

**POKAGON BAND OF POTAWATOMI INDIANS**  
**TRIBAL COUNCIL PROCEDURES ACT**

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## **CHAPTER 1**

### **General Provisions**

#### **Section 1.01 Title**

This act shall be known as the “Tribal Council Procedures Act.”

#### **Section 1.02 Purpose**

The purpose of this Act is to provide standards and procedures for the Tribal Council to conduct business, including without limitation, calling meetings, enacting legislation, adopting resolutions, passing motions, making appointments, and conducting removal proceedings.

#### **Section 1.03 Authority**

In accordance with the duties and powers of the Tribal Council in Article IX, subsections 1(a), 1(c), 1(f), and 1(h) of the Constitution, the constitutional mandate in Article IX, subsection 1(g), and the inherent authority of the Band as a sovereign tribal nation to provide for the health, safety, and welfare, of the Pokagon Band, the Tribal Council hereby enacts this Act.

#### **Section 1.04 Construction**

(a) This Act, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution, provided that in the event of any inconsistency, the Constitution shall control.

(b) This Act, to the extent reasonably, shall be read and interpreted in a manner consistent with other Pokagon Band laws, rules, regulations, policies and procedures, provided that in the event of any inconsistency, this Act shall control.

#### **Section 1.05 Severability**

If any provision 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.

#### **Section 1.06 References**

The reference or citation to any Chapter, Section or Subsection in this Act shall refer to a Chapter, Section or Subsection of this Act, except as otherwise expressly stated.

## **Section 1.07 Definitions.**

As used in this Act:

(a) “Act” means this Tribal Council Procedures Act.

(b) “Affected Official” means a member of the Tribal Council, Pokagon Band Election Board, Salary Commission, or Pokagon Band Tribal Judiciary that is the subject of a call for removal by the Tribal Council.

(c) “Audience Member” means an individual in attendance at a Tribal Council Meeting.

(d) “Band” or “Pokagon Band” means the Pokagon Band of Potawatomi Indians.

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

(f) “Chairperson” means the officer on the Tribal Council, whose duties as described in Article X, subsection 5 (c) of the Constitution include presiding at all meetings of the Tribal Council.

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

(h) “Clear and Convincing Evidence” means evidence presented that the validity of the claim or claims is highly probable. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence, but not as high of a standard as beyond a reasonable doubt.

(i) “Committee” means all Pokagon Band committees, boards, or commissions, however created or established.

(j) “Constitution” means the Constitution of the Pokagon Band of Potawatomi Indians, which was adopted by the Membership on November 1, 2005 and became effective on December 16, 2005.

(k) “Councilperson” means the seven non-officer seats on the Tribal Council, established pursuant to Article X, subsection 1(a) of the Constitution.

(l) “Court of Appeals” means the appellate level court of the Pokagon Band.

(m) “Election Board” means the body established to conduct and oversee Band elections, as provided by Article VI, subsection (d) and Article XIII, subsection 2(a) of the Constitution and the Band’s Election Code.

(n) “Enrollment Office” means the office established to administer and oversee the Band’s enrollment process pursuant to Article V, subsection 3(a) of the Constitution and the Band’s Enrollment Ordinance.

(o) “General Election” means the annual election that occurs on the second Saturday of July.

(p) “Immediate Family” means the term as defined in the Pokagon Band Ethics Code.

(q) “Membership” means the duly enrolled members of the Pokagon Band.

(r) “Non-Pokagon Band Entity” means an entity not created solely by the Pokagon Band or solely under Pokagon Band law.

(s) “Outside Counsel” means outside legal counsel selected by the Tribal Council to perform certain duties under Chapter 10 in connection with removal of an Affected Official.

(t) “Pokagon Band Elected or Appointed Official” means all Tribal Council Members, Election Board Members, Salary Commission Members, members of the Tribal Judiciary, Elders Council and all other Committee members.

(u) “Salary Commission” means the body established pursuant to the Salary Commission Code enacted into law pursuant to the mandate at Article X, subsection 7 of the Constitution.

(v) “Salary Commission Member” means any person duly installed as a member of the Salary Commission.

(w) “Secretary” means the officer on the Tribal Council, whose duties as described in Article X, subsection 5 (f) of the Constitution include ensuring that all votes and report of the minutes of the Tribal Council are recorded, maintained and protected.

(x) “Selection Committee” means the committee established pursuant to Article XII, Section 8 of the Constitution that is tasked with the responsibility to review prospective Tribal Judiciary candidates and establish standards for the merits of such candidates.

(y) “Treasurer” means the officer 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.

(z) “Tribal Council” or “Council” means the governing body of the Pokagon Band, established pursuant to Article X of the Constitution.

(aa) “Tribal Council Member” means any person duly installed as a member of the Tribal Council.

(bb) “Tribal Newsletter” means a publication by the Pokagon Band of the news and events of the Pokagon Band that is provided to households of Band Citizens.

(cc) “Vice-Chairperson” means the officer on the Tribal Council, whose duties as described in Article X, subsection 5 (e) of the Constitution include performing the duties of the Chairperson in the Chairperson’s absence.

## **CHAPTER 2**

### **Types of Meetings**

#### **Section 2.01 Regular Meetings**

(a) Purpose. The purpose of Regular Meetings is to address any and all matters of the Band.

(b) Authority to Call. The time and location of a Regular Meeting shall be established on a recurring schedule by resolution of the Tribal Council; provided, however, that the Tribal Council shall have a Regular Meeting at least once monthly, except for the month of July when elections are conducted.

#### **Section 2.02 Special Meetings**

(a) Purpose. The purpose of Special Meetings is to address any specific matter of the Band between Regular Meetings.

(b) Authority to Call. Special Meetings may be called by the Chairperson at his or her discretion; provided, however, that Special Meetings shall be called by the Chairperson upon the written request of the Vice-Chairperson, Treasurer, or Secretary. If the Chairperson refuses to call and conduct a Special Meeting within seven (7) calendar days of the Chairperson’s receipt of the written request of the Vice-Chairperson, Treasurer, or Secretary, then the Council officer who requested the meeting shall call and conduct the meeting. Special Meetings called pursuant to a membership petition, shall be called and conducted by the Chairperson within seven (7) calendar days after notification from the Election Board of a valid petition.

#### **Section 2.03 Emergency Meetings**

(a) Purpose. The purpose of Emergency Meetings is to address matters when necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Band.

(b) Authority to Call. Emergency Meetings may be called by the Chairperson if, in his or her judgment, it is necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Band.

#### **Section 2.04 Membership Meetings**

(a) Purpose. As provided in Article VIII of the Constitution, the purpose of Membership Meetings is to provide an opportunity for both Band Citizens and Tribal Council to inform the Membership of the affairs of the Band and to discuss issues facing the Band. Membership Meetings are not Tribal Council meetings and a quorum is not needed to conduct a Membership Meeting. Every year, Tribal Council shall hold a Membership Meeting on a Saturday in the month of March. Tribal Council may hold additional Membership Meetings when it deems appropriate.

(b) Authority to Call. Pursuant to Article VIII, Sections 1 and 2, of the Constitution, Membership Meetings may be called by either the Tribal Council or the Membership. Membership Meetings called by the Tribal Council shall be conducted by the Chairperson. The Election Board shall call and conduct a Membership Meeting upon receipt of a petition calling for a meeting in accordance with Article VIII, Section 2 of the Constitution.

#### **Section 2.05 Legislative Sessions**

(a) Purpose. The purpose of Legislative Sessions is to prepare, review, discuss, comment, or amend laws of the Pokagon Band.

(b) Authority to Call. Tribal Council shall establish the dates of the Legislative Session and conduct at least two (2) Legislative Sessions per year, with each of the two sessions occurring at least twenty (20) calendar days apart.

#### **Section 2.06 Executive Committee Meetings**

(a) Composition. Pursuant to Article IX, subsection 3(e) of the Constitution, the Executive Committee is comprised of the Chairperson, Vice-Chairperson, Secretary and Treasurer of the Tribal Council.

(b) Authority to Act. The Executive Committee may act on matters requiring full Council attention at times other than scheduled Tribal Council meetings; provided, however, that the Executive Committee shall act only in the following circumstances:

(1) Any matter that requires full Council attention before the next scheduled meeting of the Tribal Council and such matter does not meet the requirements for calling an Emergency Meeting of the Tribal Council; or

(2) Any matter for which an Emergency Meeting of the Tribal Council is authorized, but the Tribal Council cannot obtain a quorum in order to conduct such a meeting.

(c) Authorization to Call. The authorization to call an Executive Committee Meeting shall be vested solely in the Chairperson.

(d) Ratification. All action taken at an Executive Committee Meeting and the reason(s) warranting said meeting shall be reported to Tribal Council no later than the next Regular Meeting for ratification by the Tribal Council.

## **CHAPTER 3**

### **Meeting Agenda**

#### **Section 3.01 Regular Meeting**

Any and all matters facing the Band may be included on the agenda, and items may be added to the agenda on the day of the Regular Meeting, upon the affirmative vote of a majority of the Tribal Council Members in attendance. If a matter is raised at a Regular Meeting, but not added to the agenda, Council shall place the matter on the agenda for the next Regular Meeting or for a Special Meeting, whichever occurs first.

#### **Section 3.02 Special Meeting**

The business to be conducted at any Special Meeting shall be limited to that stated in the notice, provided that additional business to be conducted at any Special Meeting may be added to the agenda on the day of said meeting upon affirmative vote of at least two-thirds (2/3) of the Tribal Council Members in attendance at said meeting. When considering whether to add an item or items to the agenda on the day of the meeting, the Council may decide the addition of each item to the agenda separately from the addition of any other item to the agenda. However, adding items to the agenda of a Special Meeting on the day of the meeting undermines the purpose and intent of public notice and is therefore disfavored.

#### **Section 3.03 Emergency Meeting**

The business to be conducted at any Emergency Meeting shall be limited to that stated in the notice, provided that additional business to be conducted at any Emergency Meeting may be added to the agenda on the day of said meeting upon affirmative vote of at least two-thirds (2/3) of the Tribal Council Members in attendance at said meeting. When considering whether to add an item or items to the agenda on the day of the meeting, the Council may decide the addition of each item to the agenda separately from the addition of any other item to the agenda. However, adding items to the agenda of an Emergency Meeting on the day of the meeting undermines the purpose and intent of public notice and is therefore disfavored.

### **Section 3.04 Membership Meeting**

The Tribal budget and the comprehensive long term land acquisition and development plan shall be included as specific agenda items at the Membership Meeting held in March of each year. The agenda for the annual Membership Meeting called by the Tribal Council must be approved in advance by the Tribal Council. However, because Membership Meetings are not official meetings of the Tribal Council, matters not included on the agenda may be discussed at a Membership Meeting, provided that no official business may be conducted.

### **Section 3.05 Legislative Session**

The agenda presented at Legislative Sessions shall be limited to the laws of the Pokagon Band. The business to be conducted at any Legislative Session shall be limited to that stated in the notice, provided that additional business to be conducted at any Legislative Session may be added to the agenda on the day of the Legislative Session, upon affirmative vote of at least two-thirds (2/3) of the Tribal Council Members in attendance at said meeting. When considering whether to add an item or items to the agenda on the day of the meeting, the Council may decide the addition of each item to the agenda separately from the addition of any other item to the agenda. However, adding items to the agenda of a Legislative Session on the day of the meeting undermines the purpose and intent of public notice and is therefore disfavored.

### **Section 3.06 Executive Committee**

The business to be conducted at any Executive Committee Meeting shall be limited to that stated in the notice and the agenda may not be amended.

### **Section 3.07 General Requirements**

(a) Preparation. The Chairperson shall be responsible for the preparation of the agenda. To the extent practicable, requests to place an item on the agenda shall be directed to the Chairperson and shall include a complete description of the issue or question, the action requested and, to the greatest extent possible, any necessary documents Tribal Council may need for consideration of the issue or question. Requests to place items on the agenda may be made by any Tribal Council Member, Pokagon Band Elected or Appointed Official, Pokagon Band employee, or any Band Citizen.

(b) Contents. Any item placed on an agenda shall include an adequate description of the issue and, to the extent practicable, shall state the action, if any, requested. If an item on an agenda is to be addressed in a closed meeting, the agenda shall clearly indicate which portion of the meeting is closed and the description of the issue(s) and the action, if any, to be addressed in the closed meeting shall be sufficiently limited so as to maintain the confidentiality of the matter.

(c) Removal from Agenda Following Meeting. Unless specifically provided otherwise in this Act, upon the conclusion of any meeting, any agenda item which was not approved, disapproved, or postponed shall be removed from the agenda.

## **CHAPTER 4**

### **Meeting Notice**

#### **Section 4.01 Regular Meeting**

Written notice shall be provided at least five (5) calendar days before the meeting.

#### **Section 4.02 Special Meeting**

Written notice shall be provided at least three (3) calendar days before the meeting.

#### **Section 4.03 Emergency Meeting**

To the greatest extent possible, efforts shall be made to provide maximum practical written notice to each Tribal Council Member, provided that an Emergency Meeting may be called upon less than three (3) calendar days written notice.

#### **Section 4.04 Membership Meeting**

At least fourteen (14) calendar days prior to the meeting, the Tribal Council shall post conspicuously within the tribal community, including without limitation, at the designated or customary meeting location of the Tribal Council and the Elders Council and in the Tribal Newsletter, a notice of the meeting. The Tribal Council shall also mail a copy of the notice to all Band Citizens eighteen (18) years of age or older, to their last mailing address provided to the Enrollment Office.

#### **Section 4.05 Legislative Session**

At least fourteen (14) calendar days prior to any Legislative Session, written notice of said meeting shall be mailed to each Tribal Council Member and all Band Citizens eighteen (18) years of age or older, to their last mailing address provided to the Enrollment Office.

#### **Section 4.06 Executive Committee**

Efforts shall be made to give maximum practical notice to each Executive Committee member, provided that Executive Committee Meetings may be called upon less than three (3) days written notice. In addition, because of the nature of Executive Committee Meetings, notice may be provided in writing, electronic format or in person directly from the Chairperson to the Executive Committee Member.

## **Section 4.07 General Requirements**

(a) Method of Delivery. Unless provided otherwise in this Act, any notice required to be delivered to a Tribal Council Member or any other person entitled to notice under this Act shall be delivered by: (1) hand delivery; (2) first class U.S. Mail; or (3) private courier to his or her last known address; provided, however, that if the person to whom notice is required to be delivered is a Pokagon Band employee, in his or her capacity as a Pokagon Band employee, notice may be delivered via hand delivery or inter office mail to the employee at his or her Pokagon Band office or via electronic delivery to the employee's Pokagon Band e-mail account.

(b) Posting. In addition to the delivery of a notice to Tribal Council Members, a copy of the notice shall be posted conspicuously within the Tribal community, including but not necessarily limited to the designated or customary meeting location of the Tribal Council and the Elders Council. A copy of the notice may also be posted on the official website of the Pokagon Band.

(c) Electronic Delivery. Any notice required to be delivered to a Tribal Council Member may be provided via electronic delivery to the Tribal Council Member's Pokagon Band e-mail account.

(d) Contents. The notice shall include the date, time and location of the meeting, a description of agenda item(s) to be considered at the meeting.

(e) Contents if Closed Meeting. If any part of the meeting is a closed meeting, the notice shall indicate which portion of the meeting is closed and the description of the closed items and requested action shall be sufficiently limited so as to maintain the confidentiality of the matter.

(f) Persons to Whom Notice Shall be Delivered. Unless specifically provided otherwise in this Act, notice of a Tribal Council meeting shall be delivered to all Tribal Council Members, any person that the Tribal Council specifically requests be present at the meeting, and any person whose request to add a specific agenda item to a Tribal Council meeting was granted, if such item will be addressed at the meeting.

## **Section 4.08 Council Meeting Packets**

For each Regular Meeting, Special Meeting, Emergency Meeting, Membership Meeting, and Legislative Session, each Tribal Council Member shall receive, in accordance with the notice timelines and delivery requirements provided in this Chapter 7, a Council Meeting Packet. A Council Meeting Packet shall include at a minimum, the available compilation of documents supporting the items listed on the meeting agenda and requiring Council action.

## CHAPTER 5

### Meeting Quorum and Attendance

#### Section 5.01 Quorum

(a) Tribal Council Meetings. A quorum of the Tribal Council shall equal one-half (1/2) the filled seats plus one (1), with all numbers rounded to the next whole number. Once a quorum is established, it shall continue throughout the meeting, even though one or more Tribal Council Members leaves, provided that the number of Tribal Council Members remaining is at least equal to quorum minus one (1).

(b) Executive Committee Meetings. Three (3) Executive Committee members shall constitute a quorum of the Executive Committee.

#### Section 5.02 Attendance

(a) Manner of Attendance. All Tribal Council Members should to the greatest extent possible, attend all meetings in person. Tribal Council Members may attend Regular Meetings, Special Meetings, Emergency Meetings, and Legislative Sessions via telephone, video conference, or other electronic means, as provided in this Section, provided that because of the nature of Regular Meetings and Legislative Sessions, attendance by telephone, video conference, or other electronic means is disfavored.

(b) Executive Committee Meetings. Because of the nature of Executive Committee Meetings, Executive Committee Members may attend Executive Committee Meetings, via telephone, video conference, or other electronic means, as provided in this Section.

(c) Hear and Be Heard. Any Tribal Council Member, who attends a Regular Meeting, Special Meeting, Emergency Meeting, Legislative Session, or Executive Committee Meeting by telephone, video conference, or other electronic means, must be able to hear and be heard clearly by the other Tribal Council Members in attendance.

(d) Physical Location. Because all Tribal Council meetings and Executive Committee Meetings are open meetings, the Band must either: (1) maintain a physical location where Tribal Council Members and Band Citizens may participate in the meeting and hear those Tribal Council Members participating via telephone, video conference, or other electronic means, or (2) regarding meetings to be conducted exclusively by telephone, video conference or other electronic means, include in the meeting notice how one may attend the meeting. By way of illustration and not limitation, if a meeting will be conducted exclusively via telephone, the meeting notice should specify that the meeting will be conducted exclusively via telephone and should include the telephone number to participate in the meeting.

(e) Attendance Via Electronic Means. If a Tribal Council Member attends a Regular Meeting, Special Meeting, Emergency Meeting, Legislative Session, or Executive

Committee Meeting via telephone, video conference, or other electronic means, he or she shall be counted as present for quorum and voting purposes. The Chairperson shall, from time to time or upon the request of another Council Member, during the meeting, confirm the Tribal Council Member is still in attendance. The Meeting Minutes shall reflect that the Tribal Council Member attended the meeting via telephone, video conference, or other electronic means.

(f) Chairperson. If the participation of the Chairperson in the Regular Meeting, Special Meeting, Emergency Meeting, or Legislative Session is via telephone or other electronic means that does not include both video and audio communication, and if the meeting or session is being held at a physical location and not wholly via telephone or other electronic means, then he or she shall not serve as presiding officer for that meeting and the presiding officer shall be determined in accordance with Section 6.01, provided that the Tribal Council Member that would preside pursuant to Section 6.01 may defer and request the Chairperson to conduct the meeting. If none of the Tribal Council Members that would preside pursuant to Section 6.01 are physically present at the meeting location, then the Chairperson shall conduct the meeting.

(g) Procedure. A Tribal Council Member who desires to attend a Regular Meeting, Special Meeting, Emergency Meeting, Legislative Session, or Executive Committee Meeting via telephone, video conference, or other electronic means, shall as soon as practicable, notify the Executive Secretary to the Tribal Council.

### **Section 5.03 Absence**

(a) Advance Notice. Any Tribal Council Member who is unable to attend a Tribal Council meeting shall notify the Executive Secretary to the Tribal Council as far in advance as possible. The Tribal Council Member shall inform the Executive Secretary that he or she will be unable to attend the meeting and shall indicate whether there exists a valid excuse for said absence.

(b) Excused absences. Only the following shall be valid excuses for an absence from a Tribal Council meeting:

- (1) Illness of the Tribal Council Member or his or her Immediate Family;
- (2) Personal or Immediate Family emergency;
- (3) Engaged in other Tribal Council business; and
- (4) Another commitment scheduled prior to receiving notice of the Tribal Council meeting.

(c) Invalid Excuse. Any absence from a Tribal Council meeting other than stated in subsection 5.03(b), or any absence in which the Executive Secretary to the Tribal Council is not provided prior notice, shall be considered an invalid excuse.

## **CHAPTER 6**

### **Meeting Procedures**

#### **Section 6.01 Conducting Meetings**

Except as provided in Section 5.02(f) and this Section, the Chairperson shall conduct all Tribal Council meetings. In the Chairperson's absence, the Vice-Chairperson shall conduct the Tribal Council meeting. If the Vice-Chairperson is absent, the Treasurer shall conduct the Tribal Council meeting. If the Treasurer is absent, the Secretary shall conduct the Tribal Council meeting. Any question regarding the conduct of a meeting shall be resolved by the Chairperson, whose rulings may be overruled by a motion to appeal the decision of the Chairperson, as described in Section 6.02.

#### **Section 6.02 Point of Order**

If, during a Tribal Council meeting, a Tribal Council Member believes that the procedures provided in this Act are not being followed, the Tribal Council Member may immediately and without waiting for recognition, call the violation to the attention of the Chairperson by calling a Point of Order. All Points of Order must be made promptly when the violation occurs. After calling a Point of Order, the Chairperson shall ask the Tribal Council Member to explain why he or she believes a violation of the Act has occurred. After hearing the explanation, the Chairperson shall rule on the Point of Order. Following the ruling, any Tribal Council Member, with the support of another Tribal Council Member, may appeal the ruling to the Tribal Council. If the ruling is appealed, the question for the Council shall be: "Shall the decision of the Chairperson be sustained?" The decision of the Council shall be final.

#### **Section 6.03 Introduction of Agenda Item**

The Chairperson shall, to the extent practicable, introduce each item on the agenda, summarize the item, describe any supporting documentation provided, and identify the person who requested the item be placed on the agenda. After introducing the agenda item, the Chairperson may ask the individual or a representative of the entity who requested that the item be added to the agenda, to provide a brief overview and answer any questions regarding the agenda item.

#### **Section 6.04 Deliberation**

(a) Introduction. Following the presentation of the agenda item, the Chairperson will open the agenda item up for discussion or questions from the Tribal Council.

(b) Motion or Resolution. A Tribal Council Member may propose a motion or resolution regarding the agenda item at any time following the initial presentation, subject to the requirements provided in this Section.

(c) Recognition. Tribal Council Members who wish to ask questions or make statements must first be recognized by the Chairperson. Tribal Council Members may seek recognition by raising their hand. The Chairperson shall provide an equal opportunity for all Tribal Council Members to be heard without the imposition of arbitrary time limitations.

(d) Relevance. All questions or statements must be germane to the matter currently before the Tribal Council and presented in a respectful manner, without shouting or engaging in personal attacks, or profanity.

(e) Call for Motion or Resolution. At the conclusion of deliberation, if a motion or resolution has not been presented to the Council, the Chairperson may call for a motion or resolution on the agenda item.

(f) Specificity. The Tribal Council Member making the motion or resolution shall specify the action to be taken in the context of the motion or resolution.

(g) Support. Once a motion or resolution has been made the Chairperson will ask if there is support for the motion or resolution on the floor. A motion or resolution must have support to be acted upon by the Tribal Council.

(h) Reading. If a motion or resolution has been presented to the Council, upon the conclusion of deliberation the Chairperson will invite the Tribal Council Member that made the motion or resolution to read the motion or resolution on the floor; provided however, that the Tribal Council Member making a resolution that is in writing and has been presented to the Council shall not be required to read the resolution into the record in its entirety.

(i) Methods of Voting. Following the conclusion of deliberation and the reading of the motion or resolution, the Chairperson shall call for a vote by any of the following methods: voice vote, a show of hands, or he or she may direct the Secretary to conduct a roll call vote; provided, however, that the method of voting on resolutions and legislation shall be by a roll call vote.

### **Section 6.05 Voting**

(a) Requirement for approval. Any Tribal Council action shall be determined by a majority vote of the Tribal Council Members present at the Tribal Council meeting, unless a greater vote is specified in this Act, the Constitution, or other laws of the Band.

(b) Items added to the Agenda. Tribal Council action on an item added to the agenda on the day of a Special Meeting, Emergency Meeting, or Legislative Session shall require the affirmative vote of at least two-thirds (2/3) of the Tribal Council Members in attendance at the meeting.

(c) Call for Vote. After the Chairperson has called for the vote, deliberation on the matter shall cease. A Tribal Council Member shall not explain his or her vote while voting.

(d) Announcing Results. When the voting is complete, the Chairperson shall announce the results by reporting whether the motion or resolution is adopted or lost. Following the announcement of results, the Chairperson shall announce the next item of business on the agenda.

### **Section 6.06 Abstention from Voting**

(a) Duty to Vote. Tribal Council Members shall have a duty to vote for each matter up for a vote while the Tribal Council Member is in attendance at a Council Meeting, subject to a member's right or obligation abstain from voting.

(b) Abstention Required. Tribal Council Members shall abstain from voting in conflict-of-interest cases as defined by the Code of Ethics.

(c) Abstention Permitted. Tribal Council Members may abstain from voting due to absence from previous relevant meetings.

(d) No Participation in Deliberation. At the beginning of deliberation on a matter, a Tribal Council Member who is required to abstain or chooses to abstain from voting on the matter shall announce at the beginning of deliberations on the matter that he or she will abstain and why he or she is required or permitted to abstain. A Tribal Council Member who is required to or who chooses to abstain from voting on a matter shall not participate in any deliberations on the matter but may remain in attendance at the meeting; provided that if the Tribal Council closes the portion of the meeting at which deliberations will occur, the Tribal Council Member shall temporarily leave the meeting upon request by the Tribal Council.

### **Section 6.07 Robert's Rules of Order**

Subject to Sections 6.01 and 6.02, questions regarding meeting procedures of the Tribal Council that are not addressed in this Act or other Pokagon Band law, regulation, or policy, may be resolved by consulting the most current available edition of Robert's Rules of Order. The preferred authority is the official version of Robert's Rules of Order as recognized by the National Association of Parliamentarians.

## CHAPTER 7

### Types of Tribal Council Action

#### Section 7.01 Permitted Action

In accordance with Article IX, subsection 3(b) of the Constitution, the Tribal Council shall act only by legislation, resolution, or motion.

#### Section 7.02 Tribal Council Action Via Legislation

Subject to the limits on specific legislation as stated in the Constitution, the Tribal Council shall act by legislation when:

- (a) Adopting or amending rules governing the conduct of Band Citizens or other persons within the territorial jurisdiction of the Band;
- (b) Adopting or amending procedures prescribing standards of conduct or performance for the Band or any agency or governmental instrumentality of the Band; and
- (c) Creating any regulatory commission, organization, or agency or establishing a comprehensive regulatory program.

#### Section 7.03 Tribal Council Action Via Resolution

The Tribal Council shall act by resolution when:

- (a) The matter is one that the Constitution or any Pokagon Band law requires a resolution;
- (b) The matter consists of amendments to any Pokagon Band law or the charter of any instrumentality of the Pokagon Band;
- (c) Establishing the recurring schedule of the time and location for Regular Meetings;
- (d) The matter regulates the management of the Band or instrumentality of the Band; and
- (e) The matter is one that is likely to be referred to from time to time.

#### Section 7.04 Form of Resolution

(a) At the meeting, the Council may adopt a written resolution or an orally stated resolution. A resolution stated orally shall be reduced to writing and final version for the record shall contain the information required in this Section.

(b) Numbering Format. Tribal Council resolutions shall be numbered using an eight digit format, hyphenated every two digits, with the first two digits representing the last two digits of the year, the second two digits representing the month, the third two digits representing the day, and the final two digits the sequence of the number of the resolutions adopted by Tribal Council that day.

(c) Certification. Evidence demonstrating approval of a resolution shall be provided by written certification signed by both the Chairperson and the Secretary. At a minimum, the certification shall contain the date of approval, that a quorum was present at a duly convened meeting, whether the meeting was a Regular Meeting, Special Meeting, Emergency Meeting, or Legislative Session and a record of the number of Tribal Council Members who voted in favor, against, or abstained, or were absent.

(d) All resolutions of Tribal Council shall include the following information:

- (1) The resolution number;
- (2) A precise statement of the action taken by the Tribal Council;
- (3) An attached copy of any document that Tribal Council is approving by resolution;
- (4) If applicable, a clear directive or mandate identifying the person(s) or entity responsible for implementing the action taken; and
- (5) A certification.

#### **Section 7.05 Presentation of Resolution**

The resolutions adopted by Tribal Council shall be prepared by the Secretary and he or she shall present the resolutions for signature by the Chairperson and Secretary no later than seven (7) calendar days following the meeting in which the resolution was adopted.

#### **Section 7.06 Tribal Council Action by Motion**

All decisions, actions, or directives of the Tribal Council, which are not memorialized by legislation or resolution, shall be made by motion. Decisions, actions, or directives performed by motion shall be clearly described in the minutes and, in the discretion of the Council, be reduced to writing.

#### **Section 7.07 Termination of Employee Contracts**

No written contract for employment with the Pokagon Band may be terminated by the Band without the affirmative vote of at least eight (8) Tribal Council Members.

## CHAPTER 8

### Public Participation at Meetings

#### Section 8.01 Attendance of Meetings

(a) Band Citizens may attend all open meetings.

(b) Non-Band Citizens may attend all open meetings of the Tribal Council, provided that they are:

- (1) Asked by Tribal Council to attend the meeting; or
- (2) Have a purpose at the meeting recognized by Tribal Council.

(c) Notwithstanding subsection 8.01, the Tribal Council may close any open meeting to non-Band Citizens.

(d) Representatives of any news media may, upon the affirmative vote of at least two-thirds (2/3) of Tribal Council Members in attendance, attend an open meeting. All representatives of any news media shall identify themselves to the Tribal Chairperson prior to the start of the meeting.

#### Section 8.02 Opportunity to be Heard

At any open meeting, any Audience Member shall have a reasonable opportunity to be heard. The Audience Member must comply with any procedural requirements approved by Tribal Council and be recognized by the Chairperson 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 Chairperson shall be “out of order” and will be requested to remain silent until recognized by the Chairperson.

#### Section 8.03 Comments or Questions Must be Germane

An Audience Member who is recognized by the Chairperson to speak shall address his or her questions or comments to the Tribal Council and restrict his or her questions or comments solely to the agenda item currently on the floor.

#### Section 8.04 Comments or Questions Must be Respectful

All comments or questions must be presented in a respectful manner, without shouting or engaging in personal attacks, or profanity. Audience Members who are disrespectful, shout, engage in personal attacks, or use profanity in their questions or comments shall be “out of order”.

### **Section 8.05 Time Limit on Audience Member Remarks**

The Chairperson may establish time limits for Audience Member questions and comments; provided, however, that each Audience Member with questions or comments has a reasonable opportunity to be heard. The Chairperson may schedule Audience Member questions and comments to occur at an appropriate time during the Tribal Council meeting that is consistent with the orderly conduct of the Tribal Council meeting.

### **Section 8.06 Recording of Meeting**

Audience Members shall not record, by any visual and/or audio means, any meeting; provided, however, that the Tribal Council may permit an Audience Member to record a ceremonial event that is part of a Tribal Council meeting, if the recordation does not disrupt or interfere with the meeting. If the Audience Member fails to cease recordation when asked by the Chairperson, he or she shall be considered “out of order.”

### **Section 8.07 Removal of Disruptive Audience Member**

Audience Members who are “out of order” will be asked to be silent and/or cease engaging in their disruptive behavior. If the Audience Member continues to be “out of order”, the Chairperson shall ask the Audience Member to leave. If the Audience Member refuses to leave, he or she shall be considered to be trespassing and shall be removed from the meeting by the Pokagon Band Tribal Police.

### **Section 8.08 Written Comments**

(a) Specific Agenda Item. Any Band Citizen may provide written comments to the Tribal Council regarding a specific agenda item. All written comments must be germane to a specific agenda item and written in a respectful manner, and must not contain personal attacks or profanity. Any Band Citizen providing written comments must include his or her name and address and clearly identify the specific Tribal Council meeting and agenda item upon which he or she is commenting and the written comments must be signed by the Band Citizen. Written comments must be received by the Executive Secretary to the Tribal Council prior to the Tribal Council meeting at which the agenda item will be discussed. Written comments received in compliance with this Section shall be copied and distributed to the Tribal Council prior to the meeting at which the agenda item will be addressed.

(b) Written Comments Unrelated to an Agenda Item. Written comments received by the Band which are not directed to a specific Tribal Council Member, but instead are directed to the Tribal Council in general shall be copied and provided to each Tribal Council Member as soon as practicable.

## **CHAPTER 9**

### **Censure of Elected or Appointed Officials**

#### **Section 9.01 Scope**

A censure is not a removal from office, rather it is a formal resolution by the Council expressing its significant disapproval of the conduct of a Pokagon Band Elected or Appointed Official, provided that the Tribal Council shall not be permitted to censure and, this Chapter 9 shall not apply to, any Member of the Tribal Judiciary.

#### **Section 9.02 Grounds for Censure**

When the Tribal Council has determined by Clear and Convincing Evidence that any Pokagon Band Elected or Appointed Official has engaged in conduct that it finds reprehensible and where such conduct reflects adversely on his or her office, the Tribal Council may vote to censure the official.

#### **Section 9.03 Vote Required to Censure**

The Tribal Council may, by majority vote of the Tribal Council Members present, resolve to censure any Pokagon Band Elected or Appointed Official, whether or not that official is present at the Tribal Council meeting.

#### **Section 9.04 Censure Resolution**

Except as may be otherwise provided in this Chapter 9, the procedures for discussion, debate, and voting on a resolution for censure shall follow the same procedures as other resolutions set forth in this Act, provided that the Pokagon Band Elected or Appointed Official who is the subject of the proposed censure shall be provided by hand delivery, U.S. mail, or private courier, at least three (3) days written notice of the meeting at which the censure resolution will be discussed. If the Tribal Council approves a resolution to censure, a copy of the resolution shall be sent to the Pokagon Band Elected or Appointed Official who is the subject of the censure. The resolution censuring the official shall contain a description of the facts that warranted censure.

## **CHAPTER 10**

### **Removal of Affected Officials**

#### **Section 10.01 Investigation into Grounds for Removal**

If the Tribal Council has reason to believe that cause for removal of an Affected Official exists, the Tribal Council shall direct that an investigation be conducted by Outside Counsel, which may include the power to subpoena records or compel testimony. If, in the Tribal Council's determination, the investigation substantiates the existence of

grounds for removal, the Tribal Council may vote to call for the removal of the Affected Official.

### **Section 10.02 Initial Vote to Conduct Removal Hearing**

Tribal Council may call for the removal of any Affected Official, by an affirmative vote of at least eight (8) Tribal Council Members. Call for removal shall be made solely by resolution and within said resolution, the grounds for removal shall be set forth with specificity. The resolution or a separate document attached to the resolution shall identify the specific reasons for removal, and identify specific dates, times, places, documents, names, and actions which comprise the grounds for removal. Any resolution calling for removal and any subsequent hearing may address only one Affected Official.

### **Section 10.03 Grounds for Removal**

The Tribal Council's ability to call for the removal of a Tribal Council Member, Election Board Member, Salary Commission Member, or Tribal Judiciary Member shall be limited to one or more of the following reasons:

- (a) Persistent failure to perform his or her duties of office;
- (b) Misconduct in office consisting of any knowing violation of Pokagon Band law;
- (c) Physical or mental disability which prevents the performance of his or her duties;
- (d) Ineligibility for his or her office, under the specific qualifications for office; or
- (e) Failure to attend three (3) consecutive meetings without a valid excuse; or
- (f) For the Tribal Judiciary: unethical conduct as defined by such rules of judicial conduct as may be established by Pokagon Band law.

### **Section 10.04 Suspension Pending Final Disposition**

Upon affirmative vote of call for removal of an Affected Official, the Tribal Council may, at its discretion, suspend the Affected Official without loss of pay, until a final disposition of the call for removal. The Tribal Council is prohibited from suspending the Affected Official with any loss of pay.

### **Section 10.05 Notice of Hearing**

- (a) Scheduling. Upon the adoption of a resolution calling for the removal of an Affected Official, the Tribal Council shall schedule a hearing on the charges.
- (b) Content. The Tribal Council shall provide notice of the hearing to the Affected Official subject to removal, which shall include all of the following:

- (1) The specific claims and allegations against the Affected Official;
- (2) A statement informing the Affected Official that the call of removal is subject to a hearing before the Tribal Council;
- (3) The date, time, and location of the hearing before Tribal Council;
- (4) A statement informing the Affected Official that the Tribal Council Member may defend himself or herself at the hearing, with or without the assistance of private legal counsel at his or her own expense;
- (5) A statement informing the Affected Official that in order to be removed, the Tribal Council must, after a hearing and by affirmative vote of at least eight (8) Tribal Council Members, find by Clear and Convincing Evidence that the stated grounds for removal exists;
- (6) A statement informing the Affected Official whether the Tribal Council suspended him or her without loss of pay, until final disposition of the call for removal; and
- (7) A copy of the Tribal Council resolution calling for removal.

(c) Delivery. Said notice shall be delivered by personal delivery, by registered, or by certified mail at least thirty (30) days prior to the hearing.

(d) Posting. Notice shall also be posted conspicuously within the tribal community, including but not necessarily limited to the Tribal Council Office and Elders Hall.

### **Section 10.06 Hearing on Call for Removal**

(a) Right to Hearing. An Affected Official shall have a right to a hearing before the Tribal Council on any call for removal of the Affected Official.

(b) Priority. Tribal Council shall give priority to any hearing calling for the removal of an Affected Official. The hearing on the removal of an Affected Official shall occur whether or not the Affected Official makes any appearance at the scheduled hearing.

(c) Burden of Proof. The facts warranting removal must be proven by Clear and Convincing Evidence.

(d) Subpoenas. The Tribal Council has the power and discretion to issue subpoenas to compel the production of documents or other tangible things and to compel the appearance of witnesses to give testimony with regard to any removal investigation or removal hearing. The Tribal Council may impose reasonable penalties and take such other appropriate actions as the Tribal Council deems warranted under the circumstances to address noncompliance with a subpoena.

(e) Witness and Exhibit List. No later than five (5) calendar days prior to the hearing, the Affected Official shall submit to the Tribal Council, a list of proposed witnesses that will be called and a copy of all documents that will be presented at the hearing. No later than five (5) calendar days prior to the hearing, the Tribal Council shall provide the Affected Official by hand delivery, first class U.S. mail, or private courier, a list of proposed witnesses that will be called and a copy of all documents that will be presented at the hearing.

(f) Witnesses. The Tribal Council may order any person to appear and testify before it at a removal hearing, provided the Band has jurisdiction over the person.

(g) Court Reporter. The hearing shall be recorded by a duly certified court reporter at the Band's expense.

### **Section 10.07 Hearing Procedures**

(a) Chairperson Preside. The Chairperson shall preside over all removal hearings conducted before the Tribal Council. The Chairperson shall inform the Tribal Council, the Affected Official, and the witnesses that all statements, answers, and testimony shall be limited to that which is relevant to the claims for removal of the Affected Officer.

(b) Reading of Claims. Outside Counsel shall read each claim for removal individually.

(c) Answering of Claims. Upon the conclusion of the Outside Counsel's reading of a claim, the Chairperson shall call upon the Affected Official and offer him or her the opportunity to answer the claim. The Outside Counsel shall not proceed to the next claim until the Affected Official has concluded his or her answer or stated that he or she chooses not to answer.

(d) Presenting of Evidence. After the Outside Counsel has read all of the claims and the Affected Official has answered or stated he or she chooses not to answer, the Outside Counsel shall present any witnesses and documents that substantiate the validity of each claim.

(e) Defending Claims. Upon the conclusion of the Outside Counsel's presentation regarding a claim, the Chairperson shall call upon the Affected Official and offer him or her an opportunity to present his or her witnesses and evidence in regards to the claim. The Affected Official may also question any witnesses and review any documents presented by the Outside Counsel. New witnesses or evidence not included in the Witness and Exhibit List in subsection 10.06(e) may be accepted for the record at the hearing by majority vote of the Tribal Council.

(f) Testimony of Witnesses. Witness testimony shall be under oath and shall be limited to matters relevant to the claims for removal of the Affected Officer.

(g) Questioning by Tribal Counsel. The Tribal Council may question any witnesses presented during the hearing; provided, however, that said questions shall be limited to matters related to the removal of the Affected Officer.

(h) Open to Public. All removal hearings shall be open to the public.

(i) Procedures and Rules. The Tribal Council may establish additional hearing procedures as well as rules of evidence, provided that formal rules of evidence shall not apply, except that hearsay shall not be permitted, unless the Chairperson deems the evidence reliable.

### **Section 10.08 Tribal Council Decision**

(a) In Favor of Removal. No Affected Official shall be removed unless within thirty (30) calendar days after completion of the hearing, the Tribal Council determines, by an affirmative vote of at least eight (8) Tribal Council Members, that Clear and Convincing Evidence that the stated grounds for removal exists. The Tribal Council's decision shall order the Affected Official removed from office.

(b) Against Removal. If Tribal Council by vote fails to find that Clear and Convincing Evidence that the stated grounds for removal exist, or if the Tribal Council takes no vote on the proposed removal within thirty (30) calendar days after the completion of the hearing, the removal proceeding shall be concluded, and the Affected Official shall remain in office.

(c) Decision. If the Council votes on the removal, its decision shall be in writing, setting forth the facts and conclusions that serve as the basis for the decision.

(d) Notice of Decision. The Tribal Council's decision shall be provided to the Affected Official immediately upon issuance, by personal delivery, registered or certified mail. If the decision is in favor of removal, the notice shall include a statement informing him or her that the Tribal Council removal order may be appealed to the Court of Appeals within ten (10) calendar days after the decision is issued. If the Tribal Council fails to vote on the proposed removal within thirty (30) calendar days after the hearing, then it shall provide notice of such to the Affected Official and indicate that the Council's failure to vote on the proposed removal within thirty (30) calendar days after the completion of the hearing, results in the conclusion of the matter and the Affected Official shall remain in office.

(e) Final Decision. A hearing decision by the Tribal Council shall be final, subject to appeal to the Court of Appeals. An Affected Official who is removed shall remain removed from his or her office during the pendency of the appeals process, if any.

### **Section 10.09 Appeal**

(a) Any decision to appeal must be filed by the Affected Official within ten (10) calendar days after the issuance of the Council's removal decision.

(b) The Court of Appeals shall limit its review to the hearing record.

(c) The Court of Appeals may remand the matter to the Tribal Council to remedy any procedural errors found by the Court of Appeals, but otherwise shall reverse a removal decision only if the decision is not supported by substantial evidence in the hearing record.

### **Section 10.10 Subsequent Removal Hearing**

Except for a remand by the Court of Appeals as provided in subsection 10.09(c), no official shall be subject to a second removal hearing before the Tribal Council, if the facts or allegations regarding removal arise out of the same transaction(s) or occurrence(s) that was the subject of a prior removal hearing for that same official.

## **CHAPTER 11**

### **Committees**

#### **Section 11.01 Scope**

Chapters 11 and 12 shall apply to all Committees to the extent not inconsistent with any provision of the Constitution or Pokagon Band law that establishes a specific Committee.

#### **Section 11.02 Establishment**

The Tribal Council may establish any Committee it deems necessary to assist it in carrying out its duties. For each Committee it establishes, the Tribal Council shall specify the purpose of the Committee, the authority of the Committee, the duties of the Committee, the number of members to serve on the Committee, the qualifications for serving as a member of the Committee, the duration of the Committee, and an approximate date for the initial appointment of members to the Committee. The Tribal Council shall select a Committee chairperson from among the Committee members.

#### **Section 11.03 Initial Appointment**

(a) Prior to the initial appointment, the Tribal Council shall post conspicuously within the tribal community, including but not limited to the customary meeting location of the Tribal Council and the Elders Council, and publish in the Tribal Newsletter, a notice soliciting the interest of the Membership in the initial appointment to the Committee and informing the Membership of the purpose of the Committee, the duties, the required or preferred qualifications, the anticipated time requirements for serving on the Committee, the anticipated term length, contact information if someone has questions about serving,

how one may be considered for appointment to the Committee, and any deadline for submission of written statements of interest.

(b) Persons meeting the qualifications who wish to be considered for appointment shall submit written statements of interest to the Tribal Council, or the Tribal Council's designee, by any deadline established by the Tribal Council and stated in the notice of the vacancy.

(c) A potential appointee shall be present at the meeting at which the Tribal Council will review the written statements of interest, provided that the Tribal Council may for good cause waive this requirement. At such meeting, each potential appointee may make a statement regarding the Committee appointment and shall answer questions from the Tribal Council.

(d) The Tribal Council may make the initial appointment at the same meeting at which it reviews the written statements of interest or at a later meeting of the Tribal Council. If the Tribal Council elects to make the initial appointment at a later meeting of the Tribal Council, a potential appointee is not required to attend the later meeting to be eligible for appointment to the Committee.

(e) The Tribal Council shall only appoint a person to a Committee if the person meets all qualifications and requirements established for serving on the Committee.

(f) In making an appointment to a Committee, the Tribal Council should consider whether the expertise, knowledge, skills, professional and personal experience of the potential appointee will contribute to the fulfillment of the Committee's purposes.

(g) The Tribal Council shall take all reasonable steps to make the initial appointments to a Committee within forty-five (45) calendar days after the creation of the Committee, or as soon as thereafter possible.

#### **Section 11.04 Tribal Council Membership on Committees**

(a) Pursuant to Article X, subsection 5(c) of the Constitution, the Chairperson, or a Tribal Council Member designated by the Chairperson, shall serve as a member of all committees of the Tribal Council and said membership shall be as either of the following:

(1) As an ex-officio, non-voting member, with the right and privilege of attending all Committee meetings and access to all information available to other Committee members; or

(2) As a member of the Committee by appointment as a Tribal Council Member, with full voting rights.

(b) A Tribal Council Member serving as a member of a Committee shall ensure that the Tribal Council is appropriately informed of the activities of the Committee no less frequently than on a monthly basis.

### **Section 11.05 Terms**

(a) Staggered Terms. Unless otherwise expressly provided by the Tribal Council in establishing a Committee, Committee members shall serve staggered three (3) year terms. To achieve such staggered terms, the initial terms of the initial appointments shall be of varying lengths between approximately three (3) years and one (1) year, as determined by the Tribal Council. In order to maintain staggered terms, terms of office shall commence upon appointment and end on October 31<sup>st</sup> after the prescribed number of years.

(b) No Term Limits. There shall be no limit to the number of terms a Committee member may serve.

(c) Continued Service. A Committee member may, at the discretion of the Tribal Council, continue to serve in his or her position, with full authority, after the completion of his or her term of office until such time as a replacement is appointed and sworn into office.

### **Section 11.06 Subsequent Appointment**

Appointments to a Committee following the initial appointment shall occur in accordance with the procedures provided at Section 12.04 of this Act.

## **CHAPTER 12**

### **Vacancies**

#### **Section 12.01 Creation of Vacancies**

The office of any Tribal Council, Election Board, Tribal Judiciary, or Salary Commission Member, or Committee Member, who is recalled, removed, no longer meets the qualifications for office or dies, shall automatically be deemed to be vacant. Resignations from such offices shall be effective as of the date such resignation is tendered unless provided otherwise in the notice of resignation or the Constitution.

#### **Section 12.02 Tribal Council Vacancies**

(a) Chairperson. A vacancy in the office of Chairperson, other than a vacancy described in Article XV, subsection 3(c) of the Constitution, shall be filled in the manner provided herein. If the balance of the unexpired term is twelve (12) months or greater, the vacancy shall be filled, for the balance of the unexpired term, by a special election. If the balance of the unexpired term is less than twelve (12) months, then the Vice-Chairperson shall serve as Acting Chairperson for the balance of the unexpired term. If

the Vice-Chairperson is unable to serve as Acting Chairperson, then the Treasurer shall act in that capacity. If the Treasurer is unable to serve as Acting Chairperson, then the Secretary shall act in that capacity. If the Secretary is unable to serve as Acting Chairperson, then the Councilpersons shall elect an Acting Chairperson from amongst themselves.

(b) Vice-Chairperson, Treasurer, or Secretary. A vacancy in the office of Vice-Chairperson, Treasurer, or Secretary, other than a vacancy described in Article XV, subsection 3(c) of the Constitution, shall be filled by Tribal Council appointment of a seated Councilperson who was originally elected by the Membership. The appointee shall serve in an acting capacity and only until the next General Election.

(c) Councilperson Seeking Different Elective Office. A vacancy in any Tribal Council office, other than the Chairperson, Vice-Chairperson, Treasurer, or Secretary, due to the current office holder becoming a certified candidate for another Pokagon Band elective office, may be filled in the same General or Special Election filling the other office.

(d) Other Councilperson Vacancies. For any Councilperson vacancy not filled pursuant to subsection 12.02(c) above, the first five (5) Councilperson vacancies occurring between regularly scheduled elections for Tribal Council shall be filled by Tribal Council appointment, utilizing the procedures provided in subsections 12.03(d) through 12.03(f). Said appointment shall be in an acting capacity only and only until the next General Election. If there are more than five (5) Councilperson vacancies that occur between regularly scheduled elections, those vacancies over five (5) shall be filled by a special election conducted in accordance with the Election Code and the Constitution.

(e) Time Limitation. For all Council vacancies filled by Tribal Council appointment, the Tribal Council shall make a good faith effort to fill the vacancy within forty-five (45) calendar days after the effective date of the vacancy, or as soon thereafter as possible.

(f) Waiver of Appointment. If Council is unable to fill a Council vacancy by appointment or if a special election has been scheduled under subsection 12.02(d), the Tribal Council may waive its authority to make an appointment to a vacant Council seat and refer the vacancy to be filled in the special election.

(g) Term Length.

(1) By Appointment. If the Council vacancy was filled by Tribal Council appointment pursuant to subsections 12.02(b) or 12.02(d) above, then the person shall serve in that position only until the next General Election. The balance of any unexpired term in the vacated position shall be filled at the next General Election.

(2) By Election. Any special election held to fill a Tribal Council vacancy shall be for the balance of the unexpired term.

(h) Return to Original Position. A Tribal Council Member appointed in an acting capacity to the office of Chairperson, Vice-Chairperson, Treasurer, or Secretary shall resume his or her original position if the term for that original position extends beyond the General Election filling the seat the Tribal Council Member held in an acting capacity.

(i) Preference for Filling Vacancies. The above provisions in this Section 12.02 notwithstanding, the preferred method for filling vacancies on the Tribal Council as a result of the current office holder becoming a certified candidate for another Pokagon Band elective office is to fill the vacancy in the same General or Special Election filling the other office.

### **Section 12.03 Election Board, Tribal Judiciary, and Salary Commission Vacancies**

(a) The office of any Election Board Member or Salary Commission Member who is recalled, and any Election Board Member, Salary Commission Member, or Tribal Judge, who is removed, or no longer meets the qualifications for office, resigns or dies, shall be deemed to be vacant.

(b) The office of any Election Board, Tribal Judiciary or Salary Commission Member who becomes certified by the Election Board as a candidate for an elective tribal office not presently held by such member shall be deemed to be vacant as of the first Regular Meeting of the Tribal Council following the General or Special Election involved or forty-five (45) days following the General or Special Election involved, whichever comes first.

(c) Any vacancy in the Election Board, Salary Commission, or Judgeships of the Tribal Judiciary shall be filled by Tribal Council appointment for the balance of the unexpired term.

(d) Prior to filling the vacancy, the Tribal Council shall post, conspicuously within the tribal community, including but not necessarily limited to the designated or customary meeting location of the Tribal Council and the Elders Hall and in the Tribal Newsletter, a notice informing the Membership of the vacancy, the duties, the required or preferred qualifications, the anticipated time requirements, the anticipated term length, and how one may be considered for appointment. Said notice shall be published at least once prior to appointment by the Tribal Council. The preceding notwithstanding, for vacancies occurring in the Election Board, the Tribal Council shall first endeavor to fill said vacancy with an alternate to the Election Board, to the extent that an alternate is willing and able to serve.

(e) Band Citizens meeting the qualifications and willing to be considered for appointment to fill the vacancy shall submit written statements of interest to the Tribal Council not less than seven (7) days prior to the date the vacancy may be filled.

(f) A potential appointee shall be present at the meeting at which the Council will consider appointments to the Election Board, Salary Commission, or Tribal Judiciary, provided that the Tribal Council may for good cause waive this requirement.

(g) When filling a vacancy, the Pokagon Band Tribal Council shall, with the assistance of the Tribal Police, make a determination regarding the eligibility of each prospect willing to be considered for appointment in accordance with the standards and procedures set forth in the Constitution and applicable Pokagon Band law. If the vacancy is in the Tribal Judiciary, the Selection Committee shall review prospective candidates under applicable standards for determining the merits of the candidates. The Tribal Council shall meet with the Selection Committee in an open meeting at least once prior to any Council Meeting to appoint a Tribal Judge.

(h) The Tribal Council shall take all reasonable steps to fill the vacancy within forty-five (45) calendar days after the effective date of the vacancy, or as soon as thereafter possible.

#### **Section 12.04 Committee Vacancies**

Unless a different Committee appointment process is established in conjunction with the creation of the Committee, then appointments to a Committee shall be governed by the following procedures:

(a) Tribal Council shall fill any vacant Committee position first from any alternates that the Committee may have to the extent that an alternate is willing and able to serve.

(b) If the vacancy cannot be filled with alternates, a notice informing the Membership of the vacancy, the purpose of the Committee, the duties, the required or preferred qualifications, the anticipated time requirements, the date, time, and location of regular meetings, the anticipated term length, contact information if someone has questions about serving, and how one may be considered for appointment, including any deadline for submission of written statements of interest, shall be published in the Tribal Newsletter and posted conspicuously within the tribal community, including but not necessarily limited to the designated or customary meeting location of the Tribal Council and the Elders Hall, at least once prior to appointment by the Tribal Council.

(c) Persons meeting the qualifications and willing to be considered for appointment to fill the vacancy shall submit written statements of interest to the Tribal Council by any deadline stated in the notice of the vacancy, which shall be not less than seven (7) days prior to the date the vacancy may be filled.

(d) A potential appointee, whether an alternate or otherwise, shall be present at the meeting in which the Tribal Council reviews the written statements of interest, provided that the Tribal Council may for good cause waive this requirement. At such meeting, each potential appointee may make a statement regarding the Committee appointment and shall answer questions from the Tribal Council.

(e) The Tribal Council may fill a vacancy at the same meeting at which it reviews the written statements of interest or at a later meeting of the Tribal Council. If the Tribal Council elects to fill the vacancy at a later meeting of the Tribal Council, a potential appointee is not required to attend the later meeting to be eligible for appointment to fill the vacant Committee position.

(f) The Tribal Council shall only appoint a person to fill a vacancy on a Committee if the person meets all qualifications and requirements established for serving on the Committee.

(g) In making an appointment to a Committee to fill a vacancy on the Committee, the Tribal Council should consider whether the expertise, knowledge, skills, professional and personal experience of the potential appointee will contribute to the fulfillment of the Committee's purposes.

(h) The Tribal Council shall take all reasonable steps to fill the vacancy within seventy-five (75) calendar days after the effective date of the vacancy, or as soon as thereafter possible.

## **CHAPTER 13**

### **Meeting Records**

#### **Section 13.01 Pokagon Band Property**

Original records of an open meeting or official action taken by the Tribal Council shall be maintained as the exclusive property of the Pokagon Band and kept at the official offices of the Band. The Tribal Council Secretary shall be responsible for the maintenance and protection of Tribal Council records.

#### **Section 13.02 Required Meeting Records**

The record to be maintained for each meeting shall consist of the following:

(a) Meeting notice;

(b) Published agenda;

(c) Final agenda for meeting;

(d) Approved minutes;

(e) Original executed resolutions and legislation, if any, that were approved at the meeting; and

(f) The materials submitted for review or action with regard to the items on the agenda.

### **Section 13.03 Meeting Minutes**

(a) The Tribal Council Secretary shall ensure that a report of the minutes of all Regular Meetings, Special Meetings, Emergency Meetings, Executive Committee Meetings, Legislative Sessions, and Membership Meetings, is recorded, maintained and submitted to the Tribal Council.

(b) Each vote of the Council or Executive Committee shall be recorded in the minutes, which shall include, the following:

- (1) The substance of the agenda item under consideration;
- (2) The vote taken, including the names of each Tribal Council Member supporting, opposing, or abstaining, unless the vote was a voice vote, show of hands or unanimous consent, in which case the Secretary shall record only whether the motion was adopted or lost; and
- (3) If applicable, the resolution number.

(c) The Tribal Council Secretary shall, to the greatest extent possible, prepare the meeting minutes of the Tribal Council for approval by the Tribal Council at the next Regular Meeting.

(d) The Tribal Council Secretary shall, to the greatest extent possible, prepare the meeting minutes of the Executive Committee for approval by the Executive Committee within thirty (30) days of each such meeting.

### **Section 13.04 Publication of Votes and Minutes in Newsletter**

The Tribal Council Secretary shall ensure that a record of all votes of the Tribal Council and approved meeting minutes of the Tribal Council and Executive Committee are published in a Tribal Newsletter and said material may also be published on the official website of the Pokagon Band, provided that votes on motions regarding routine procedural matters within a closed session shall not be published except by direction of the Tribal Council.

### **Section 13.05 Records of a Closed Meeting**

In accordance with Article VII, subsection 2(d) of the Constitution, when meeting in a duly authorized closed session, the Tribal Council may, in its discretion, determine not to keep a record of all or any part of its discussion in closed session, provided that the general reason for such determination shall be recorded and a record shall be kept of any action taken in a closed session.

## **CHAPTER 14**

### **Sovereign Immunity**

#### **Section 14.01 Authority to Waive Sovereign Immunity**

Pursuant to Article XVIII, Section 2 of the Constitution, the Tribal Council may waive the Band's immunity from suit in furtherance of a governmental or tribal business purpose. Any such waiver must be in writing, be approved by the affirmative vote of at least eight (8) Tribal Council Members, and should include, at a minimum, the following information:

- (a) The person or entity to whom the waiver is granted;
- (b) The purpose and scope of the waiver;
- (c) Applicable law;
- (d) The forum(s) in which the waiver is applicable; and
- (e) The length of time the waiver is valid.

#### **Section 14.02 Delegation of Authority to Waive Sovereign Immunity**

Tribal Council may delegate its authority to waive the Band's sovereign immunity to governing bodies of subordinate tribal entities, provided that recourse is limited to the assets of the entity.

#### **Section 14.03 Limited Waiver of Sovereign Immunity in this Act**

The Band hereby waives the sovereign immunity of the Band, its officers, employees, and representatives solely for the limited purpose of a Band Citizen commencing an action in Tribal Court under Section 17.04 and awarding relief stated in subsection Section 17.04.

## **CHAPTER 15**

### **Tribal Council Member Requests for Assistance**

#### **Section 15.01 Requirements for Request**

A Tribal Council Member may, without authority or prior direction from the Tribal Council, request the assistance of any Pokagon Band employee, including, without limitation the Band's General Counsel regarding official matters, provided the request:

- (a) Is needed for a matter pending before the Tribal Council;

(b) Is directed to the Government Manager or, for departments and programs not subject to the supervision of the Government Manager, the head of the department or program from which such assistance is being sought;

(c) Reasonably describes the specific assistance sought and the specific reason(s) for requesting the assistance;

(d) Is directed to the department or program best suited to provide the assistance;

(e) Can be fulfilled with minimal interference with current priorities and responsibilities of the department or program; and

(f) Doesn't conflict with Pokagon Band law, regulation, policy, or procedure.

## **CHAPTER 16**

### **Non-Pokagon Band Entities**

#### **Section 16.01 Scope**

This Chapter governs appointments by the Tribal Council to a Non-Pokagon Band Entity and the service of such appointees on such entity.

#### **Section 16.02 Initial Appointment**

Appointments made by the Tribal Council to a Non-Pokagon Band Entity shall, to the extent practicable be made in a manner consistent with Section 11.03 of this Act.

#### **Section 16.03 Subsequent Appointment**

Subsequent appointments by the Tribal Council to a Non-Pokagon Band Entity shall, to the greatest extent possible, be made in a manner consistent with Section 11.06 of this Act.

#### **Section 16.04 Term of Appointment**

Unless otherwise provided in the appointment resolution, all appointees to a Non-Pokagon Band Entity shall be for a one-year term. All such appointees shall serve at the pleasure of the Tribal Council. An appointee may, at the discretion of the Tribal Council, continue to serve in his or her appointed position, with full authority, after the completion of his or her term until such time as a replacement is appointed. An appointee may serve successive terms without limitation. An appointee may be removed from such appointment by the Tribal Council with or without prior notice to the appointee. The preceding notwithstanding, if the Tribal Council appoints a Tribal Council Member to

serve on a Non-Pokagon Band Entity, his or her term on the non-Pokagon Band entity shall be coterminous with his or her term on the Tribal Council.

### **Section 16.05 Reporting**

All appointees to a Non-Pokagon Band Entity shall provide a written report regarding the activities of the Non-Pokagon Band Entity to the Tribal Council no less frequently than quarterly. Such report shall, at a minimum, include copies of approved meeting minutes of the Non-Pokagon Band Entity.

### **Section 16.06 Compensation**

No appointee to a Non-Pokagon Band Entity shall receive compensation for his or her service on such entity without approval by resolution of the Tribal Council. Appointees shall be entitled to expense reimbursement in accordance with the expense reimbursement policy adopted by the Non-Pokagon Band Entity, provided that if the Non-Pokagon Band Entity does not have an expense reimbursement policy, then the appointee shall be eligible to receive reimbursement in accordance with the expense reimbursement policy adopted by the Tribal Council.

## **CHAPTER 17**

### **Violations**

#### **Section 17.01 Reporting Violations**

(a) Whenever a Tribal Council Member has reliable personal knowledge of facts that indicate that Tribal Council action is occurring in violation of this Act, such Tribal Council Member shall promptly make a public statement at the meeting objecting to the Tribal Council action, 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.

#### **Section 17.02 Non-Conforming Action Voidable**

(a) Any action taken by the Tribal Council that was not in conformance with this Act shall be voidable in a proceeding commenced by a Band Citizen in the Tribal Court within forty (40) days after the action sought to be voided is made public, provided that such Band Citizen has first provided the Tribal Council written notice of his or her intention to commence a proceeding in Tribal Court pursuant to this subsection. Such written notice shall be provided to the Tribal Council a minimum of ten (10) days prior to the commencement of any proceeding in Tribal Court and shall include sufficient information to permit the Tribal Council to identify the specific provision(s) of the Act which have allegedly been violated, the act or omission alleged to constitute a violation,

and the date or dates of the violation. Such action shall not be voidable solely due to a failure to conform with the meeting notice requirements in Chapter 7 of this Act.

(b) An action of the Tribal Council taken during a nonconforming meeting may only be voided upon a finding by the Tribal Court of substantial non-compliance by the Tribal Council with the requirements of this Act in taking such action and that the substantial non-compliance has actually impaired the rights of the Membership under the Constitution and this Act.

### **Section 17.03 Remedial Action**

(a) The Tribal Council may at any time at a duly called meeting in accordance with the requirements of this Act, take remedial action to correct the non-conforming action 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 Tribal Council contrary to its interest.

(b) An action that is reenacted in the manner described in subsection 17.03(a) 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 17.04 Injunctive Relief**

(a) Any Band Citizen may commence an action in Tribal Court and apply to the Tribal Court for declaratory and injunctive relief to ensure compliance with this Act. To the extent the interest of justice so requires, the Tribal Court may expedite such proceedings.

(b) If a Band Citizen commences an action seeking declaratory or injunctive relief, that person shall not be required to post security as a condition for obtaining an injunction.

(c) If a Band Citizen commences a civil action against the Tribal Council for declaratory or injunctive relief to compel compliance with this Act and succeeds in obtaining relief in the action, such Band Citizen shall be entitled to recover court costs and the lesser of reasonable or actual attorney fees for the action.

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## **LEGISLATIVE HISTORY**

Tribal Council Procedures Act, enacted February 1, 2010 by Res. No. 10-02-01-02; Amended on February 12, 2014 by Res. No. 14-02-12-02.