

**POKAGON BAND OF POTAWATOMI INDIANS
FINANCE BOARD ORDINANCE**

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CHAPTER I
TITLE; PURPOSE; AUTHORITY

Section 1.01 Short Title. This Ordinance shall be known and may be cited as the “Finance Board Ordinance”

Section 1.02 Authority. Under the authority granted by the Constitution, the Tribal Council is the governing body of the Band and is vested with the sovereign powers of the Band not inconsistent with any provisions of the Constitution. Pursuant to the express grant of authority enumerated in Article IX, subsections 1 (a), (c), (d), (e) and (h) and subsections 2 (a), (f), (j), (k) and (l) of the Constitution and the inherent authority of the Band as a sovereign tribal nation to provide for the health, safety, and welfare of the Band, the Tribal Council enacts this Finance Board Ordinance.

Section 1.03 Purpose. The Tribal Council has the duty to utilize and account for the financial resources of the Band efficiently, effectively and responsibly, and has determined that the enactment of this Ordinance is in the best interests of the Band. The Tribal Council desires to delegate, subject to the limitations provided herein, limited contract approval authority to the Band’s Government Manager and the Finance Board. The Finance Board is organized as a permanent standing committee of Tribal Council, and is delegated the authority of Tribal Council to the extent provided in this Ordinance for the purposes of:

- (a) Establishing annual operating and capital budgets for the Band;
- (b) Approving amendments to the approved operating and capital budgets;
- (c) Authorizing and approving disbursements of funds on behalf of the Band within budget constraints;
- (d) Establishing financial policies and procedures of the Band, and monitoring compliance with such policies and procedures;
- (e) Establishing investment policies for funds of the Band, and monitoring performance of such investments and compliance with such policies;
- (f) Overseeing the Department of Finance;
- (g) Reviewing and monitoring, for purposes of financial compliance, all contracts with the Band and its instrumentalities, subject to the limitations provided in this Ordinance;
- (h) Approving, subject to the limitations provided in this Ordinance, contracts with the Band and its instrumentalities; and

- (i) Overseeing the Band’s external and internal audit process.

Section 1.04 Repeal of Conflict Laws. All other laws, regulations, and policies that may be inconsistent with or in conflict with this Ordinance are hereby repealed.

Section 1.05 Severability. If any provision of this Ordinance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without invalid provision or application. To this end, the provisions of this Ordinance are severable.

Section 1.06 Existing Contracts. Nothing in this Ordinance shall affect or impair the validity or effectiveness of any contract of the Band or of Tribal Council taken prior to the adoption of this Ordinance.

CHAPTER II DEFINITIONS

The following terms, whenever used or referred to in this Ordinance, shall have respective meanings stated below, which shall apply regardless of whether such terms are used in their singular or plural form:

“Band” or “Pokagon Band”: The Pokagon Band of Potawatomi Indians.

“Board” or “Finance Board” or “Pokagon Band Finance Board”: The Finance Board established pursuant to Chapter III of this Ordinance.

“Board Member”: A member of the Finance Board as set forth in Section 3.01 of this Ordinance.

“Chi Ishobak”: The Michigan non-profit corporation established under Michigan law, Act 284, Public Acts 1972, as amended (corporate identification # 70708E), to provide credit, capital, financial services, and/or financial management training and assistance to Band citizens and their families as well as businesses owned by Band citizens and their families.

“Committee Procedures Handbook”: The handbook adopted by the Tribal Council that establishes procedures and guidelines that are intended to improve the efficiency and effectiveness of Band boards, commissions, and committees.

“Constitution”: The Constitution of the Band.

“Mno-Bmadsen”: The unincorporated governmental instrumentality of the Band established and chartered by the Tribal Council through the adoption of the Mno-Bmadsen Charter.

“Ordinance”: The Finance Board Ordinance of the Band.

“Pokagon Gaming Authority”: The unincorporated governmental instrumentality of the Band established by the Tribal Council through adoption of the Pokagon Gaming Authority Ordinance.

“Treasurer”: One of the four officers on the Tribal Council, whose duties as described in Article X, subsection 5 (e) of the Constitution include monitoring fiscal matters of the Band and ensuring that accurate records of account be maintained.

“Tribal Council”: The governing body of the Band, in accordance with Article IX of the Constitution.

“Tribal Council Member”: Any one of the eleven (11) seats on the Tribal Council.

CHAPTER III FINANCE BOARD CREATION; OFFICERS

Section 3.01 Creation and Composition of the Finance Board. There is hereby created a Board to be known as the "Pokagon Band Finance Board" that shall be composed of five (5) Tribal Council Members as hereinafter provided. The Board Members shall be:

- (a) The Treasurer of the Tribal Council; and
- (b) Four (4) other Tribal Council Members, each of whom shall be appointed by Tribal Council to serve for the later of a one (1) year term or until his or her successor is appointed by Tribal Council.

Section 3.02 Governmental Instrumentality. The Finance Board is an instrumentality of the Band government and shall be clothed with all the rights, privileges, and immunities of the Band, including but not limited to the sovereign immunity of the Band from suit absent express consent from Tribal Council. Board Members shall be deemed officers of the Band government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law with respect to officers of the Band. Neither any Board Member nor any person executing any contract or obligation on behalf of the Board shall be liable personally on any such contract or obligation.

Section 3.03 Officers of the Finance Board. The Finance Board officers and duties are as follows:

- (a) Chair. The Treasurer shall serve as Chair of the Board and shall:
 - (1) Preside at all meetings of the Board, and set the agenda for each meeting;
 - (2) Except as otherwise authorized by resolution of the Board, sign contracts, reports and other instruments or documents on behalf of the Board;
 - (3) Be responsible for preparation of the agenda; and

(4) Report to Tribal Council on actions of the Board.

(b) Vice Chair. The Vice-Chair shall be appointed by Tribal Council and shall perform the duties and exercise the powers of the Chair as may be necessary due to the absence or disability of the Chair. In case of the resignation, long-term disability or death of the Chair, the Vice-Chair shall perform the Chair's duties until a new Chair is appointed by Tribal Council.

(c) Secretary: The Secretary shall be appointed by Tribal Council and shall keep and maintain the records of the Board, including without limitation a chronological filing system of minutes, resolutions, record of votes, approved contracts and budgets, and any other information that pertains to the Board.

No person shall hold more than one office on the Board.

Section 3.04 Removal. All Board Members serve at the will of Tribal Council, and can be removed by the Tribal Council with or without cause or notice; provided that the Treasurer can only be removed as a Board Member if the Treasurer is also removed or recalled as Treasurer of the Band. The Board Member whose removal is sought cannot vote on any Tribal Council resolution relating to his or her removal, but any other Board Member may vote on any such resolution.

Section 3.05 Deemed Resignation. A Board Member who no longer meets the eligibility requirements for service on the Finance Board provided at Section 3.01, shall automatically be deemed to have resigned from the Finance Board without further action of the Finance Board or the Tribal Council. Such deemed resignation shall be effective as of the date the Board Member no longer met the eligibility requirements provided at Section 3.01.

Section 3.06 Compensation. The Board Members will be entitled to compensation and reimbursement for actual and reasonable expenses incurred in the discharge of their duties, provided that such payments shall be in accordance with the policies and procedures of the Band's Committee Procedures Handbook.

CHAPTER IV MEETINGS

Section 4.01 Meetings. The Board shall meet as often as necessary to perform its duties, provided that the Board shall meet at least once per month.

Section 4.02 Quorum.

(a) A quorum shall consist of four (4) Board Members for the following actions or delegation of any of the following actions (other than approval of the operating or capital budget of the Band and any contract approval, which cannot be delegated):

- (1) Approval of the operating or capital budget of the Band, or
 - (2) Approval of any contract where the annual value of the contract exceeds \$50,000.
- (b) For all actions other than those described above in subsection 4.02(a) or for delegation of any such other actions, a quorum shall consist of three (3) Board Members.
- (c) The quorum requirements under this Section 4.02 shall not be reduced, regardless of the existence of vacancies.
- (d) No Board action shall be taken unless a quorum is present.

Section 4.03 Recess. Any meeting may be recessed from time to time, and such meeting shall be reconvened at an announced future place and time.

Section 4.04 Action by Resolution. The Finance Board shall act by resolution when approving contracts and budgets. In addition, any delegation by the Board pursuant to Subsection 6.03(c) shall be by resolution of the Finance Board.

Section 4.05 Telephone Meetings. Board Members may participate in a meeting of the Board or of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting in such manner by any Board Member who does not object at the beginning of such meeting to the holding thereof in such manner shall constitute presence for quorum and voting purposes at such meeting.

Section 4.06 Open Meetings. All Finance Board meetings shall be open to all Band citizens unless a closed meeting is required or authorized pursuant to the Band's Open Meetings Act.

CHAPTER V POWERS AND DUTIES OF THE FINANCE BOARD; LIMITATIONS

Section 5.01 Powers and Duties of the Finance Board. The Finance Board shall have the following duties, and the following powers which it may exercise, consistent with the purposes set forth above and the provisions of this Ordinance:

- (a) To review and monitor, for purposes of financial compliance, all contracts (including contracts, agreement and understandings with the Federal Government, State Governments or their agencies or instrumentalities, and Tribal and non-Tribal local governments and governmental entities) on behalf of the Band, or of any agency or instrumentality of the Band, provided that the Finance Board shall not review or monitor any employment contracts, grant contracts, or any contracts in which the Pokagon Gaming Authority, Mno Bmadsen, or Chi Ishobak is a party, unless the Band is also a party to such contract.

- (b) To approve all contracts with an annual value of not more than \$200,000, provided that the Finance Board shall not have power to approve any contract regardless of value, that:
- (1) contains a waiver of sovereign immunity,
 - (2) is a contract in which the Band or any instrumentality thereof is borrowing money,
 - (3) is an employment contract,
 - (4) is a grant contract in which the Band or any instrumentality of the Band is a party,
 - (5) is a contract in which the Pokagon Gaming Authority, Mno-Bmadsen, or Chi Ishobak is a party, provided that the immediately preceding limitation shall not apply to contracts in which a party is an entity that is owned in whole or in part by Mno-Bmadsen,
 - (6) is a settlement of any lawsuit or claim against the Band or any instrumentality thereof,
 - (7) is a contract for legal services, or
 - (8) the cost or expense for such contract is not within an Approved Budget.
- (c) To establish and review operating and capital budgets for the Band, or by any agency or instrumentality of the Band (other than the Pokagon Gaming Authority, Mno Bmadsen, and Chi Ishobak). Such budgets shall become effective 30 days after they are transmitted by the Board to the Tribal Council Secretary, if they are not stayed, modified or disapproved by Tribal Council within that 30-day period.
- (d) Prior to transmitting an operating or capital budget to the Tribal Council Secretary:
- (1) the Finance Board shall cause notice of its intent to transmit the same to be posted on the Band's website and at the Band's main administrative offices. The notice shall, at a minimum, include: (i) a summary of the operating or capital budget, (ii) a statement that comments from Band citizens on the operating or capital budget may be submitted to the Director of Finance no later than thirty (30) days from the date of the notice, and (iii) a statement that Band citizens may make a written request to the Treasurer to inspect or receive a copy of the full operating or capital budget under the Band's Freedom of Information Act.
 - (2) the Finance Board shall, at a meeting of the Finance Board or the Tribal Council, present such budget, or a summary of the same, and at such meeting provide Band citizens a reasonable opportunity to comment on the budget.
 - (3) The Director of Finance shall provide all comments received during the comment period in Subsection 5.01(d)(1) and the meeting in Subsection 5.01(d)(2) to the Finance Board. The Finance Board shall review all such comments and shall make such changes to the operating or capital budget as the Finance Board, in its sole discretion, deems necessary or appropriate.

- (e) If a budget is not submitted by the Finance Board to Tribal Council by the date which is 45 days prior to commencement of a fiscal year, Tribal Council shall have the option of proceeding to review, authorize and approve such budget. Any budget that has been approved by the Board and not stayed, modified or disapproved by Tribal Council within 30 days after transmission to the Tribal Council Secretary, or that has been otherwise approved by the Tribal Council, is referred to as an “Approved Budget”.
- (f) To review, authorize and approve amendments to the approved operating and capital budgets of the Band, or of any agency or instrumentality of the Band (other than the Pokagon Gaming Authority, Mno Bmadsen, and Chi Ishobak). An amended budget shall become effective immediately if the amended budget does not increase an Approved Budget. An amended budget that increases an Approved Budget shall become effective 30 days after it is transmitted by the Board to the Tribal Council Secretary, if it is not stayed, modified or disapproved by Tribal Council within that 30-day period.
- (g) To review, authorize and approve financial statements of the Band, or of any agency or instrumentality of the Band (other than the Pokagon Gaming Authority Mno Bmadsen, and Chi Ishobak), provided that such financial statements are consistent with operating or capital budgets approved by Tribal Council or amendments to such budgets approved by the Tribal Council.
- (h) To review, authorize and approve financial policies and procedures of the Band, or of any agency or instrumentality of the Band (other than the Pokagon Gaming Authority, Mno Bmadsen, and Chi Ishobak), and to monitor and investigate compliance with such policies.
- (i) To review, authorize and approve investment policies for funds of the Band, or of any agency or instrumentality of the Band (other than the Pokagon Gaming Authority, Mno Bmadsen, and Chi Ishobak), to monitor performance of such investments, and to monitor and investigate compliance with such policies.
- (j) To engage the external audit firm for the Band’s annual audit requirements, other than for the Pokagon Gaming Authority, Mno Bmadsen, and Chi Ishobak.
- (k) To review and take corrective action on the results of the Band’s annual financial audits, including any specific issues or areas of concern (this includes the review of any external auditor provided reports of all instrumentalities of the Band).
- (l) Oversee the operation and function of the Band’s Department of Finance to assure effective accomplishment of all financial and accounting services of the Band.

Section 5.02 Limitations on the Powers of the Finance Board.

- (a) Tribal Council. Tribal Council retains authority to modify or rescind actions taken by the Board, but no modification or rescission by Tribal Council shall impair or affect the validity

or enforceability of any contract entered into by the Board on behalf of the Band under subsection 5.01(b) of this Ordinance prior to such modification or rescission.

- (b) **Grievance Procedure.** The Finance Board shall have no duty or authority to investigate matters that are subject to the Band’s Grievance Procedure for Tribal Citizens.
- (c) **Incurring Debt.** The Board may review and recommend the terms of a proposed borrowing of the Band, but shall not have the authority to incur debt on behalf of the Band.
- (d) **Civil Rights.** In exercising the powers granted by the Ordinance, neither the Board nor its agents or representatives, shall violate the civil rights of any person under the Indian Civil Rights Act, 25 U.S.C. 1301-1303, or under Band law.
- (e) **Conflict of Interest.**
 - (1) Board Members shall avoid acts and situations which constitute a conflict of interest or are otherwise improper, which might give an appearance of a conflict of interest or other impropriety, or which might otherwise impair their good judgment when acting on the Board.
 - (2) No Board Member shall participate in any discussion about, or vote on any contract with or any disbursement to, any Immediate Family Member of the Board Member or any entity with which the Board Member is affiliated. Any Board Member having such an interest in a matter brought before the Board shall disclose such interest at the commencement of the discussion. “Immediate Family Member” means that person’s spouse, parent, child, sibling, step-child and foster child, grandparent, grandchild, step-grandchild, any person so related to the spouse of that person, and any other person raised in that person’s home or residing in that person’s home. “Affiliated” means having any direct or indirect interest in a joint venture, partnership, corporation or other entity.
- (f) **No Jurisdiction Over Grant Agreements.** The Board shall have no jurisdiction over any grant agreement in which the Band or any instrumentality of the Band is or may become a party, and may not authorize or modify any such agreements.
- (g) **No Power to Waive Immunity.** The Board shall not have the power to waive the Band’s sovereign immunity or consent to suit in any jurisdiction, and any agreement purporting to do so shall void unless expressly approved by Tribal Council.
- (h) **Powers Limited Pending Adoption of Budget.** Any power of Finance Board which, under this Ordinance, is limited by an applicable Approved Budget, may not be exercised by the Finance Board unless and until such a budget has been adopted by the Band in accordance with this Ordinance. For example, the Board shall not have the power to (i) approve disbursements of a department until a budget governing disbursements of such department has been adopted by the Band in accordance with this Ordinance, or (ii) approve and

execute a contract under subsection 5.01(b) of this Ordinance until a budget governing such contract has been approved by Tribal Council.

- (i) **Limitations on Jurisdiction over Tribal Instrumentalities.** The Tribal Council may, by resolution, limit the jurisdiction of the Board over any Band agency or instrumentality.
- (j) The Board shall have no authority over the Pokagon Gaming Authority, Mno-Bmadsen, or Chi Ishobak.
- (k) The Board shall have no supervisory or disciplinary authority over the Government Manager.

Section 5.03 Confidentiality. In carrying out its duties and powers, the Board and each Board Member shall maintain confidentiality as required by and in accordance with the confidentiality standards and procedures followed by Tribal Council.

Section 5.04 Reporting. Not later than seven (7) days after the Finance Board's approval of a contract pursuant to Subsection 5.01(b) of this Ordinance, the Finance Board shall provide a written report to the Tribal Council that includes, at a minimum, a copy of such contract.

CHAPTER VI RELATIONSHIP TO TRIBAL COUNCIL; DIRECTOR OF FINANCE; DELEGATION

Section 6.01 Relationship to Tribal Council.

- (a) The Board and all tribal enterprises shall submit an annual report to Tribal Council that includes and compares the actual financial results of the prior Fiscal Year ending December 31 to the budgeted financial results of the same period. Annual reports shall be due by April 30 of each year.
- (b) The Board may not take any action inconsistent with a resolution of Tribal Council, and shall not review, approve or disapprove any matter on which Tribal Council has acted through adoption of a resolution.

Section 6.02 Relationship to Director of Finance.

- (a) The Board shall act through the Director of Finance, who shall be responsible for implementing the resolutions of the Finance Board and for communicating on behalf of the Board with all departments and instrumentalities of the Band; except that the Chair shall execute all contracts approved by the Board.
- (b) The Board's supervision and oversight of the Director of Finance shall be limited to his or her duties as they relate to financial matters.

- (c) The Chair shall delegate to the Director of Finance, the posting of the agenda on the Band website and locations throughout the government in accordance with the Open Meetings Act.

- (d) The Director of Finance shall transmit to the Tribal Council Secretary, no later than 14 days after approval by the Board or execution of any contract, copies of all resolutions and minutes of the Board, all contracts authorized by the Board and executed by the Chair on behalf of the Band, and any financial statements approved by the Board.

Section 6.03 Delegation of Authority. The Board may delegate any of its powers to a subcommittee of the Board, the Director of Finance, or any other employee or instrumentality of the Board, provided that:

- (a) the Board cannot delegate the power to adopt the operating or capital budget of the Band,
- (b) the Board cannot delegate the power to approve any contract,
- (c) any delegation must be pursuant to a written resolution adopted at a meeting at which the quorum provided in section 4.02 of this Ordinance was present, and
- (d) any delegation of powers by the Board shall be revocable by the Board or Tribal Council at any time.

CHAPTER VII CONTRACTING APPROVAL AUTHORITY OF THE GOVERNMENT MANAGER

Section 7.01 Grant of Authority. The Government Manager shall have the authority to approve and execute, on behalf of the Band, all contracts in which the Band is a party, provided that the contract:

- (a) Has an annual value of less than \$50,000,
- (b) Does not contain a waiver of sovereign immunity of the Band or any instrumentality thereof,
- (c) Is not a contract in which the Band or any instrumentality thereof is borrowing money,
- (d) Is not an employment contract with the Band or any instrumentality thereof,
- (e) Is not a grant contract in which the Band or any instrumentality thereof is a party,

- (f) Is not a settlement of any lawsuit or claim against the Band or any instrumentality thereof,
- (g) Is not a contract for legal services,
- (h) Cost or expense is within an Approved Budget; and
- (i) Is not one in which the Pokagon Gaming Authority, Mno-Bmadsen, or Chi Ishobak is a party, provided that the immediately preceding limitation shall not apply to contracts in which a party is an entity that is owned in whole or in part by Mno-Bmadsen.

Section 7.02 Non-Delegable. The authority granted to the Government Manager in Section 7.01 of the Ordinance may not be delegated by the Government Manager.

Section 7.03 Reporting. Not later than seven (7) days after the Government Manager's approval of a contract pursuant to Section 7.01 of this Ordinance, the Government Manager shall provide a written report to the Tribal Council that includes, at a minimum, a copy of such contract.

CHAPTER VIII ANNUAL AUDIT REQUIREMENTS

Section 8.01 Annual Audit Standards. The Band shall maintain such books and records with respect to its operations and assets as are customary or required by any applicable legal requirement. The Band shall cause annual audits of the Band Government in compliance with generally accepted accounting principles, the Governmental Auditing Standards, and as required by the U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. The Finance Department shall prepare such other reports at such times and relating to such matters with respect to the Band Government as the Tribal Council and/or the Finance Board may from time to time request.

Section 8.02 Auditor Requirements. The Tribal Council shall select an independent certified public accounting firm that meets all of the following requirements:

- (a) The firm must be a member in good standing of the American Institute of Certified Public Accountants (AICPA) Governmental Audit Quality Center,
- (b) The firm must be licensed and in good standing with the Board of Accountancy in the state of the firm's domicile,
- (c) All CPA's in the firm must be in good standing of the AICPA and the applicable Board of Accountancy,

- (d) No partner, principal, or other owner of the firm shall be the subject of any pending or unresolved disciplinary actions such as suspensions, mandated external pre-issuance review, or similar actions by the AICPA or any Board of Accountancy of any jurisdiction in the United States or its territories,
- (e) The firm must be experienced in the accounting and auditing for Indian Tribal Governments and their Hospitality Enterprises; such expertise shall be demonstrated by serving as external audit firm for at least 7 other tribal government/enterprises at the time they are considered by the Band,
- (f) The firm must be recognized by the Band's lenders as a quality firm with a National reputation, to facilitate the Band's financing goals,
- (g) The firm must be recognized as a major regional or national firm, with at least 100 active Partners, and 800 or more professional staff,
- (h) The Partner or equivalent that is to be in charge of providing services to the Band must have at least 10 years recent experience in serving other similarly sized Tribal Governments. Additionally, the majority of the professional staff assigned to work with the Band will also have current, recent experience in serving other similar sized Tribal Governments, and
- (i) The firm shall carry professional liability insurance commensurate with the size of the firm.

LEGISLATIVE HISTORY

THE "FINANCE BOARD ORDINANCE" WAS ENACTED ON NOVEMBER 11, 2000 BY ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 00-11-11-18. AMENDMENTS TO INCORPORATE AUDIT STANDARDS WERE ENACTED BY ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 09-12-21-01; AND BY ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 10-01-25-03, TRIBAL COUNCIL RESOLUTION NO. 09-12-21-01 WAS REPEALED AND AMENDED AUDIT STANDARDS WERE ENACTED AS NEW ARTICLE. ON OCTOBER 10, 2011, BY ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 11-10-10-04, COMPREHENSIVE AMENDMENTS THROUGHOUT THE FINANCE BOARD ORDINANCE WERE ENACTED; ON JANUARY 30, 2012, SUBSECTION 5.01(B) WAS AMENDED BY TRIBAL COUNCIL RESOLUTION No. 12-01-30-04; ON JUNE 13, 2016, SUBSECTIONS 5.01(B)(5) AND 7.01(I) WERE AMENDED; ON NOVEMBER 19, 2018 AMENDMENTS, INCLUDING A REQUIREMENT FOR ANY PROPOSED OPERATING OR CAPITAL BUDGET TO BE SUBJECT TO A COMMENT PERIOD BEFORE TRANSMITTING SUCH TO THE TRIBAL COUNCIL WERE ENACTED BY TRIBAL COUNCIL RESOLUTION NO. 18-11-19-01.