

**POKAGON BAND OF POTAWATOMI INDIANS  
OPEN MEETINGS ACT**

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## **CHAPTER 1**

### **Short Title; Authority; Purpose; Public Policy; Applicability; Construction of Act; Severability; Effective Date; and Definitions**

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

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

#### **Section 1.02 Authority**

The Tribal Council enacts the Pokagon Band Open Meetings 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(c), 1(f), and 1(i) of the Constitution.

#### **Section 1.03 Purpose**

The purpose of this Act is to ensure that the requirements of Article VII, Section 2 of the Constitution are observed throughout the Pokagon Band government and, in furtherance thereof, the Tribal Council recognizes the following to be guiding principles of this Act and the Pokagon Band:

(a) The Pokagon Band governs its affairs through the collective actions of the Pokagon Band membership and through the Tribal Council;

(b) The activities and actions of the Pokagon Band government are representative actions of the Band, and as such, are to serve the interests of the Band as a whole;

(c) Secrecy in public affairs undermines the faith of the Pokagon Band members in their government and hinders the effectiveness of the members in fulfilling their role in the democratic process;

(d) The right of Pokagon Band members to have advance notice of all public meetings, to be present at public meetings and to witness in full detail all phases of the deliberation, policy formulation, and decision making of the Pokagon Band government is vital to the enhancement and proper functioning of the democratic process; and

(e) In order to provide for a system of open communication and participation with the Pokagon Band membership, the governmental bodies of the Pokagon Band shall conduct all their meetings open to members of the Band unless otherwise provided in the Constitution and enacted laws of the Pokagon Band.

#### **Section 1.04 Public Policy**

In fulfillment of the purpose stated in § 1.03 of this Act, the Tribal Council declares it to be the public policy of the Pokagon Band that the Public shall have adequate advance notice of and the right to attend all Meetings of Public Bodies at which any business affecting the Public is discussed or acted upon in any way except when such rights may be limited pursuant to Article VII, subsection 1(e) of the Constitution and Pokagon Band enacted law.

#### **Section 1.05 Applicability**

(a) This Act shall apply exclusively to Public Bodies.

(b) Informal or purely advisory bodies with no effective authority are not subject to the requirements of this Act nor are groupings composed of a public official with subordinates or advisors who are not empowered to act by vote, such as an Executive Council member meeting with department heads.

(c) To be covered by the provisions of this Act, a meeting must, at a minimum, be open to all the members of the Public Body and the meeting must be called with some intent to discuss or otherwise address the Public Business of the Public Body. Therefore, social or chance encounters of members of Public Bodies are not covered by the provisions of this Act.

#### **Section 1.06 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) This Act shall be liberally construed in order to accomplish its purpose and the public policy of the Pokagon Band as set forth in § 1.04 of this Chapter.

(c) Nothing in this Act shall be construed to limit the discretion of a Public Body to regulate the active participation of the Public and other persons at any Meeting, subject to the requirements of the Constitution and, to the extent applicable, the Tribal Council Procedures Act.

#### **Section 1.07 Severability**

(a) If any section, subsection, clause, sentence, paragraph, or 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 action of the Band heretofore taken, the provisions of this Act shall govern and the conflicting provisions are hereby superseded and repealed, provided that nothing in this Act shall be construed as affecting or superseding the provisions of the Tribal Council Procedures Act or the Freedom of Information Act, which shall to the extent reasonable be interpreted in harmony with this Act.

### **Section 1.08 Effective Date**

This Act shall become effective as Pokagon Band law for all purposes on the date of its enactment.

### **Section 1.09 Definitions**

As used in this Act:

(a) "Adequate Notice" means as follows:

(1) any advance notice of Meetings of the Tribal Council, the Executive Committee, Membership Meetings, or Legislative Sessions that meets the minimum requirements of the Constitution and the Tribal Council Procedures Act; and

(2) regarding all Public Bodies other than the Public Bodies identified in § 1.09 (a)(1), any notice of Meetings provided at least forty-eight (48) hours in advance of the scheduled Meeting time that provides the name, address, and telephone number of the Public Body, and the time, date, location and, to the extent required or known, the Meeting agenda, which notice shall be

(A) published in any newspaper or newsletter that is owned, controlled, or managed by the Pokagon Band or that is designated by the Tribal Council to publish notices in accordance with the requirements of this subsection,

(B) distributed at a Regular Meeting of the Tribal Council or verbally announced at such Meeting,

(C) prominently posted at the principal office of the Public Body, if any, and in at least one public place reserved for such or similar announcements, or

(D) provided by displaying or making available through the internet on any official website of the Pokagon Band of Potawatomi Indians, provided that the Public Body giving such notice informs the Public in advance through the means described at § (B) of its intent to make use of the internet website for its Meeting notices.

(b) "Audience Member" means an individual in attendance at a Meeting of a Public Body.

(c) "Meeting" means and includes any meeting of a Public Body, regardless of whether or not such meeting was duly called or whether the members of the Public Body are physically present or are present by means of communication equipment, provided that the meeting:

(1) is open to all of the members of the Public Body and at least a quorum of the members are present or, if a quorum is not prescribed by law, at least a majority of the members are present; and

(2) was called with the intent to include discussion, deliberation, formulation of policy, or action upon the Public Business of that Public Body.

(d) "Non-Member" means any person who is not a member of the Public.

(e) "Public" means, individually and collectively, the enrolled members of the Pokagon Band of Potawatomi Indians.

(f) "Public Body" means the Tribal Council and any board, committee, commission, authority, or any other instrumentality or group of two or more persons organized under the laws of the Pokagon Band and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal interests of any one or more members of the Public, or collectively authorized to spend public funds. Public Body does not mean or include the Tribal Judiciary.

(g) "Public Business" means and includes all matters which relate in any way, directly or indirectly, to the purpose, duties, powers, or functions of the Public Body.

## CHAPTER 2

### **Adequate Notice of a Meeting; Failure to Invite All Members of a Public Body to a Meeting; Meetings Open to the Public; Exceptions; and Requests for Meeting Notices**

## **Section 2.01 Adequate Notice of a Meeting**

(a) Except as provided by § (b) of this Section or for any Meeting limited exclusively to consideration of items listed in § 2.03(f), no Public Body shall hold a Meeting unless Adequate Notice thereof has been provided to the Public.

(b) Upon the affirmative vote of three quarters of the members present, a Public Body may hold a Meeting notwithstanding the inadvertent failure to provide Adequate Notice if:

(1) such Meeting is required in order to deal with matters of such urgency and importance that a delay for the purpose of providing Adequate Notice may result in substantial harm to the public interest;

(2) the Meeting is limited to such matters of urgency and importance;

(3) as soon as practicable after the Meeting is called, notice of the Meeting is provided by either of the methods described in § 1.09(a)(2)(C) or (D) above; and

(4) at the commencement of the Meeting, the person presiding shall announce publicly, and shall cause to be entered in the minutes or other official record of the Meeting, a statement that adequate notice of the Meeting was not provided to the Public and that the Meeting will be limited to matters of urgency and importance. Such statement shall also report the time, place, and manner in which notice of the Meeting was provided and explain the nature of the urgency and importance and the substantial harm to the public interest that may result if the Meeting is delayed.

## **Section 2.02 Failure to Invite All Members of a Public Body to a Meeting**

It shall be a violation of this Act for any person or Public Body to fail to invite all of its members to a Meeting for the purpose of circumventing the provisions of this Act.

## **Section 2.03 Meetings Open to the Public; Exceptions**

(a) Except as provided in § (f) of this Section, all Meetings of Public Bodies, including votes on matters before such Public Bodies, shall be open to the Public at all times.

(b) Meetings of Public Bodies shall be held in a place that is accessible to the Public.

(c) Except as may be required by Pokagon Band law or policy in order to verify a person's status as an enrolled member of the Pokagon Band, a member of the Public shall not be required, as a condition of attendance at a Meeting of a Public Body, to register or

otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance at such Meeting.

(d) Members of the Public shall have a reasonable opportunity to be heard at such Meetings under such procedures as may be prescribed by tribal law or written policy.

(e) Notwithstanding the requirements of § (a) of this Section, votes on motions regarding routine procedural matters during a closed session of a Public Body shall not be open to the Public.

(f) A Public Body may exclude the Public only from that portion of a Meeting that involves:

(1) Information specifically protected from disclosure by federal or Tribal law, including common law privileges of confidentiality.

(2) Personnel, medical, or housing information that, if disclosed, would constitute a clear and unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information, provided that this provision shall not prohibit the disclosure of information that bears on the duties of employment with the Band shall not be considered an invasion of personal privacy.

(3) Law enforcement investigations, but only to the extent that disclosure would:

(A) Interfere with law enforcement proceedings,

(B) Deprive a person of the right to a fair trial,

(C) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source,

(D) Disclose law enforcement investigative techniques or procedures, or

(E) Endanger the life or physical safety of law enforcement personnel.

(4) Trade secrets and commercial or financial information which, if released, would endanger the economic viability or competitive position of the tribal business.

(5) Ongoing negotiations and pending public bids to enter into contracts.

(6) The identity of any individual who in good faith makes a complaint or otherwise discloses information that alleges a violation or potential violation of law or regulation by the Band; provided, that if the complaint or information is used in a civil or criminal proceeding, this provision shall not diminish the defendant's due process rights to confront and examine the complainant and witnesses.

(7) Information that is part of negotiations in a proposed land purchase by the Band until that purchase is completed.

(8) Information that would reveal the location of archeological or culturally significant sites.

(9) Information that is submitted upon a promise of confidentiality by the Band.

(10) Information that is protected by attorney-client privilege or the attorney work-product doctrine.

(g) No Public Body shall exclude the Public from any Meeting to discuss any matter described in § 2.03(f) unless the person presiding announces publicly at the Meeting, and causes to be entered in the minutes or other official record of the Meeting, a statement regarding the general nature of the matter to be discussed and the specific provision(s) under § 2.03(f) that the Public Body is relying on to exclude the Public from the Meeting.

## **Section 2.04 Requests for Meeting Notices**

Any member of the Public may request that a Public Body mail to him copies of any Meeting notice or schedule required under the Constitution, this Act, or other applicable law and, upon prepayment by such person of a reasonable sum, if any, fixed by resolution of the Public Body to cover the costs of providing such notice, the Public Body shall promptly mail to such person the Meeting notices or schedules requested, subject only to the exception provided under § 2.01 (a) for any Meeting limited exclusively to consideration of items listed in § 2.03 (f).

## **CHAPTER 3**

**Scope of this Chapter; Attendance of Non-Members at Meetings;  
Attendance of News Media at Meetings; Closing a Meeting to Non-Members  
or to News Media; Recording of Meetings; Opportunity to be Heard;  
Removal of Disruptive Audience Members; and Written Comments**

### **Section 3.01 Scope of this Chapter**

(a) This Chapter shall apply to all Meetings of Public Bodies except the following:

(1) Meetings of the Tribal Council, the Executive Committee of the Tribal Council, Membership Meetings, and Legislative Sessions;

(1) Meetings that are closed pursuant to § 2.03(f) of this Act; and

(3) Meetings of any Public Body that has adopted alternative written rules or policies that expressly state that such rules or policies shall substitute for this Chapter 3.

### **Section 3.02 Attendance of Non-Members at Meetings.**

A Non-Member may attend all Meetings of Public Bodies; provided that the Non-Member is:

(a) asked by the governing body of the Public Body to attend the Meeting; or

(b) has a purpose at the Meeting recognized by the governing body of the Public Body.

### **Section 3.03 Attendance of News Media at Meetings**

Prior to the start of a Meeting, all representatives of any news media shall identify themselves to the head of the Public Body and shall inform the head of the Public Body whether or not they intend to record any portion of the Meeting. Representatives of any news media may only attend a Meeting and record the Meeting upon the affirmative vote of two-thirds (2/3) of the members of the Public Body in attendance at the Meeting.

### **Section 3.04 Closing a Meeting to Non-Members or to News Media**

The requirements of § 3.02, § 3.03, and § 2.03(f) notwithstanding, a Public Body may at any time, at its discretion, close any Meeting to Non-Members or to representatives of the news media upon the affirmative vote of a majority of the members of the Public Body in attendance at the Meeting.

### **Section 3.05 Recording of Meetings**

Audience Members shall not record, by any visual and/or audio means, any Meeting; provided, however, that the Public Body may by consensus permit an Audience Member

to record a ceremonial event that is part of a Meeting if the recording process does not disrupt or interfere with the Meeting. Any Audience Member that fails to cease recording when asked by the head of the Public Body shall be considered "out of order".

### **Section 3.06 Opportunity to be Heard**

(a) At any Meeting, any Audience Member shall have a reasonable opportunity to be heard. The Audience Member must be recognized by the head of the Public Body before making any comments. An Audience Member may seek recognition by raising his or her hand. Prior to making his or her comments, the Audience Member must identify himself or herself. Audience Members who speak without first being recognized by the head of the Public Body shall be "out of order" and the head of the Public body may remind the Audience Member of the requirement to remain silent until recognized by the head of the Public Body.

(b) An Audience Member who is recognized by the head of the Public Body to speak shall address his or her questions or comments to the Public Body and shall restrict his or her questions or comments solely to the agenda item currently on the floor.

(c) All comments or questions presented at a Meeting must be presented in a respectful manner, without shouting, making personal attacks, or using profanity. Audience Members who disregard such requirements after being reminded by the head of the Public Body shall be "out of order".

(d) The head of the Public Body may establish time limits for Audience Member questions and comments. The head of the Public Body may also schedule Audience Member questions and comments to occur at a specific time during the Meeting that the head of the Public Body determines to be consistent with the orderly conduct of the Meeting.

### **Section 3.07 Removal of Disruptive Audience Members**

Audience Members who are "out of order" may be asked by the head of the Public Body to remain silent and to abide by the requirements of § 3.06. If an Audience Member continues to be "out of order" after being cautioned, the head of the Public Body may ask the Audience Member to leave the Meeting. If the Audience Member refuses to leave Meeting after being asked to do so, such Audience Member shall be considered to be trespassing and the Pokagon Band Tribal Police shall remove such Audience Member from the Meeting.

**Section 3.08 Written Comments** Any member of the Public or Non-Member may provide written comments to a Public Body regarding a specific agenda item. All written comments must be germane to a specific agenda item, shall be respectful, and must not

contain personal attacks or profanity. Any person that provides written comments must sign the comments, which shall include his or her name and address and shall clearly identify the specific Meeting and agenda item upon which such person is commenting. Written comments must be received by the Public Body at least five (5) business days prior to the date of the Meeting of the Public Body at which the agenda item will be discussed. Written comments received in compliance with this Section shall be copied and distributed to the members of the Public Body prior to the Meeting at which the agenda item will be addressed.

## **CHAPTER 4**

### **Penalties for Violations of this Act; Enforcement; Reporting Violations; Continued Participation in a Meeting; Proceedings to Void Action at Non-Conforming Meeting; Remedial Action; and Injunctive Orders and Other Remedies**

#### **Section 4.01 Penalties for Violations of this Act; Enforcement**

(a) Any person who intentionally violates this Act shall be subject to a fine of \$50.00 for the first offense and a fine of not less than \$50.00 and not more than \$300.00 for any subsequent offense.

(b) The Tribal Court shall have jurisdiction to enforce said penalty upon complaint of the Tribal Prosecutor.

#### **Section 4.02 Reporting Violations; Continued Participation in a Meeting**

(a) Whenever a member of a Public Body has reliable personal knowledge of facts that indicate that a Meeting of such Public Body is being held in violation of this Act, such member shall promptly make a public statement at the Meeting objecting to the holding of the Meeting, which shall identify the specific provisions of this Act alleged to be violated and shall include a description of the facts supporting the conclusion that this Act is being violated.

(b) The member's statement shall be recorded in the minutes of that Meeting.

(c) If a majority of those members of the Public Body attending the Meeting overrule such a member's objections to the holding of the Meeting, such member may continue to participate in the Meeting without penalty provided that the member has complied with the requirements of this Section.

#### **Section 4.03 Proceedings to Void Action at Non-Conforming Meeting; Remedial Action**

(a) Any action taken by a Public Body at a Meeting that was not in conformance with this Act shall be voidable in an proceeding commenced by a member of the Public in the Tribal Court within thirty (30) days after the action sought to be voided is made public. Such action shall not be voidable solely due to a failure to conform with the Adequate Notice requirements of this Act. An action of a Public Body taken during a non-conforming Meeting may only be voided upon a finding by the Tribal Court of substantial non-compliance by the Public Body with the requirements of Article VII, Section 2 of the Constitution and this Act in taking such action and that the substantial non-compliance has actually impaired the rights of the Public under the Constitution and this Act.

(b) A Public Body may at any time after providing Adequate Notice take remedial action to correct an action taken at a non-conforming Meeting by reenacting such action at a subsequent Meeting held in full conformity with this Act and other applicable law. Such remedial action shall not be deemed an admission of non-compliance with this Act by the Public Body contrary to its interest. An action that is reenacted in the manner described in this subsection shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

#### **Section 4.04 Injunctive Orders and Other Remedies**

(a) Any member of the Public may commence an action in Tribal Court and apply to the Tribal Court for injunctive orders and other remedies to ensure compliance with this Act or to enjoin further noncompliance with this Act. The Tribal Court may issue such orders and provide such remedies as the Tribal Court determines to be necessary to ensure such compliance. To the extent the interest of justice so requires, the Tribal Court may expedite such proceedings.

(b) If a member of the Public commences an action seeking injunctive relief, that person shall not be required to post security as a condition for obtaining an injunction.

(c) If a member of the Public commences a civil action against the Public Body for injunctive relief to compel compliance or to enjoin further noncompliance with this Act and succeeds in obtaining relief in the action, such person shall be entitled to recover court costs and actual attorney fees for the action.

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#### **LEGISLATIVE HISTORY**

Open Meetings Act, enacted January 28, 2008 by Res. No. 08-01-28-11.