

**POKAGON BAND OF POTAWATOMI INDIANS  
DRONE ACT**

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## **CHAPTER 1**

### **General**

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

This Act shall be known and may be cited as the “Drone Act”.

#### **Section 1.02 Authority**

The Tribal Council enacts this Act pursuant to:

- (a) Article I, Section 1 and Article III, Sections 1 and 2 of the Constitution;
- (b) the legislative powers of the Tribal Council set forth in Article IX, subsections 2(a) and 2(d) of the Constitution; and
- (c) 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 Findings**

The Tribal Council finds as follows:

- (a) The Band is a sovereign, federally recognized Indian tribe, as reaffirmed under P.L. 103-323, enacted September 21, 1994.
- (b) Under Article IX of the Constitution, the Tribal Council is the governing body of the Band.
- (c) Under Article IX, subsection 1(a) of the Constitution, the Tribal Council’s duties include “[t]o promote and protect the peace, health, safety . . . and general welfare of the Band[.]”
- (d) Under Article IX, subsection 2(a) of the Constitution, the Tribal Council is empowered “[t]o make laws, not inconsistent with the Constitution . . . and to implement and enforce . . .” such laws.
- (e) Under Article III, Section 1 of the Constitution, “[t]he Band’s sovereign powers shall be exercised to the fullest extent consistent with tribal self-determination, and to the extent applicable, federal law and shall extend to all . . . [Citizens and Non-Citizens] within the jurisdiction of the Band . . .”
- (f) Under Article III, Section 2 of the Constitution, the territory of the Band includes the Reservation.
- (g) Under federal law, the Band’s sovereign power centers on the Reservation, focuses on self-governance and internal relations and includes the authority to:

(1) exclude Persons from the Reservation and to impose conditions on entry onto the Reservation;

(2) regulate Citizens, including within the Reservation; and

(3) regulate the conduct of Non-Citizens within the Reservation when the requisite consensual relationship exists, or the conduct threatens or has some direct effect on the economic security, political integrity, health, or welfare of the Band.

(h) The Band has inherent sovereignty and a government-to-government relationship with the United States government.

(i) For nearly 50 years, Congress has supported the policy of tribal self-governance, including furthering tribal control over government services, natural resources, economic development, and tribal culture and community.

(j) Through FAA Order 1210.20, the FAA has expressed support for the policy of tribal self-governance, including stating: “The Federal government must act in good faith and loyalty to the best interests of American Indians . . . , among those being their interest in self-government.”

(k) Under the Federal Aviation Act, 49 U.S.C. 40101-41901, the FAA regulates the Navigable Airspace.

(l) The FAA is empowered to regulate below Navigable Airspace, including pursuant to 49 U.S.C. 40103, under which the FAA must prescribe air traffic regulations, including for “navigating, protecting, and identifying aircraft” and “protecting individuals and property on the ground.”

(m) The FAA’s regulation of the Navigable Airspace and air traffic does not displace all local regulation, including regulation of the surface, which is a matter of local control. *See Gustafson v. City of Lake Angelus*, 76 F.3d 778 (6<sup>th</sup> Cir. 1996) (concluding that the Federal Aviation Act does not displace local regulation of landing sites, as Congress left the matter to local control); *Skysign Intern., Inc. v. City and County of Honolulu*, 276 F.3d 1109 (9<sup>th</sup> Cir. 2002) (concluding that the Federal Aviation Act does not displace local regulation of aerial advertising); *Nat’l Press Photographers Assoc. v. McCraw*, 504 F.Supp.3d 568 (W.D. TX 2020) (stating that “a state may promulgate drone regulations consistent with its traditional police powers, such as to protect privacy or prevent trespass or voyeurism.”).

(n) The Band’s rights to the Reservation do not end at the surface but extend to the “immediate reaches of the enveloping atmosphere”. *See United States v. Causby*, 328 U.S. 256 (1946) (stating: that as an incident of ownership, a landowner has a claim to “exclusive control of the immediate reaches of the enveloping atmosphere” and, accordingly, invasions of the same “are in the same category as invasions of the surface.”).

(o) Under 14 C.F.R. Part 107, the FAA regulates Drones operated for commercial use, but such provisions relate primarily to operating rules and remote pilot certification for Drones.

(p) Under 49 USC 44809, except as otherwise stated, a person may operate a Drone without specific certification or operating authority from the FAA, if the Drone is flown strictly for recreational purposes and meets all other applicable requirements.

(q) The FAA has recognized that “certain legal aspects concerning [the use of Drones weighing less than 55 pounds] may be best addressed at the State or local level.” 81 Fed. Reg. 42064, 42194 (Jun. 28, 2016).

(r) As between the Tribal Council and the FAA, the Tribal Council is in the best position to determine the appropriate uses of the Reservation, including the immediate reaches of the enveloping atmosphere.

(s) As between the Tribal Council and the FAA, the Tribal Council is in the best position to determine the conduct that threatens the peace, culture, customs, privacy, health, safety, and welfare of the Band, including by interfering with traditional practices, ceremonies, and gatherings.

(t) A Person who violates this Act threatens the peace, culture, customs, privacy, health, safety, and welfare of the Band, including traditional practices, ceremonies, and gatherings.

(u) The Tribal Council desires to reduce the threat to the peace, culture, customs, privacy, health, safety, and welfare of the Band through this Act.

(v) The Tribal Council is empowered to regulate conduct within the Reservation involving a Drone System and to impose conditions on entering an Authorized Area with a Drone System.

(w) The Tribal Council retains the authority under the Constitution to enact this Act, and this Act is consistent with applicable federal law.

(x) This Act is necessary and appropriate to achieve the purpose set forth in Section 1.04.

#### **Section 1.04 Purpose**

The purpose of this Act is to reduce the threat posed by the operation of Drones within the Reservation to the peace, culture, customs, privacy, health, safety, and welfare of the Band, Citizens, and others, including by prohibiting certain conduct involving Drone Systems.

#### **Section 1.05 Application**

This Act shall apply to all Persons who are subject to the jurisdiction of the Band.

## **Section 1.06 Construction**

(a) This Act shall be read and interpreted in a manner consistent with the Constitution, but in the event of any inconsistency, the Constitution shall control.

(b) This Act shall be read and interpreted in a manner consistent with applicable federal law, but in the event of any inconsistency, the applicable federal law shall control.

(c) This Act shall be liberally construed to in furtherance of the findings and purpose as set forth in Sections 1.03 and 1.04 of this Chapter.

(d) The reference to any Chapter, Section, or Subsection in this Act shall refer to a Chapter, Section, or Subsection of this Act, unless otherwise specified.

## **Section 1.07 Severability**

(a) If any part of this Act, or the application of this Act to any Person or circumstance, shall be adjudged by any 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 any part of 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 control, and the conflicting parts are superseded and repealed.

## **Section 1.08 Definitions**

The following terms, whenever used in this Act, shall have the following respective meanings, whether used in singular or plural form:

(a) “Authorized Area” means an area within the Reservation designated by the Band Police from which a person may cause a Drone to take off and land.

(b) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign federally recognized Indian tribe, as reaffirmed under P.L. 103-323, enacted September 21, 1994.

(c) “Band Police” means the Band’s Police Department.

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

(e) “Community-Based Organization” has the meaning set forth in 49 U.S.C. 44809, as may be amended, which has been recognized by the FAA.

(f) “Constitution” means the Band’s Constitution, as amended, which was adopted on November 1, 2005 and became effective on December 16, 2005.

(g) “Director” means the Band’s Director of Kowabdanawa Odë Kè

(h) “Drone” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft, including everything that is on board or otherwise attached to the aircraft.

(i) “Drone System” means a Drone and associated elements required for operation, including communication links and the components that control the Drone.

(j) “FAA” means the Federal Aviation Administration.

(k) “Government Manager” means the Band’s Government Manager.

(l) “Include” or any derivative thereof, whether capitalized, shall be deemed to be followed by “without limitation.”

(m) “Navigable Airspace” means as defined under federal law.

(n) “Non-Citizen” means any person other than a Citizen.

(o) “Non-Citizen Spouse” means any person other than a Citizen who is married to, or recognized as being married to, a Citizen pursuant to applicable law.

(p) “Person” means any natural person and any business, proprietorship, association, partnership, syndicate, corporation, firm, joint venture, trust, or other form of business association or entity, along with any labor organization, government, or government instrumentality, subdivision or entity. “Person” without a capital “P” refers only to a natural person.

(q) “Reservation” means:

(1) 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

(2) all lands proclaimed by the Secretary of the Interior to be part of the Band’s Reservation.

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

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

(t) “Visual Observer” means a person designated by the Citizen or Non-Citizen Spouse to assist the Citizen or Non-Citizen Spouse, or other person authorized by the Citizen or Non-Citizen Spouse to operate the Drone, to see and avoid other air traffic or objects.

## **CHAPTER 2 Prohibitions and Exceptions**

### **Section 2.01 Prohibitions**

Except as provided in Section 2.02 and Subsection 3.02(a), no Person shall knowingly:

- (a) cause a Drone to take-off or land within the Reservation except from an Authorized Area;
- (b) leave an Authorized Area while in possession of any Drone System while the Drone associated with such Drone System is in flight; or
- (c) otherwise violate any provision of this Act.

### **Section 2.02 Exceptions**

This Act shall not apply to any:

- (a) employees, representatives, volunteers, or contractors (all tiers) of the Band, or any instrumentalities or wholly owned entities that are owned by or through the Band, in the performance of their official duties or scope of work, provided that such Persons must comply with all other applicable laws, including applicable federal law; and
- (b) Person who has obtained the prior approval of the Band Police to engage in conduct prohibited by this Act, provided that the Band Police shall not approve such request unless it advances or supports the health, safety, and welfare of the Band, rather than primarily a private or commercial interest, and such Person must comply with all other applicable laws, including applicable federal law. This exception is intended to be interpreted narrowly and would include the Band Police authorizing an assisting law enforcement agency to operate a Drone within the Reservation.

## **CHAPTER 3 Authorized Area**

### **Section 3.01 Designation**

(a) The Band Police, in consultation with the Director and Government Manager, may designate one or more Authorized Areas within the Reservation, provided that no area:

- (1) within five (5) miles of an airport shall be designated as an Authorized Area; and
- (2) shall be designated as an Authorized Area, where the operation of a Drone within such area would threaten the peace, culture, customs, privacy, health, safety, and welfare of the Band, including by interfering with traditional practices, ceremonies, and gatherings.



(b) Any designation of an Authorized Area shall state the hours during which Citizens and Non-Citizen Spouses may enter an Authorized Area with a Drone System for the purpose of operating the Drone System.

(c) Nothing in this Act, including the designation of an Authorized Area under this Act, shall authorize any Citizen or Non-Citizen to be present within the Reservation, including any Authorized Area, if the Citizen or Non-Citizen is not otherwise permitted within the Reservation, including any Authorized Area.

### **Section 3.02 Requirements**

(a) Citizens and Non-Citizen Spouses may cause a Drone to take off or land within an Authorized Area.

(b) Except as otherwise expressly provided under Section 2.02, no person other than a Citizen or Non-Citizen Spouse may cause a Drone to take off or land within an Authorized Area.

(c) As a condition of entering or remaining in an Authorized Area with a Drone System, Citizens and Non-Citizen Spouses shall comply with the following:

- (1) the Drone must not be more than 55 pounds, including the weight of anything attached to or carried by the Drone;
- (2) the Drone must be operated strictly for hobby or recreational use;
- (3) the Drone must be operated in accordance with or within the programming of a Community-Based Organization's set of safety guidelines that are developed in coordination with the FAA, provided that until a Community-Based Organization has been recognized by the FAA, the Drone must be operated in accordance with the Academy of Model Aeronautics safety guidelines;
- (4) the Drone must be operated by the Citizen or Non-Citizen Spouse within the visual line of sight of the Citizen or Non-Citizen Spouse, or a Visual Observer co-located and in direct communication with the Citizen or Non-Citizen Spouse;
- (5) the Drone must be operated in a manner that does not interfere with and gives way to any manned aircraft;
- (6) the Drone must be flown from the surface to not more than 400 feet above ground level and in accordance with all airspace restrictions and prohibitions; and
- (7) the Drone must be registered and marked in accordance with 48 U.S.C. Chapter 441 and proof of registration must be made available to Band Police upon demand.

### **Section 3.03 Closure Order**

(a) If the Band Police determines that it is necessary to close all or any portion of an Authorized Area, including to protect public safety, then it shall prepare and issue a closure order and post the closure order at the Authorized Area and on the Band's website.

(b) No Person shall knowingly violate any closure order.

## **CHAPTER 4 Maps**

### **Section 4.01 Posting**

(a) The Band Police shall maintain maps depicting the Reservation, and all Authorized Areas, which shall be available to the public upon request made to Band Police main office and shall be posted on the Band's website.

(b) The maps shall include a statement of the hours during which Citizens and Non-Citizen Spouses may enter an Authorized Area with a Drone System for the purpose of operating the Drone System.

### **Section 4.02 Updating**

(a) The Band Police shall promptly cause the maps depicting the Reservation and all Authorized Areas, to be updated to reflect any change to the applicable boundaries.

(b) Any updated maps shall be made available, posted and sent in accordance with Section 5.01.

## **CHAPTER 5 ENFORCEMENT**

### **Section 5.01 Band Police**

(a) The Band Police shall enforce this Act and may issue a civil citation to any Person who violates this Act.

(b) Nothing in this Act is intended to, or shall, waive, diminish, or alter any authority granted to the Band Police under applicable law.

### **Section 5.02 Penalties**

(a) A Person who violates any provision of this Act may be cited for a civil infraction for which the penalty, if found responsible, shall be not less than \$100 or more than \$500 for each such violation.

(b) Nothing in this Act, or any action under this Act, shall bar any criminal prosecution, including for a violation of any state law that is incorporated into the Band's Code of Offenses, including MCL 259.322, as may be amended.

### **Section 5.03 Seizure**

(a) Whenever the Band Police has probable cause to believe that this Act has been or is being violated by any Person, the Band Police may seize and take possession within the Reservation of the Drone System that is the subject of the violation, and the seizure may be made without a warrant.

(b) Each Drone System seized by the Band Police shall be turned over to the Band Police to be held until a determination by the Band's legal counsel that forfeiture will not be pursued, or order of the Tribal Court under Section 5.04.

### **Section 5.04 Forfeiture**

(a) The Tribal Court shall have jurisdiction to determine whether any Drone System seized within the Reservation under this Chapter shall be forfeited under this Section 5.04.

(b) For a Drone System to be forfeited, the Band's legal counsel shall file a verified complaint in the Tribal Court within ninety (90) calendar days of the seizure, which complaint shall identify the owner of the Drone System, if known, and set forth a description of the Drone System, the time and place of the seizure, the reasons for the seizure, and a demand for forfeiture of the Drone System.

(c) When a complaint for forfeiture is filed in the Tribal Court, the Tribal Court shall issue a summons, signed by the judge or the Tribal Court clerk. The Tribal Court shall retain a copy of the executed summons and immediately return the original of the executed summons to the Band's legal counsel.

(d) After the Tribal Court issues the summons, the Band's legal counsel shall cause the owner of the Drone System to be served with the summons and a copy of the complaint for forfeiture along with all other documents filed with the Tribal Court by:

(1) causing the summons and copy of the complaint for forfeiture to be delivered to the owner of the Drone System personally; or

(2) sending the summons and copy of the complaint for forfeiture by registered or certified mail, return receipt requested, and delivery restricted to the addressee, with service being made when the owner of the Drone System acknowledges receipt.

(e) Proof of service must be filed with the Tribal Court indicating the date of service and, in the case of service under Subsection 5.04(d)(2) above, a copy of the return receipt signed by the owner of the Drone System must be attached to the proof of service.

(f) On a showing that the owner of the Drone System is not known or cannot be found, the Tribal Court may, by order, permit service of process to be made in any other manner reasonably calculated to give the owner of the Drone System actual notice of the proceedings and an opportunity to be heard.

(g) Process may be served by any legally competent adult who is not a party to the action, and proof of service may be made by affidavit, made before a notary public, stating the means of service made by such person as provided in this Section 5.04.

(h) The owner of the Drone System shall file an answer with the Tribal Court, or take other action permitted by Band law or Tribal Court rules, within twenty-one (21) calendar days after being served with the summons and a copy of the complaint for forfeiture.

(i) The owner of the Drone System shall cause the Band's legal counsel to be served with the answer in the manner provided under Subsection 5.04(d) above and shall cause proof of service to be filed with the Tribal Court in accordance with Subsection 5.04(e) above.

(j) At the hearing on the complaint, the Band shall bear the burden of proof to establish that a violation of this Act has occurred by a preponderance of the evidence. There shall be a rebuttable presumption that any person other than an owner who is operating a Drone was lawfully in possession of the Drone with knowledge of the owner.

(k) The Tribal Court shall not enter an order forfeiting the Drone System as a matter of course on the default of the owner of the Drone System because of failure to timely answer or appear at the hearing, but rather the Tribal Court shall hear each such case in open court on proofs taken, but if the owner of the Drone System signs a property release, a Tribal Court proceeding shall not be necessary.

(l) Upon the hearing on the complaint for forfeiture:

(1) if the Tribal Court determines that the Drone was operated, at any time, in any manner, or for any purpose contrary to this Act, either by the owner or by a person lawfully in possession of the Drone with the knowledge of the owner, an order may be made forfeiting the Drone System and directing its sale or other disposal by the Band Police; or

(2) if the Tribal Court determines that the Drone was not operated, at any time, in any manner, or for any purpose contrary to this Act, either by the owner or by a person lawfully in possession of the Drone with the knowledge of the owner, the Tribal Court shall order the Band Police to return the Drone System immediately to its owner.

(m) When a Drone System is confiscated under this Section 5.04, and the Band has met the burden of proof, the Band Police, at its discretion, may retain the Drone System for official use or may sell the Drone System, but the Band Police shall destroy any Drone System that it deems to threaten public safety. The proceeds from any sale shall be paid into the Band treasury and directed towards administration of this Act.

(n) Forfeiture of a Drone System encumbered by a bona fide security interest shall be subject to the interest of any secured party who neither had knowledge of nor consented to the violation of this Act.

## **CHAPTER 6 SOVEREIGN IMMUNITY**

### **Section 6.01 No Bar**

No action under this Act shall bar or prevent the Band from pursuing or prosecuting any other action under Pokagon Band law.

### **Section 6.02 No Waiver**

Nothing in this Act shall waive the sovereign immunity of the Band or any of its officials or employees.

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### **LEGISLATIVE HISTORY**

Enacted on December 8, 2022, by Resolution No. 22-12-08-01, under which the Drone Act shall become effective on January 15, 2023.