this Act adopts as Tribal Law standards as or more substantively rigorous than those state laws concerning health, environment, and building construction that would otherwise be applicable within Pokagon Band tribal lands if such lands were not Reservation lands.

Section 1.04 Scope and Applicability

This Act shall apply to all Reservation lands, all improvements located thereon, and to all activities undertaken on Reservation lands that are regulated pursuant to the provision of this Act.

Section 1.05 Definitions

Unless otherwise required by the context or defined elsewhere in this Act, the following words and phrases shall have the indicated meanings:

(a) "Casino Gaming" means Class II Gaming or Class III Gaming, as those terms are defined in the Pokagon Band Gaming Regulatory Act, as amended.

(b) "Incorporated Law" means the substantive laws of the United States, the State of Michigan, the State of Indiana, and any other state or other jurisdiction that are incorporated into this Act under Chapter 2.

(c) "Food Code" means the U.S. Food and Drug Administration's Food Code of 2013 and all amendments and supplements thereto.

- (d) “Person” means any individual, firm, partnership, corporation, or association.
- (e) “Potluck” means an event where:
- (1) People are gathered to share Food;
 - (2) People attending the event are expected to bring Food to share;
 - (3) There is no compensation provided for people bringing Food to the event;
 - (4) There is no charge for any Food or beverage provided at the event; and
 - (5) The event is not conducted for commercial purposes.
- (f) “Tribal Court” means the Tribal Court of the Pokagon Band of Potawatomi Indians.
- (g) “Tribal Law” means the enacted laws of the Pokagon Band of Potawatomi Indians.
- (h) “Reservation” means, pursuant to 25 U.S.C. § 1300j-5 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 of Potawatomi Indians; and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Tribe’s reservation. The term Reservation includes any rights-of-way running through the Reservation.

Section 1.06 Effective Date

This Act shall become effective as the date of enactment into law by the Pokagon Band Tribal Council, provided that:

- (a) All amendments to the substantive provisions of those laws enumerated in Chapter 2 and any laws enacted to replace, in whole or in part, the substantive provisions of such laws shall take effect as Tribal Law on the same date as they would otherwise be effective as to lands that are not Reservation; and
- (b) Any such amendment or replacement shall not be applicable to construction or development activities that commenced prior to the date that such amendment or replacement became effective within the jurisdiction that first enacted the law.

Section 1.07 Construction of this Act

- (a) To the extent reasonable, this Act shall be read and interpreted in a manner that is consistent with the Constitution, but in the event of any inconsistency, the provisions of the Constitution shall control.
- (b) In the event of a conflict between the Food Code and this Act, the provisions of this Act shall govern.
- (c) This Act shall be liberally construed in order to accomplish its purpose as set forth in Section 1.03 of this Chapter.

CHAPTER 2

Building Codes; Health and Food Safety; Fire Prevention and Safety; Environmental Protection; Child Care Center Licensing Requirements; and Emergency Operation Plans

Section 2.01 Building Codes.

(a) The standards and substantive provisions of the following codes, laws and regulations are adopted as Incorporated Law shall apply to any activity for which a permit would be required under Section 3.02 of this Act:

(1) The following Codes:

- (A) 2015 International Building Code;
- (B) 2015 International Residential Code;
- (C) 2015 International Plumbing Code;
- (D) 2015 International Mechanical Code;
- (E) 2015 International Fire Code;
- (F) 2015 International Fuel Gas Code;
- (G) 2015 International Energy Conservation Code
- (H) 2015 International Existing Building Code
- (I) 2015 International Swimming Pool and Spa Code; and
- (J) 2009 ICC A117.1, Accessible and Usable Buildings and Facilities.

(2) Unless and until amended or replaced by the codes enumerated in subsection (a)(1):

- (A) NFPA 10 (2013 ed.), Portable Fire Extinguishers;
- (B) NFPA 13 (2016 ed.), Installation of Sprinkler Systems;
- (C) NFPA 13D (2016 ed.), Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes;
- (D) NFPA 13R (2016 ed.), Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height;
- (E) NFPA 14 (2016 ed.), Installation of Standpipe and Hose Systems;
- (F) NFPA 17 (2013 ed.), Dry Chemical Extinguishing Systems;
- (G) NFPA 17A (2013 ed.), Wet Chemical Extinguishing Systems;
- (H) NFPA 20 (2016 ed.), Installation of Stationary Pumps for Fire Protection;
- (I) NFPA 22 (2013 ed.), Water Tanks for Private Fire Protection;
- (J) NFPA 24 (2016 ed.), Installation of Private Fire Service Mains and Their Appurtenances;
- (K) NFPA 25 (2017 ed.), Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems;
- (L) NFPA 30 (2015 ed.), Flammable and Combustible Liquids Code;
- (M) NFPA 70 (2017 ed.) National Electrical Code;
- (N) NFPA 72 (2016 ed.), National Fire Alarm Code;
- (O) NFPA 80 (2016 ed.), Fire Doors and Other Opening Protectives;

- (P) NFPA 90A (2015 ed.), Installation of Air-Conditioning and Ventilating Systems;
- (Q) NFPA 90B (2015 ed.), Installation of Warm Air Heating and Air-Conditioning Systems;
- (R) NFPA 92 (2015 ed.), Smoke Control Systems;
- (S) NFPA 110 (2016 ed.), Emergency and Standby Power Systems;
- (T) NFPA 2001 (2015 ed.), Clean Agent Fire Extinguishing Systems; and
- (U) Underwriters Laboratory (required listing on equipment, fire rated assemblies, doors, etc.).

Section 2.02 Health and Food Safety.

(a) The substantive provisions of the following codes, laws and regulations are adopted as Tribal Law:

- (1) The Food Code;
- (2) Safe Drinking Water Act and all rules, regulations and codes adopted thereunder;
- (3) The Health Code, and all rules and regulations adopted thereunder, of the County within which the construction activity or existing improvement is physically located; and
- (4) U.S. Occupational Safety and Health Act, standards for the workplace, 29 C.F.R. § 1910 and 1926.

(b) For purposes of this Act and the Food Code, “Operate” means a Food Establishment that:

- (1) Has a physical facility located within the Reservation; or
- (2) Does not have a physical facility located within the Reservation, but stores, prepares, packages, serves or vends food directly to the consumer at any location within the Reservation and such food is “time/temperature control for safety food” and is not “prepackaged food”, as those terms are defined in the Food Code.

(c) A Food Establishment may not operate within the Reservation without a valid permit issued by the Code Enforcement Officer, provided that a permit issued by the Code Enforcement Officer shall not be required for any Food Establishment that does not have a physical facility located within the Reservation if: (1) the Food Establishment possesses a valid permit issued by the Regulatory Authority in the jurisdiction where the physical facility that prepared the food is located; and (2) the food was prepared in accordance with applicable law.

(d) The definition of “Food Establishment” in the Food Code shall be supplemented to provide that “Food Establishment” does not include:

(1) An establishment that only prepares food in a kitchen located in a private home, or other location, that is served at or delivered to a Potluck within the Reservation; and

(2) An establishment operated by Pokagon Band officials, staff or volunteers that only prepares food in a kitchen located in a private home, or other location, that is served at or delivered to a meeting of the Tribal Council or any Pokagon Band committee, commission or board, provided that any amount charged does not exceed actual cost of the food.

(e) For purposes of this subsection 2.02(e), "Wild Game" means any animal of a wild nature that may be lawfully hunted or taken under applicable law, including deer, rabbit, squirrel, wild turkey, waterfowl, pheasant, ruffed grouse and fish. Notwithstanding subsection 2.02(a) of this Act, live-caught and field dressed Wild Game may be stored, prepared, packaged, served, vended or delivered as follows:

(1) The person or entity that operates within the Reservation shall ensure that Wild Game is field-dressed, transported and processed in accordance with the following publications, copies of which are available through the Pokagon Band Department of Natural Resources:

(A) All procedures, standards, requirements and recommendations set forth in the publication entitled: "Proper Field Dressing and Handling of Wild Game and Fish", published by Penn State Extension;

(B) All procedures, standards, requirements and recommendations set forth in the publication entitled: "Proper Processing of Wild Game and Fish", published by Penn State Extension;

(C) All procedures, standards, requirements and recommendations set forth in the publication entitled: "Proper Care and Handling of Venison from Field to Table", published by Penn State Extension;

(D) All procedures, standards, requirements and recommendations set forth in the publication entitled: "Proper Care and Handling of Game Birds from Field to Table", published by Penn State Extension; and

(E) All procedures, standards, requirements and recommendations set forth in the publication entitled: "Proper Care and Handling of Fish from Stream to Table", published by Penn State Extension.

(2) A sign bearing the following message shall be posted within the dining area where the Wild Game is served: "The Wild Game served at this location has not been inspected by the Pokagon Band." The words of the message shall be written or printed in letters not less than 3/4 of an inch high and 3/4 of an inch wide and readable. Signs which meet the above requirements are available through the Pokagon Band Department of Natural Resources.

(3) In addition to the requirements of this subsection 2.02(e), all requirements provided in subsection 2.02(a) shall apply with regard to the storage, preparation, packaging, serving or delivery of Wild Game.

(f) Subsection 2.02(e) of this Act shall not apply to Wild Game served at a commercial location within the Reservation, including without limitation, at any gaming establishment.

(g) Any permit to operate a Food Establishment that is not a Temporary Food Establishment shall expire at midnight on April 30 of each year. Any permit to operate a Temporary Food Establishment shall not exceed 14 consecutive days and shall expire as provided in the permit. The term “Temporary Food Establishment” shall have the meaning defined in the Food Code.

Section 2.03 Fire Prevention and Safety.

(a) The substantive provisions of the following codes, laws and regulations are adopted as Tribal Law:

(1) Trade licensure requirements, and all rules and regulations adopted thereunder, of the County and/or State within which the construction activity or existing improvement is physically located; and

(2) Fire prevention requirements, and all rules and regulations adopted thereunder, of the County and/or State within which the construction activity or existing improvement is physically located.

Section 2.04 Environmental Protection.

The substantive provisions of the Natural Resource and Protection Act, MCL 324.101 et seq. (“NREPA”), are adopted as Tribal Law, excluding however, all matters governed by the Pokagon Band’s Hunting and Gathering Code and any rules or regulations adopted thereunder.

Section 2.05 Emergency Operation Plan.

(a) Every facility under the ownership and jurisdiction of the Band with a rated occupancy capacity in excess of two hundred (200) persons shall have in place an Emergency Operation Plan that complies with the minimum standards and requirements of this Section.

(b) Emergency Operation Plans shall, at a minimum, establish the following core functions and procedures and assign responsibility for carrying out those functions and procedures to a permanent position within the management structure for the facility, which person shall be designated as the “Emergency Response Coordinator”:

- (1) Direction and Control;
- (2) Communications;
- (3) Warning;

- (4) Emergency Public Information;
- (5) Evacuation;
- (6) Mass Care;
- (7) Health and Medical;
- (8) Training; and
- (9) Drills and Exercises.

(c) Emergency Operation Plans shall, at a minimum, include detailed plans to protect life and property in the following hazardous situations:

- (1) Earthquake;
- (2) Flood;
- (3) Hazardous Materials;
- (4) Lethal Unitary Chemical Agents and Munitions;
- (5) Radiological Hazards;
- (6) Terrorism;
- (7) Tornado; and
- (8) Fire.

Section 2.06 Child Care Center Licensing Requirements.

(a) Definitions. The definitions set forth below shall apply to this Section.

(1) The term “Child Care Center”, which includes the provider of services to infants or children and the physical location and facility where such services are provided, means:

(A) Any grantee or other recipient of funds under the Head Start Act (42 U.S.C. § 9801 et seq.) and any other entity that provides “Head Start” or “Early Head Start” services, including without limitation any “Head Start agency”, “Early Head Start agency”, or “delegate agency”, as those terms are defined or used in the Head Start Act;

(B) Any “Child Care Center”, as that term is defined under the Michigan Child Care Licensing Act (Act 116 of 1973), and any other entity that is subject to the licensing requirements of the Child Care Licensing Act; and

(C) Any “Child Care Provider”, “Child Care Home”, or Child Care Ministry”, as those terms are defined or used under Title 12, article 17.2 of the Indiana Code (IC 12-17.2).

(2) The term “Child Care Services” means all developmental, educational, nutritional, and other services provided by any Child Care Center to infants or children within the applicable age requirements under § (a)(1)(A)-(C) to promote and facilitate positive infant and early childhood development.

(b) Licensing Requirements. In order to ensure that the provision of Child Care Services within the Reservation meets certain minimum requirements for the protection and promotion of

infant and child health, safety, and welfare and to fulfill the minimum licensing requirements under 42 U.S.C. § 9836a(a)(1)(D) of the Head Start Act applicable to Child Care Centers defined under § (a)(1)(A) of this Section, every Child Care Center located within the Reservation shall maintain compliance with the standards and requirements set forth in this Section. Child Care Services shall not be provided by any Child Care Center without a current, valid license issued by a Code Enforcement Officer upon investigation and verification of such compliance. A license issued under this Section shall not be valid for longer than a twenty-four month period, provided that prior to the expiration of a valid license and for good cause shown, a Code Enforcement Officer may extend a license for an additional period not exceeding sixty (60) days to facilitate completion of the investigative process prior to considering the issuance of a new license.

(c) Applicable Standards. In accordance with the licensing requirements of 45 C.F.R. §§ 1302.20-1302.24, Child Care Centers located within the Reservation shall comply with the following requirements of the U.S. Code of Federal Regulations, including any amendments thereto promulgated after the date this Section is enacted into law:

- (1) 45 CFR §§ 1302.21-1302.23, 1302.31 and 1302.47, regarding physical environment and facilities, provided that compliance with § 1302.21 (d) and § 1302.47 may be verified by proof that that the facility meets the requirements of Subsection 2.01 of this Act;
- (3) 45 CFR §§ 1302.60-1302.63, 1302.101, 1303.75, regarding non-discrimination and specific access requirements for children with disabilities;
- (4) 45 CFR § 1302.47, regarding safety practices, § 1302.90, regarding personnel policies; § 1302.92, regarding staff training and professional development; § 1302.15, regarding enrollment; §1302.41, regarding collaboration and communication with parents; § 1302.42, regarding child health status and care; and § 1302.46, regarding family support services for health, nutrition and mental health, including verification that procedures for reporting child abuse or neglect meet the requirements of § 1302.47(b)(5) and Section 10 of the Pokagon Band Child Protection Code; and
- (5) 45 CFR part 84, regarding non-discrimination on the basis of handicaps in programs and activities receiving or benefiting from federal financial assistance in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(d) Additional Standards. Child Care Centers located within the Reservation shall also maintain compliance with the following requirements:

- (1) 25 U.S.C. § 3201 *et seq.* (Indian Child Protection and Family Violence Protection Act of 1990, as amended), which shall require the adoption of policies and procedures with standards that are at least as stringent as those contained in the Pokagon Band Employee, Volunteer, and Contractor Screening Policy and Procedures; and

(2) Maintenance of a drug and alcohol free workplace, which shall require the adoption of drug and alcohol testing policies and procedures with standards that are at least as stringent as those contained in the Pokagon Band Drug and Alcohol Testing Policy.

(e) Conditional Licenses. In order to ensure compliance with the requirements of this Section, the Code Enforcement Officer shall have, in addition to the authority to grant or deny a license, the authority to grant a conditional license for a period not exceeding ninety (90) days when a Child Care Center is found to be in substantial, but not complete, compliance with this Section, provided that the areas of non-compliance would not involve a present risk to the health, safety, or welfare of infants or children. A conditional license may only be issued if it includes a corrective action plan with detailed written information and reasonable timelines for the Child Care Center to establish complete compliance with the requirements of this Section.

CHAPTER 3

Appointment of Code Enforcement Officer; Permits; Enforcement by Code Enforcement Officer; and Enforcement and Review by the Tribal Court

Section 3.01 Appointment of Code Enforcement Officer.

(a) The Tribal Council shall appoint a Code Enforcement Officer, who shall have the authority and responsibility to exercise the regulatory powers delegated to the Code Enforcement Officer under this Chapter. The Code Enforcement Officer may be an independent contractor or an employee of the Band.

(b) Minimum Qualifications of the Code Enforcement Officer.

(1) A CEO authorized and appointed to enforce § 2.01 of this Code must be certified as an Inspector or Plan Examiner by the International Code Council (ICC) or equivalent organization in both residential and commercial in all of the following disciplines: building, electrical, mechanical, and plumbing. Certification as a Certified Building Official (CBO) by the International Code Council (or equivalent organization) may substitute for certification as an Inspector or Plan Examiner by the ICC or equivalent organization in both residential and commercial in all of the following disciplines: building, electrical, mechanical, and plumbing. Organizations considered equivalent to the ICC include the Council of American Building Officials and the International Conference of Building Officials. A company, corporation, or other business entity may meet the minimum qualifications in this subsection if an employee of the business entity (i) meets the minimum qualifications, (ii) oversees and is directly responsible for the performance of the CEO's duties and responsibilities, and (iii) signs all permits, certifications, and other documents that must be signed by the CEO.

(2) The minimum qualifications for a Code Enforcement Officer authorized and appointed to enforce any one or more of §§ 2.02 (Health and Food Safety), 2.03 (Fire

Prevention and Safety), 2.04 (Environmental Protection), 2.05 (Emergency Operation Plan), or 2.06 (Child Care Center Licensing Requirements) of this Code shall be determined by the Tribal Council prior to or contemporaneous with the time such appointment is made and such minimum qualifications shall be set forth in the official record of the Tribal Council action taken to appoint each such Code Enforcement Officer.

(c) The Code Enforcement Officer shall:

- (1) Review applications for permits, and issue permits and certificates of occupancy under this Act;
- (2) inspect projects and food establishments to determine compliance with this Act and any conditions imposed under permits;
- (3) inform the Director of the Department of Housing and Director of the Department of Finance, of violations of permits; and
- (4) implement appropriate enforcement measures, including issuing cease and desist orders and causing court actions to be initiated.

(d) The Tribal Council may, in its discretion, appoint more than one Code Enforcement Officer and may delegate specific areas of authority under this Act to each Code Enforcement Officer. The Code Enforcement Officer may assign responsibilities under this Act to one or more assistants who are under the direct supervision of the Code Enforcement Officer, provided that the Code Enforcement Officer shall retain ultimate authority and responsibility for carrying out the requirements of this Chapter.

(e) If the Code Enforcement Officer has reasonable grounds to believe that a Band official or employee has attempted to exert influence on the Code Enforcement Officer's independent professional judgment exercised in the performance of his or her statutory duties, the Code Enforcement Officer may elevate the issue successively to the Tribal Chairperson and the Tribal Council until the issue is resolved to the satisfaction of the Code Enforcement Officer or, in the alternative, the Code Enforcement Officer may resign from the position.

Section 3.02 Permits.

(a) Any Person who undertakes any activity that would require a permit under any Incorporated Law or Tribal Law in Chapter 2 of this Code must obtain a permit from the Band under this Act.

(b) Applications for permits shall be filed with the Code Enforcement Officer in accordance with published filing requirements available from the Pokagon Band Tribal Council. The applicant shall file one original and one complete duplicate of the permit application. Every permit application shall contain, at a minimum, the following information:

- (1) The name and address of the applicant;
- (2) The address and specific eat the address of the proposed activity;

(3) Each applicable Incorporated Law as enumerated in Chapter 2 that would apply during or upon completion of the activity; and

(4) A concise factual description of the proposed activity for which the permit is requested, including any —

(A) proposed physical construction;

(B) use of natural resources; and

(C) potential impacts of the environment.

(c) Upon submission of the permit application, the Applicant shall pay a permit application fee. The amount of the permit application fee shall be determined in accordance with the following fee schedule, provided that the Tribal Council may apply a different fee schedule it included as part of the contract for services of a Code Enforcement Officer who is an independent contractor:

(1) If the estimated project cost is —

(A) less than \$100,000, the fee shall be: 0.25% of the project cost, but not less than \$100.00; or

(B) greater than \$100,000, the fee shall be: 1% of the project cost

(d) Upon receipt of a permit application, the Code Enforcement Officer shall:

(1) Determine what, if any, additional information is needed to ensure compliance with this Act, including detailed plans and specifications as appropriate;

(2) Inform the applicant in writing within 10 business days of the Code Enforcement Officer's receipt of the permit application whether the application is complete and specifically what, if any, additional information is needed to ensure compliance with this Act; and

(3) Within 20 days of the Code Enforcement Officer's receipt of all such additional information, issue —

(A) written findings stating that the proposed activity complies with this Act, and issue a permit for the proposed activity; or

(B) written findings stating that the proposed activity would, on compliance with certain conditions, comply with this Act, and issue a permit for the proposed activity subject to such conditions; or

(C) written findings stating that the proposed activity does not comply with this Act and giving reasons for such finding, and issue a denial of permit for the proposed activity.

(e) Any Person filing an application for a permit under this Act shall furnish to the Code Enforcement Officer any and all information that the Code Enforcement Officer may request to assist the Code Enforcement Officer in processing the application.

(f) Any applicant aggrieved by a decision of the Code Enforcement Officer or the failure of the Code Enforcement Officer to comply with the requirements of this Code may appeal to the Tribal Operations Officer by written notice filed with the Tribal Operations Officer, with copies to the Tribal Council Chairperson and the General Counsel's Office. The following requirements shall apply to all appeals:

Section 3.03 Enforcement by Code Enforcement Officer.

(a) The Code Enforcement Officer may direct a Person to immediately cease and desist from any activity that violates this Act if he or she finds that the activity presents an imminent threat to the public health and safety.

(b) If the Code Enforcement Officer finds that an activity violates this Act but does not present an imminent threat to the public health and safety, he or she shall so notify the Person conducting the activity in writing and shall identify all appropriate corrective action to be taken by such Person to conform the activity to the requirements of this Act, including any required time limits for taking such corrective action. If such Person does not correct the violation within the specified time limits, the Code Enforcement Officer may issue an enforcement notice that orders the Person ("Respondent") to immediately desist from all activity that is identified to be in violation of this Act.

(c) A copy of the enforcement notice shall be sent to the Respondent at such Person's address of record and, if the Code Enforcement Officer determines it to be warranted by the circumstances, a copy of the notice may also be posted at the location of the activity. The Respondent shall have five (5) business days from the date of that notice to cure the violation. A penalty can only be imposed by the Code Enforcement Officer if the violation is not cured within the five business-day period and after a hearing held on not less than ten (10) days written notice.

(d) A Person found by the Code Enforcement Officer to be in violation of this Act shall be subject to civil penalties for such violations as warranted based on the severity of the violation and the nature of the Person's failure to comply. Civil penalties under this Act shall not exceed \$500.00 per day for each violation of this Act.

Section 3.04 Enforcement and Review by the Tribal Court.

(a) The Tribal Court shall have exclusive jurisdiction to hear challenges regarding any final decision by the Code Enforcement Officer and to enforce cease and desist orders and civil penalties issued by the Code Enforcement Officer.

(b) The Code Enforcement Officer may bring an action in the Tribal Court to enforce cease and desist orders and civil penalties against any Person for a violation of this Act.

(c) The Pokagon Band Prosecutor shall, at the request of the Code Enforcement Officer, assist the Code Enforcement Officer in enforcing his or her order and any civil penalties in Tribal Court. The Code Enforcement Officer may, in addition, seek to recover all costs of enforcement from any Person that is the subject of enforcement action.

(d) An applicant for a permit under Section 3.02 and a Person granted a permit under Section 3.03 may challenge any final decision by the Code Enforcement Officer under this Act by filing an action in the Tribal Court. Actions brought in the Tribal Court under this Section shall comply with the following standards and procedures:

(1) The Tribal Court shall review the Code Enforcement Officer's decision *de novo* and shall limit its review to the administrative record;

(2) The Code Enforcement Officer's decision may be set aside only upon a finding that it was arbitrary, capricious, unsupported by substantial evidence in the record, or made in violation of Tribal Law, including any Incorporated Law; and

(3) The Tribal Court shall grant deference to the reasonable interpretations of this Code by the Code Enforcement Officer.

CHAPTER 4

Limitations; Amendments; and Severability

Section 4.01 Limitations

(a) Civil Rights.

In exercising the powers granted by this Act, neither the Band nor its agents or representatives shall violate the civil rights of any person under the Constitution or Tribal Law.

(b) Sovereign Immunity.

Neither the adoption of the Incorporated Law under Chapter 2 of this Act nor any other provision of this Act shall waive the sovereign immunity of the Pokagon Band of Potawatomi Indians; constitute Tribal consent to the exercise by any state or local agency, board or instrumentality of jurisdiction over any portion of the Reservation, including any improvement located thereon, or over any activity on such property; or incorporate procedural, remedial, penal or financial provisions of such laws or regulations.

Section 4.02 Amendments.

Council may amend this Act at any time in accordance with the standards and procedures provided under the Constitution and applicable Tribal Law, provided that any amendment shall, solely with regard to any portion of the Reservation where Casino Gaming is conducted, provide substantive standards as or more substantively rigorous than those state laws concerning health,

environment, and building construction that would otherwise be applicable to such land if that land was not part of the Reservation.

Section 4.03 Severability

(a) If any section, subsection, clause, sentence, paragraph, or other part of this Act or the application thereof to any person or circumstances, 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 Act, which shall continue in full force and effect.

(b) To the extent this Act conflicts with any provision of law, resolution, motion or any other legislative action of the Band heretofore taken, the provisions of this Act shall govern and the conflicting provisions are hereby superseded and repealed.

Legislative History

The “Health, Environmental Protection and Building Codes Ordinance” was enacted on April 24, 2002 by adoption of Tribal Council Resolution No. 02-04-24-02; on June 5, 2003, by adoption of Tribal Council Resolution No. 03-06-05-01, Article V was amended by renumbering Section 5 as Section 6 and inserting a new Section 5 (Emergency Operation Plan); on June 1, 2006, by adoption of Tribal Council Resolution No. 06-06-01-03, Article V was amended to conform the references to building codes to Michigan law current as of the date of the amendment; on October 29, 2009, by adoption of Tribal Council Resolution No. 09-10-29-01, Child Care Center Licensing Requirements were enacted, which are codified in this Act at Chapter 2, Section 2.06; on May 17, 2010, by adoption of Tribal Council Resolution No. 10-05-17-01 the Health, Environmental Protection and Building Codes Ordinance was renamed the “Health, Environmental Protection and Building Codes Act” and comprehensive amendments to the Act were enacted; on August 6, 2012, by adoption of Tribal Council Resolution No. 12-08-06-02, Chapter 2 was amended to substitute updated building and safety standards published by national and international authorities for standards under Michigan law and other published resources and the title of the Act was changed to “Health and Safety Act”; on December 15, 2014, by adoption of Tribal Council Resolution No. 14-12-15-03, Section 2.02 Health and Food Safety was amended; on January 26, 2015, by adoption of Tribal Council Resolution No. 15-01-26-03, Section 2.04, Environmental Protection, was amended; and on January 9, 2017, by adoption of Tribal Council Resolution No. 17-01-09-04, Chapter 2 was amended to substitute updated building and safety standards; on August 17, 2017, by adoption of Tribal Council Resolution No. 17-09-18-05, Subsection 2.02 was amended by the addition of subsection (g); on December 1, 2021, by adoption of Tribal Council Resolution No. 21-12-01-01, Subsection 2.06(c) was amended.