

**POKAGON BAND OF POTAWATOMI INDIANS  
EXCLUSION ACT**

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## CHAPTER 1

### **Short Title; Authority; Purpose; Applicability; Construction; Severability; Effective Date; and Definitions**

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

This Act shall be known and may be cited as the "Pokagon Band Exclusion Act".

#### **Section 1.02 Authority**

The Tribal Council enacts this Act pursuant to Article III, Sections 1 and 2 of the Constitution, the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a) and 2(d) of the Constitution and in accordance with the duties the Tribal Council stated in Article IX, subsections 1(a), 1(c), and 1(d) of the Constitution.

#### **Section 1.03 Purpose**

The purpose of this Act is to establish procedures for the Band to exercise its inherent sovereign authority to exclude Persons from the Band's Territory under the grounds for Exclusion stated in Section 2.02 of this Act. In furtherance thereof, the Tribal Council recognizes the following guiding principles of this Act:

- (a) The Pokagon Band of Potawatomi Indians is a federally recognized sovereign Indian nation, which has occupied land within the St. Joseph River Valley in southwestern Michigan and northern Indiana from time immemorial;
- (b) On September 21, 1994, the Pokagon Restoration Act, Public Law 103-323, 108 Stat. 2152, 25 U.S.C. 1300j-1300j-8 was signed into law reaffirming federal recognition of the Band; the application of federal laws governing Indian nations to the Band and its lands; and the jurisdiction of the Band over all lands taken into trust for the benefit of the Band by the Secretary of the Interior;
- (c) Since reaffirmation, the Band has reestablished its ancestral land base by reacquiring land within the St. Joseph River Valley, and the United States, through the Secretary of the Interior, has taken that land into trust;
- (d) In accordance with Section 1300j-4 of the Pokagon Restoration Act, the Band adopted a Constitution, the purpose of which includes governing and protecting the Band's Territory;
- (e) The sovereign powers of the Band extend to the Band's Territory and all Persons subject to the jurisdiction of the Band;
- (f) The Tribal Council is empowered and has a sacred obligation to protect the Band's Territory and to promote and protect the peace, health, safety, education and general welfare of the Band and Citizens; and

(g) The Tribal Council deems this Act necessary and prudent to achieve the foregoing requirement.

#### **Section 1.04 Applicability**

This Act shall apply to all Persons within the Territory of the Band.

#### **Section 1.05 Construction**

(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 as set forth in section 1.03 of this Chapter.

#### **Section 1.06 Severability**

(a) If any provision of this Act 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 Act, which shall continue in full force and effect.

(b) To the extent this Act conflicts with any provision of any Band law or any resolution or motion of the Tribal Council or any rule, regulation, policy or procedure of the Band, the provisions of this Act shall govern and the conflicting provisions are hereby superseded and repealed.

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

This Act shall become effective on the date of its enactment.

#### **Section 1.08 Definitions**

As used in this Act:

(a) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign Indian nation.

(b) “Business Days” mean the days of the week other than Saturdays, Sundays, and official holidays recognized by the Band.

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

(d) “Constitution” means the Constitution of the Pokagon Band, as amended.

(e) “Court of Appeals” means the Band’s Court of Appeals.

(f) “Exclusion” means the exclusion or removal of any Person from the Territory of the Band for a specified duration.

(g) “General Counsel” means the General Counsel for the Band or a duly authorized designee of the General Counsel.

(h) “Non-Citizen” means any individual who is not an enrolled member of the Band.

(i) “Person” means any natural person, including a Citizen or Non-Citizen; any firm, limited partnership, limited liability partnership, co-partnership, partnership, joint venture, association, corporation, subchapter S corporation, limited liability company, estate, business trust, or any other entity, group or combination acting as a unit in the plural as well as the singular.

(j) “Petition” means a petition for Exclusion filed under section 3.02.

(k) “Respondent” means any Person against whom a Petition has been filed.

(l) “Territory of the Band” or the “Band’s Territory” means all real property held in trust for the Band by the Secretary of the Interior, and as applied to a Citizen all real property held in fee by the Band, or any entity wholly owned by the Band.

(m) “Tribal Council” means the Tribal Council of the Band established under Article X of the Constitution as the governing body of the Band.

(n) “Tribal Court” means the Band’s Tribal Court.

(o) “Tribal Prosecutor” means the prosecutor for the Band or a duly authorized designee of the Tribal Prosecutor.

## **CHAPTER 2**

### **Persons Subject to Exclusion; and Grounds for Exclusion**

#### **Section 2.01 Persons Subject to Exclusion**

Any Person may be excluded from the Territory of the Band pursuant to this Act for any of the reasons set forth in Section 2.02.

#### **Section 2.02 Grounds for Exclusion**

In addition to any remedy or penalty provided by the laws of the Band, any Person may be subject to a civil proceeding for Exclusion from the Territory of the Band for any of the following conduct:

(a) Commission of any act which violates the criminal or civil laws of the Band, or breach of peace as defined by the laws, customs, or traditions of the Band, regardless of whether the Person is or may be prosecuted for the conduct;

(b) Commission of any act which violates the criminal laws of the State of Michigan or of the United States of America, regardless of whether the Person is or may be prosecuted for the conduct;

(c) Knowing failure to comply with an order, process, subpoena, decision, or other decree of the Tribal Court, the Court of Appeals, the Tribal Council, or any regulatory commission of the Band;

(d) Invasion of the privacy, stalking or harassment of the residents of the Band's Territory;

(e) Unauthorized entry into the Band's Territory for economic gain (conducting any form of business or trade);

(f) Causing loss or damage of any nature to the real or personal property of the Band or to any Person within the Territory of the Band;

(g) Occupying or using the Band's Territory without a lease, agreement, or other contract that complies with Band law and federal law;

(h) Disturbing or excavating items, sites or locations of religious, historic or scientific significance without authorization of the Band or in violation of the laws, customs, or traditions of the Band or federal law;

(i) Possessing, taking or injuring any natural resource within the Band's Territory without authorization of the Band or in violation of the laws, customs, or traditions of the Band or federal law; or

(j) Any other conduct the Tribal Council deems to threaten the health, safety, or general welfare of the Band.

## **CHAPTER 3**

### **Council Authorization; Petition; Summons; Service; Entry of Default; and Rules**

#### **Section 3.01 Council Authorization**

(a) No Petition shall be filed without prior authorization by resolution of the Tribal Council. Any such resolution shall specify that the Tribal Council approves the Exclusion and shall state:

(1) the geographic scope if other than the entire Band's Territory; and

(2) the duration of the Exclusion, which may be permanent.

(b) All Tribal Council resolutions approving the filing of a Petition for Exclusion of any Person

(1) for less than ninety (90) days shall require the affirmative vote of a majority vote of the Tribal Council; and

(2) for more than ninety (90) days shall require the affirmative vote of at least eight (8) members of the Tribal Council.

### **Section 3.02 Petition**

(a) Subject to the Tribal Council's authorization pursuant to Section 3.01 above, the General Counsel or Tribal Prosecutor may bring an action for Exclusion against any Person in the name of the Band by filing a Petition, verified under oath, in the Tribal Court, setting forth the grounds for Exclusion, under Section 2.02, together with a filing fee as such fee may be specified by Tribal Court rules.

(b) The Petition shall state the geographic scope if other than the entire Band's Territory and duration of requested Exclusion and attach a certified copy of the Tribal Council resolution approved pursuant to Section 3.01 above.

### **Section 3.03 Summons**

(a) When a Petition is filed, in accordance with the requirements of Section 3.02, the Tribal Court shall issue a summons, signed by the Judge, which shall direct the Respondent named in the Petition to answer within ten (10) Business Days from service and appear before the Tribal Court on the time and date stated therein for a hearing on the Petition or face default and entry of judgment.

(b) The hearing shall be scheduled on a date not more than thirty (30) calendar days from the date of the filing of the Petition; provided, however that for good cause, the Tribal Court may stay or postpone the hearing upon motion of either party or on initiative of the Tribal Court.

(c) The Tribal Court shall retain the original executed summons and immediately return a copy of the executed summons to the General Counsel or the Tribal Prosecutor, whichever filed the Petition.

### **Section 3.04 Service**

(a) The General Counsel or the Tribal Prosecutor shall cause the Respondent to be served with a copy of the Petition together with a copy of the summons by one of the following methods:

(1) Delivering a copy of the Petition and summons to the Respondent personally;

(2) If the Respondent is absent from the Band's Territory, by leaving a copy of the Petition and the summons with an adult at Respondent's last known address, or an agent, or employee of the Respondent found within the Band's Territory and sending copies of the same by First Class United States Mail to the Respondent at the Respondent's last known address; or

(3) If methods stated in subsections 3.04(a)(1) or (2) cannot be accomplished, then by fixing copies of the Petition and summons in a conspicuous place at the last known residence, place of visitation, or place of business of the Respondent within the Band's Territory and sending copies of the same by First Class United States Mail to the Respondent at the Respondent's last known address.

(b) Proof of service by one of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of subsection 3.04(a)(1), (2), or (3), and such proof of service shall be filed with the Tribal Court with a copy mailed to the Respondent by First Class United States Mail, addressed to the Respondent at the Respondent's last known address.

### **Section 3.05 Answer**

Except as otherwise ordered by the Tribal Court for good cause shown, the Respondent shall file an answer within ten (10) Business Days from service of the Petition and summons.

### **Section 3.06 Entry of Default**

(a) Upon receipt of the proof of service under section 3.04(b), the Tribal Court clerk or administrator shall enter on the docket the date of service, the date Respondent's answer is due, and the time and date of the hearing.

(b) If a Respondent duly served with a Petition and summons fails to file an answer on the due date entered on the docket, the Tribal Court shall enter a default against the Respondent; grant the Petition; and, subject to subsections 4.01(b), issue an order of Exclusion, as requested in the Petition.

(c) If a Respondent duly served with a Petition and summons fails to appear at the hearing, the Tribal Court shall enter a default against the Respondent; grant the Petition; and, subject to subsections 4.01(b), issue an order of Exclusion, as requested in the Petition.

(d) An entry of default and order of Exclusion may be subject to a motion for reconsideration filed by a Respondent within ten (10) Business Days of the entry, and the entry may be lifted if the Respondent shows good cause for failure to file a timely answer or to appear for hearing. A Respondent seeking to appear personally to argue such a motion may be allowed to enter the Band's Territory by order of the Tribal Court for that limited purpose. Absent a stay of the order of Exclusion by the Tribal Court, it shall remain in effect, or in modified form, as the Tribal Court may see fit, while any motion for reconsideration is pending. If a motion for reconsideration is granted, the default and order shall be lifted, new dates for filing the answer (if

not already filed) and for the hearing shall be set, and the Petition shall proceed to disposition under section 4.01.

### **Section 3.07 Rules**

Except as otherwise provided in this Act, all actions for Exclusion shall proceed pursuant to the civil rules and procedures applicable to the Tribal Court and Court of Appeals.

## **CHAPTER 4**

### **Hearing and Disposition; Appeal; and Stay Pending Appeal**

#### **Section 4.01 Hearing and Disposition**

(a) The burden of proof shall be upon the Band to establish by a preponderance of the evidence that one or more of the grounds for Exclusion stated in Section 2.02 of this Act have been met.

(b) If the Band meets its burden pursuant to subsection 4.01(a), the Tribal Court shall issue an order of Exclusion, which shall set forth the Tribal Court's findings of fact and conclusions of law, and specify the geographic scope if other than the entire Band's Territory and duration of the Exclusion, provided:

(1) The Tribal Court shall have authority to order the Band; any Citizen; or any department, agency, instrumentality, or authority of the Band to return to Respondent any property or monies given or relinquished by the Respondent, when such an order is deemed just or equitable; and

(2) The Tribal Court shall set a deadline for the Respondent to leave the Territory of the Band with the Respondent's personal property.

(c) If the Tribal Court finds that the Band has failed to meet the burden of proof pursuant to subsection 4.01(a) or that the Petition and summons were not served in accordance with the requirements of subsection 3.04(a) of this Act, the Tribal Court shall dismiss the Petition. If the reason for dismissal is solely because of a failure to serve the Petition and summons in accordance with the requirements provided in subsection 3.04(a) of this Act, the Court shall dismiss the Petition without prejudice.

#### **Section 4.02 Appeal**

(a) Any party may appeal such order to the Court of Appeals by filing a notice of appeal no later than twenty eight (28) calendar days after entry of the final Tribal Court judgment.

(b) A timely motion for reconsideration filed pursuant to section 3.06(d) shall toll the time for filing an appeal of an order of Exclusion issued upon entry of default until disposition of the motion for reconsideration or judgment granted as a result of such motion.

(c) Unless stayed pursuant to Section 4.03, an order of Exclusion shall remain in effect pending appeal, except a Respondent seeking to appear personally to argue such a motion may be allowed to enter the Band's Territory by order of the Tribal Court for that limited purpose.

### **Section 4.03 Stay Pending Appeal**

A Respondent subject to an order of Exclusion under subsection 4.01(b) of this Act may move for a stay of the order pending appeal, upon a showing of:

(a) that the Respondent will suffer irreparable injury if the stay is not entered;

(b) that the Respondent has a strong likelihood of success on the merits;

(c) that the public interest will not be harmed if the stay is entered; and

(d) that the harm to the Respondent in the absence of the stay outweighs the harm to the Band;

provided that continued occupation of the Band's Territory by the Respondent is not inconsistent with public policy reflected in the laws, customs, or traditions of the Band or in federal Indian law. Any such stay may be conditioned by the posting of a bond or other security at the discretion of the Tribal Court.

## **CHAPTER 5**

### **Enforcement and Penalties; and Emergency Order of Exclusion**

#### **Section 5.01 Enforcement and Penalties**

If any Respondent fails to comply fully with any order of Exclusion issued under this Act, the Tribal Court shall issue one or more of the following orders upon motion of the Band:

(a) direct the Band's law enforcement officers to remove the Respondent and the Respondent's property from the Territory of the Band or those portions of the Band's Territory covered by the order, at the Respondent's expense;

(b) direct the Band's Police Department to prevent the Respondent from reentry into the Band's Territory covered by the order of Exclusion for so long as the order remains in effect; and

(c) fine the Respondent up to \$1,000 per day that Respondent remains in violation of the order.

#### **Section 5.02 Emergency Order of Exclusion**

(a) The Tribal Court, upon motion and Petition by the Band, may issue an emergency order of Exclusion without notice to the Respondent, provided:

(1) it appears from specific facts shown by affidavit or the motion that immediate and irreparable injury, loss, or damage will result from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued.

(2) the General Counsel or Tribal Prosecutor certifies to the Tribal Court in writing the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required; and

(3) a record or memorandum is made of any unwritten evidence, argument, or other representations made in support of the motion.

(b) All orders granting emergency Exclusion shall be served upon the Respondent in accordance with Section 3.04(a); and shall inform the Respondent that after complying with the order, a Petition may be immediately filed with the Tribal Court for a hearing to reconsider the order.

(c) Upon receipt of a Petition for a hearing to reconsider as provided in subsection 5.01(b), the Tribal Court shall schedule a hearing. Such hearing shall be held within ten (10) Business Days of receipt of the Petition, provided, however, that the emergency order of Exclusion shall remain in effect pending hearing and a decision thereon, except for the limited purpose of allowing the Respondent to attend the hearing. The hearing and disposition shall proceed in accordance with Section 4.01.

(d) Following the hearing, the Tribal Court shall affirm, modify or rescind its previous order of Exclusion.

(e) Appeals of such orders shall be allowed as provided by Section 4.02.

## **CHAPTER 6**

### **No Bar to Other Actions; and No Waiver of Sovereign Immunity**

#### **Section 6.01 No Bar to Other Actions**

The prosecution of an action for Exclusion under this Act shall not bar or prevent the Band from pursuing or prosecuting any other action under Pokagon Band law against the Respondent.

#### **Section 6.02 No Waiver of Sovereign Immunity**

Nothing in this Act shall be construed to provide a waiver of the sovereign immunity of the Band or any of its governmental officers, representatives, employees, or agents.

## LEGISLATIVE HISTORY

Exclusion Act, enacted November 7, 2011 by Res. No. 11-11-07-06.