

POKAGON BAND OF POTAWATOMI INDIANS

FOOD POLICY

1. PURPOSE.

- (a) Departments, Committees or the Tribal Council occasionally obtain Food from a Food Establishment for a Band Event. The decision to obtain Food from a Food Establishment presents a number of important concerns, including ensuring that the Food Establishment is properly Licensed and complies with Applicable Law.
- (b) The purpose of this Policy is to promote the health, safety and general welfare of the Band by establishing standards to help ensure: (i) that a Food Establishment is properly Licensed at all times when providing Food for a Band Event; and (ii) that a Food Establishment that Operates within the Reservation complies fully with Section 2.02 of the Health and Safety Act, which adopts as Band law the substantive provisions of the Food Code. Additionally, this Policy is intended to ensure compliance with the Preferences Code and to assign certain responsibilities regarding the provision of Food by Food Establishments for Band Events.

2. APPLICABILITY.

- (a) This Policy applies solely to the provision of Food, including Wild Game, by a Food Establishment for a Band Event.
- (b) Consistent with subsection 2.02(d) of the Health and Safety Act, a Food Establishment does not include, and this Policy shall not apply to the following:
 - (i) 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; or
 - (ii) 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.

- Example: Under this exception, a member of the Land Use Board may prepare a pot of soup in a home kitchen for service at a Land Use Board meeting and, if permitted under Band policy, may be reimbursed the actual cost of the Food.
- Example: Under this exception, a Band staff person may prepare a Food in a home kitchen for service at a Finance Board meeting and, if permitted under Band policy, may be reimbursed the actual cost of the Food.

3. **DEFINITIONS.**

The Health and Safety Act and Subsection 1-201.10 of the Food Code contain definitions that apply in the interpretation and application of such Applicable Law and which shall apply in the interpretation and application of this Policy. The following definitions from the Health and Safety Act and Food Code, along with additional terms, are expressly set forth in this Policy:

- (a) “Applicable Law” means all applicable federal, state, local and Band laws, statutes, codes, ordinances, rules and regulations.
- (b) “Band” means the Pokagon Band of Potawatomi Indians.
- (c) “Band Contractor” shall have the same meaning as set forth in subsection 1.04(d) of the Preferences Code, being a corporation, limited liability company, sole proprietorship, or other business entity, at least fifty-one percent (51%) of which entity is owned and operated by a Band Citizen or a Spouse, which status must be maintained throughout the bidding stage.
- (d) “Band Contractor List” means the list of persons or entities that have been certified as a Band Contractor by the Purchasing Agent.
- (e) “Band Event” means all meetings, functions, gatherings or events of the Tribal Council or any Department or Committee.
- (f) “Citizen” means an enrolled member of the Band.
- (g) “Code Enforcement Officer” means the individual authorized and appointed to enforce Section 2.02 (Health and Food Safety) of the Health and Safety Act, including without limitation, to issue permits and enforcement notices.

- (h) “Committee” means any committee, commission, board and any other instrumentality of the Band, excluding the Gaming Authority, Gaming Commission, Mno-Bmadsen, or any of their subsidiaries and wholly owned entities.
- (i) “Department” means any program and department of the Band which is subordinate to the Tribal Council.
- (j) “Direct Purchase” means the purchase of Food for service at a Band Event directly by a Department, Committee or, the Executive Secretary in the case of the Tribal Council, without competitive bidding under this Policy.
- (k) “Executive Secretary” means the Executive Secretary to the Tribal Council, or a designee.
- (l) “Food” shall have the same meaning as set forth in subsection 1-201.10(B) of the Food Code, including a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (m) “Food Code” means the Food and Drug Administration Food Code of 2013, the substantive provisions of which were adopted as Band law pursuant to subsection 2.02(a)(1) of the Health and Safety Act.
- (n) “Food Establishment” shall have the same meaning as set forth in subsection 1-201.10(B) of the Food Code and subsection 2.02(d) of the Health and Safety Act.
- (o) “Government Manager” means the Band’s Government Manager.
- (p) “Health and Safety Act” means the Band’s Health and Safety Act.
- (q) “Licensed” means that the Food Establishment possesses all licenses, permits and registrations, and all other regulatory approvals, required to Operate a Food Establishment in a jurisdiction.
- (r) “Operate” means Food Establishment that:
 - (i) Has Physical Facilities within the Reservation; or
 - (ii) Does not have Physical Facilities 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.

- (s) "Physical Facilities" shall have the same meaning as set forth in subsection 1-201.10(B) of the Food Code, including being the structure and interior surfaces of a Food Establishment.
- (t) “Policy” means this Food Policy.
- (u) “Potluck” means a Band Event where:
 - (i) People are gathered to share Food;
 - (ii) People attending the Band Event are expected to bring Food to share;
 - (iii) There is no compensation provided for people bringing Food to the Band Event;
 - (iv) There is no charge for any Food or beverage provided at the Band Event; and
 - (v) The Band Event is not conducted for commercial purposes.
- (v) “Preferences Code” means the Band’s Employment and Contracting Preferences Code.
- (w) “Purchasing Agent” means the Band’s purchasing agent.
- (x) “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 Band; and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Band’s reservation. Reservation includes any rights-of-way running through the Reservation.
- (y) “Spouse” means a Band Citizen’s partner in marriage.
- (z) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Band’s Constitution.
- (aa) 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.

4. LICENSED.

- (a) Applicable Law. Under Applicable Law, a Food Establishment must be Licensed to Operate, including as follows:
- (i) Pursuant to subsection 2.02(a)(1) of the Health and Safety Act, the Band adopted as Band law the substantive provisions of the Food Code, including Section 8-301.11 which provides that except as otherwise provided in the Food Code, no person shall Operate a Food Establishment without a valid permit. Additionally, under subsection 2.02(c) of the Health and Safety Act, a Food Establishment may not operate within the Reservation without a valid permit issued by the Code Enforcement Officer, provided that such a permit is not required if the Food Establishment: (A) does not have Physical Facilities located within the Reservation; (B) possess a valid permit issued by a regulatory authority in the jurisdiction where the Physical Facilities that prepared the Food are located; and (C) prepared the Food in accordance with applicable law. Accordingly, except as otherwise permitted under subsection 2.02(c) of the Health and Safety Act, any Food Establishment that Operates within the Reservation must obtain a permit in accordance with the Health and Safety Act.
 - (ii) Pursuant to subsection 4101(1) of the Michigan Food Law of 2000, codified at MCL 289.1101 *et. seq.*, except as otherwise provided in the Act, a person shall not operate a Food Establishment unless licensed by the department. Accordingly, any Food Establishment that Operates within the State of Michigan must obtain a license in accordance with the Michigan Food Law if the Food Establishment is subject to the jurisdiction of such State.
 - (iii) Pursuant to subsection 410 IAC 7-24-107(a) of the Indiana Administrative Code, a person may not operate a retail food establishment without first registering with the department. Accordingly, any Food Establishment that Operates within the State of Indiana must register in accordance with the Indiana Administrative Code if the Food Establishment is subject to the jurisdiction of such State.
- (b) License. Except as otherwise described under subsection 4(a)(i) of this Policy, the Band shall purchase Food for service at a Band Event only from a Food Establishment that is Licensed within the jurisdictions in

which it Operates. This requirement applies to Food that is purchased through a Direct Purchase or competitive bidding under this Policy.

- (c) Verification. If a Department, Committee, Purchasing Agent, or the Executive Secretary, as applicable, reasonably believes that a Food Establishment is not Licensed to Operate as required under Band law, then Food shall not be purchased from the Food Establishment for service at a Band Event, unless the Food Establishment provides written proof of the required licensure prior to: (i) the purchase of Food from the Food Establishment; or (ii) the approval of any Master Food Contract under this Policy, if applicable.

5. PREFERENCE.

- (a) The Band seeks to promote Band Contractor businesses. Accordingly, regardless of whether Food is purchased through a Direct Purchase or competitive bidding under this Policy, the Band will endeavor to use a Food Establishment that is a Band Contractor, provided that the Departments, Committees or, the Executive Secretary in the case of the Tribal Council, in its sole discretion, retain the right to select any Food Establishment when competitive bidding is not used.
- (b) In the case of Departments or Committees, the preference requirements of Sections 3.01 and 3.04 of the Preferences Code shall apply to any competitive bidding to select a Food Establishment.
- (c) In the case of the Tribal Council, the preference requirements of Section 3.01 and 3.04 of the Preferences Code shall apply to competitive bidding to select a Food Establishment only if the Tribal Council expressly designates the contract as an open contract that is subject to the preference requirements of the Preferences Code. In such event, the Executive Secretary shall provide written notice of such designation to the Purchasing Agent.

6. DIRECT PURCHASE.

- (a) Subject to the requirements of this Policy, including without limitation, Subsections 4(b) (license), 4(c) (verification), 5(a) (preference), and 7(a) (competitive bidding) Departments, Committees or, the Executive Secretary in the case of the Tribal Council, may purchase Food for a Band Event through Direct Purchase if less than twenty-five (25) attendees are expected to attend the Band Event.

- (b) In general, a Direct Purchase shall be made using a Band credit card. A Director, Committee or, the Executive Secretary in the case of the Tribal Council, may request that a Band credit card issued to the Purchasing Agent be used to make a Direct Purchase. In such event, the Director, Committee or, the Executive Secretary in the case of the Tribal Council, shall comply with all purchase instructions specified by the Purchasing Agent.

7. **COMPETITIVE BIDDING.**

- (a) When Required. Although at times, competitive bidding will not be possible due to time constraints and other factors, such as Food selection, competitive bidding must be used if required under applicable law or grant requirements and should be used to select a Food Establishment whenever possible, including if twenty-five (25) or more attendees are expected to attend the Band Event.
- (b) Administration. The Purchasing Agent will administer all competitive bidding and may develop forms and procedures to govern competitive bidding and selection, which shall be effective upon approval by the Band's Finance Board. Accordingly, when competitive bidding will be used, the Director, Committee or, the Executive Secretary in the case of the Tribal Council, shall inform the Purchasing Agent of the applicable business terms governing the provision of Food at a Band Event, which should include the following:
 - (i) The Department, Committee or Tribal Council;
 - (ii) The date, location, and time of the Band Event;
 - (iii) The Food to be served, including quantity;
 - (iv) The plates, cups, utensils, napkins, etc. to be provided;
 - (v) The number of people to be served, including how the number was determined (prior events, registration, etc.);
 - (vi) The budget; and
 - (viii) Whether use of a Band kitchen or equipment will be needed.
- (c) Band Contractors. In connection with competitive bidding, the Purchasing Agent shall fulfill all duties and responsibilities of the "Department of

Housing” under Subsections 3.02(a) and 3.02(b) of the Preferences Code, including: (i) the Purchasing Agent shall maintain the Band Contractor List; (ii) any Food Establishment may submit a written request to the Purchasing Agent to be included on the Band Contractor List; (iii) the Purchasing Agent shall require the Food Establishment to provide documentation establishing that the Food Establishment qualifies as a Band Contractor; (iv) the Purchasing Agent shall endeavor to notify each Band Contractor on the Band Contractor List of each opportunity for competitive bidding under this Policy; and (v) the Purchasing Agent shall make diligent good faith efforts to maintain available contact information for each Band Contractor on the Band Contractor List.

8. **MASTER FOOD CONTRACT.**

- (a) Master Food Contract. In awarding a competitive bid, the Purchasing Agent shall endeavor to use the sample Master Food Contract and Event Addendum, as may be amended from time to time, which are attached to this Policy as Exhibit 1.
- (b) Event Addendum. While the Master Food Contract is in effect between the Band and a Food Establishment, the Event Addendum should be used for subsequent purchases of Food from the Food Establishment.
- (c) Confirmation. The Purchasing Agent shall confirm the accuracy of the Master Food Contract and Event Addendum prior to presentment for approval and signature in a manner permitted under Band law and policy.
- (d) Approval. Neither the Master Food Contract, nor any Event Addendum, shall be effective unless approved and executed in a manner permitted under Band law, including as applicable, by the Government Manager.
- (e) Amendment. The Master Food Contract, including any Event Addendum, shall be amended solely in writing approved and executed in a manner permitted under Band law, including as applicable, by the Government Manager.

9. **BAND FACILITIES.**

- (a) Band Kitchen. To the extent authorized in the Master Food Contract, a Food Establishment may utilize a designated Band kitchen to prepare the Food for a Meeting; provided, however, the Food Establishment, without limitation, shall comply with all Applicable Law, including without limitation, the Food Code and with all contractual obligations and requirements.

- (b) Inspection. If a Food Establishment utilizes a designated Band kitchen, the Department, Committee or, the Executive Secretary in the case of the Tribal Council, shall ensure that the Band kitchen has been inspected and that inventory is taken after the Band Event.

10. **COMPLIANCE.**

- (a) In connection with each Band Event, the Department, Committee or, the Executive Secretary in the case of the Tribal Council, shall monitor the Food Establishment's compliance with all obligations, including without limitation, Applicable Law, this Policy and any contractual obligations and requirements.
- (b) If a Department, Committee or, the Executive Secretary in the case of the Tribal Council determines that a Food Establishment failed to comply with any such obligations, the noncompliance must be promptly reported to the Purchasing Agent.