

**POKAGON BAND OF POTAWATOMI INDIANS
OPEN MEETINGS ACT**

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CHAPTER 1

General

Section 1.01 Title

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

Section 1.02 Authority

The Tribal Council enacts this Act pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, Subsection 2 (a) of the Constitution and the authorization set forth in Article VII, Section 2 of the Constitution and in accordance with the duties of the Tribal Council stated in Article IX, Subsections 1(c), 1(f), and 1(i) of the Constitution.

Section 1.03 Purpose

The purpose of this Act is to ensure compliance with Article VII, Section 2 of the Constitution by requiring Governmental Bodies to conduct all Meetings open to Citizens, except when authorized or required under this Act or applicable federal law.

Section 1.04 Findings

The Tribal Council finds:

(a) The Constitution establishes a system of shared governance under which the Pokagon Band will make decisions for the community as a whole and govern its affairs through the collective actions of Citizens and through the Tribal Council.

(b) Under Article VII of the Constitution, the activities and actions of the Pokagon Band government are representative actions of the Pokagon Band, and therefore, must serve the interests of the Pokagon Band as a whole.

(c) Under Article VII, Subsection 2(a) of the Constitution, all Meetings of Governmental Bodies must be open to Citizens, except when meeting in closed session is authorized or required under Pokagon Band Law consistent with the principles set forth in Article VII, Subsection 1(e) of the Constitution or by applicable federal law.

(d) The open meeting mandate of Article VII, Subsection 2(a) of the Constitution requires both formational and functional elements to qualify as a Governmental Body in that a group must:

(1) be established by the Constitution, Pokagon Band Law or Tribal Council resolution or motion or under an express delegation of authority from Tribal Council; and

(2) perform a Governmental Function.

(e) Under Article VII, Subsection 1(e) of the Constitution, Pokagon Band Law may authorize or require Governmental Bodies to meet in closed session consistent with the following principles:

(1) to prevent an unwarranted invasion of personal privacy, such as with personnel, membership and medical records;

(2) to prevent damage to the investigative, competitive or bargaining position of the Band, including with respect to pending or anticipated arbitration or litigation;

(3) to protect minors involved in juvenile or child welfare proceedings; or

(4) in other circumstances in which non-disclosure protects a significant Public Interest of the Band.

(f) Combined Article VII, Subsections (2)(a) and 1(e) of the Constitution extend the open meeting mandate of Article VII of the Constitution to all Governmental Bodies, while granting the Tribal Council discretion to enact Pokagon Band Law authorizing or requiring Governmental Bodies to meet in closed session consistent with the principles set forth in Article VII, Subsection 1(e) of the Constitution.

(g) The principles set forth in Article VII, Subsection 1(e) of the Constitution establish a balance between the need for Governmental Bodies to protect privacy and confidentiality and the countervailing understanding that:

(1) secrecy can undermine the faith of Citizens in the Pokagon Band government and hinder the effectiveness of Citizens in fulfilling their role in the democratic process; and

(2) the right of Citizens to be present at open Meetings and to witness all phases of deliberation, policy formulation, and decision making of Governmental Bodies is vital to the enhancement and proper functioning of the democratic process.

(h) Citizens must have Adequate Notice of and the right to attend all Meetings of Governmental Bodies, except when meeting in closed session is authorized or required by this Act consistent with the principles in Subsection 1(e) of the Constitution or by applicable federal law.

Section 1.05 Applicability

(a) This Act shall apply only to Governmental Bodies.

(b) This Act shall not apply to:

(1) any group that is not established by the Constitution, Pokagon Band Law, or Tribal Council resolution or motion (such as a group established by consensus of the Tribal Council), or not organized pursuant to an express delegation of authority by the Tribal Council;

(2) any group that is not empowered, and does not otherwise operate, as a voting body, including a group composed of a public official and subordinates or advisors, such as an Executive Council member meeting with department heads;

(3) any Meeting the sole purpose of which is to provide training or instruction to members of a Governmental Body;

(4) any Meeting that is not open to all the members of a Governmental Body;
and

(5) any Meeting that was not called with some intent to discuss or otherwise address the Public Business of the Governmental Body, such as social or chance encounters by members of a Governmental Body.

Section 1.06 Construction

(a) To the extent reasonable, this Act shall be read and interpreted in a manner that is consistent with the Constitution, but in the event of any inconsistency, the Constitution shall control.

(b) This Act shall be liberally construed in order to support the findings of the Tribal Council and accomplish the purpose of this Act.

(c) Nothing in this Act shall limit the discretion of a Governmental Body to regulate the active participation any Audience Members, including Citizens, at any Meeting, subject to the requirements of the Constitution and, to the extent applicable, the Tribal Council Procedures Act.

(d) Nothing in this Act shall limit the discretion of a Governmental Body to meet in open session, except when required to meet in closed session under any Pokagon Band Law or applicable federal law.

(e) The reference to any Subsection or Section in this Code shall refer to a Subsection or Section of this Code, unless otherwise expressly stated.

Section 1.07 Severability

(a) If a court of competent jurisdiction shall adjudge any provision or application of this Act to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

(b) To the extent this Act conflicts with any other current Pokagon Band Law or resolution, motion or other action of the Tribal Council, this Act shall govern and the conflicting provisions are hereby superseded and repealed, but nothing in this Act shall affect or supersede the Tribal Council Procedures Act or the Freedom of Information Act, which shall to the extent reasonable be interpreted in harmony with this Act.

Section 1.08 Effective Date

This Act shall become effective as Pokagon Band Law for all purposes on the date of its enactment.

Section 1.09 Definitions

As used in this Act:

(a) "Act" means this Pokagon Band Open Meetings Act.

(b) "Adequate Notice" means:

(1) any advance notice of a Meeting of the Tribal Council, the Executive Committee, a Membership Meeting, or Legislative Session that meets the minimum requirements of the Constitution and the Tribal Council Procedures Act; and

(2) regarding all Governmental Bodies other than the Tribal Council or Executive Committee, or a Membership Meeting or Legislative Session, any notice of a Meeting provided at least forty-eight (48) hours in advance of the scheduled Meeting time that provides the name, address, and any telephone number of the Governmental Body, and the time, date, location and, to the extent required or known, the Meeting agenda, which notice shall be:

(A) published in any newspaper or newsletter that is owned, controlled, or managed by the Pokagon Band or that is designated by the Tribal Council to publish notices in accordance with the requirements of this Subsection;

(B) distributed at a Regular Meeting of the Tribal Council or verbally announced at such Meeting;

(C) prominently posted at the principal office of the Governmental Body, if any, and in at least one public place reserved for such or similar announcements, or

(D) displayed or made available through any official website of the Pokagon Band, but only if the Governmental Body giving such notice informs Citizens in advance at a Meeting of its intent to use such official website for its Meeting notices.

(c) "Audience Member" means an individual in attendance at a Meeting of a Governmental Body.

(d) "Citizen" means any duly enrolled member of the Pokagon Band.

(e) "Constitution" means the Constitution of the Pokagon Band.

(f) "Executive Committee" means the executive committee of the Tribal Council.

(g) "Governmental Body" means the Tribal Council and any Instrumentality that performs a Governmental Function, excluding the Tribal Judiciary.

(h) "Governmental Function" means any function:

(1) performed by the Tribal Council or any Instrumentality other than a commercial function, including the spending of Public Funds; or

(2) expressly designated as a governmental function under Pokagon Band Law.

(i) "Include" or "Including" whether capitalized, shall be deemed to be followed by without limitation.

(j) "Instrumentality" means:

(1) any board, committee, commission, authority, or other instrumentality;

(2) organized under the Constitution, Pokagon Band Law or by Tribal Council resolution or motion, or organized pursuant to an express delegation of authority by the Tribal Council; and

(3) that is empowered, or otherwise operates, as a voting body.

(k) "Meeting" means and includes any meeting of any Governmental Body, regardless of whether duly called or whether the members of the Governmental Body are physically present or are present by means of communication equipment, but only if the meeting:

(1) is open to all members of the Governmental Body;

(2) at least a quorum of the members of the Governing Body are present or, if a quorum is not prescribed by Pokagon Band Law, then at least a majority of the members are present; and

(3) was called with the intent to include discussion, deliberation, formulation of any recommendation or action upon the Public Business of that Governmental Body.

Notwithstanding the above, any quorum of a Governmental Body attending a Meeting of another Governmental Body shall not be a Meeting of the first Governmental Body, if the first Governmental Body takes no action upon the Public Business of the first Governmental Body at such Meeting of the second Governmental Body.

(l) "Non-Citizen" means any person who is not a Citizen.

(m) "Pokagon Band" means the Pokagon Band of Potawatomi Indians.

(n) "Pokagon Band Law" means all legislative enactments, codes, statutes, ordinances, regulations, and judicial decisions of the Pokagon Band.

(o) "Public Business" means and includes all matters which relate in any way, directly or indirectly, to the purpose, duties, powers, or functions of the Governmental Body.

(p) "Public Funds" means and includes all funds of the Pokagon Band government, including funds deposited in the Government Operations Account under Subsection 3.B. of the Revenue Allocation Plan.

(q) "Public Interest of the Band" means and includes all matters affecting the sovereignty, culture, traditions, privileges, immunities, rights, duties, health, safety, or general welfare of the Pokagon Band, including Citizens.

(r) "Revenue Allocation Plan" means the Pokagon Band Revenue Allocation Plan.

(s) "Tribal Council" means the governing body of the Pokagon Band.

CHAPTER 2

Meetings

Section 2.01 Adequate Notice

(a) Except as provided in Subsection 2.01(b), or for any Meeting limited exclusively to consideration of items listed in Section 2.03, no Governmental Body shall hold a Meeting unless Adequate Notice thereof has been provided to Citizens.

(b) Upon the affirmative vote of at least three quarters (3/4) of the members present, a Governmental Body may hold a Meeting despite the inability or inadvertent failure to provide Adequate Notice if:

(1) such Meeting is required to deal with matters of such urgency and importance that delay for the purpose of providing Adequate Notice may result in substantial harm to the Public Interest of the Band;

(2) the Meeting is limited to such matters of urgency and importance;

(3) at the beginning of the Meeting, the person presiding announces publicly and causes to be entered in the minutes or other official record of the Meeting, a statement:

(A) that adequate notice of the Meeting was not provided to Citizens and that the Meeting will be limited to matters of urgency and importance; and

(B) explaining the nature of the urgency and importance and the substantial harm to the Public Interest of the Band that may result if the Meeting is delayed.

Section 2.02 Open Meetings

(a) Except as provided in Section 2.03, all Meetings of Governmental Bodies, including votes on matters before such Governmental Bodies, shall always be open to Citizens.

(b) All Meetings of Governmental Bodies shall be held in a place that is accessible to Citizens.

(c) Except as may be required to verify a person's status as a Citizen, no Citizen shall be required, as a condition of attending a Meeting of a Governmental Body, to register or otherwise provide the Citizen's name or other information or otherwise to fulfill a condition precedent to attending such Meeting.

(d) Citizens shall have a reasonable opportunity to be heard at such Meetings under such procedures as may be prescribed by Pokagon Band Law or policy.

(e) Notwithstanding Subsection 2.02(a), votes on motions regarding routine procedural matters during a closed session of a Governmental Body shall not be required to be open to Citizens.

Section 2.03 Exceptions

(a) A Governmental Body may exclude Citizens only from the portion of a Meeting as necessary:

(1) to prevent an unwarranted invasion of personal privacy, including with respect to:

(A) personnel, membership and medical records, including information related to participation in Pokagon Band programs (such as housing, social services, and education), unless the disclosure is consented to in writing by the subject of the information, but this Subsection 2.03(a)(1)(A) shall not prohibit the disclosure of information that bears on duties of employment with the Pokagon Band; or

(B) any information related to any grievance filed by a Citizen under the Grievance Procedures for Citizens, unless the disclosure is consented to by both the Citizen and any person who is the subject of the grievance; and

(2) to prevent damage to the investigative, competitive, or bargaining position of the Pokagon Band, including with respect to:

(A) any law enforcement investigation, but only to the extent that disclosure relating to such investigations would:

(i) interfere with law enforcement proceedings;

(ii) deprive a person of the right to a fair trial;

(iii) disclose the identity of a confidential source or, if the record is compiled by a law enforcement agency during a criminal investigation, disclose confidential information furnished only by a confidential source;

(iv) disclose law enforcement investigative techniques or procedures; or

(v) endanger the life or physical safety of law enforcement personnel;

(B) any pending or anticipated arbitration or litigation;

(C) any trade secrets, commercial or financial information;

(D) any ongoing negotiations and pending public bids related to any contract;

(E) any negotiation involving a potential or proposed land purchase by the Pokagon Band or any entity wholly owned by the Pokagon Band until that purchase is complete;

(F) information that was submitted to the Pokagon Band upon a promise of confidentiality by the Pokagon Band; or

(G) the identity of any person who in good faith makes a complaint or otherwise discloses information that alleges a violation or potential violation of applicable law or regulation by the Pokagon Band, but if the complaint or information is used in a civil or criminal proceeding, this Subsection shall not diminish the defendant's due process rights to confront and examine the complainant and witnesses; and

(3) to protect minors involved in juvenile or child welfare proceedings; and

(4) to protect a significant Public Interest of the Band, including any information that:

(A) may reveal the location of archeological or culturally significant sites;

(B) is protected from disclosure by Pokagon Band Law or applicable federal law; or

(C) is protected by common law privileges of confidentiality, including the attorney-client privilege or the attorney work-product doctrine.

(b) Before excluding Citizens from any Meeting to discuss any matter described in Subsection 2.03(a), upon the request of any Citizen, the person presiding shall identify the basis that the Governmental Body is relying on to exclude Citizens from the Meeting. Any such identification shall be entered in the minutes or official record of the Meeting.

Section 2.04 Failure to Invite

It shall be a violation of this Act for any person or Governmental Body to fail to invite all of its members to a Meeting for the purpose of circumventing the provisions of this Act.

CHAPTER 3 Participation at Meetings

Section 3.01 Scope

This Chapter shall apply to all Meetings of Governmental Bodies except the following:

(a) Meetings of the Tribal Council, the Executive Committee, Membership Meetings, and Legislative Sessions;

(b) Meetings that are closed pursuant to Section 2.03; and

(c) Meetings of any Governmental Body that has adopted alternative written rules or policies that are consistent with Article VII, Section 2 of the Constitution and expressly state that such rules or policies shall substitute for this Chapter 3.

Section 3.02 Attendance of Non-Members

A Non-Citizen may attend all Meetings of Governmental Bodies if the Non-Citizen is:

(a) asked by the governing body of the Governmental Body to attend the Meeting; or

(b) has a purpose at the Meeting recognized by the person presiding at the Meeting.

Section 3.03 Attendance of News Media

(a) Prior to the start of a Meeting, all representatives of any news media acting in such capacity, even if a Citizen, shall identify themselves to the person presiding and state whether they are seeking to record any portion of the Meeting.

(b) Representatives of any news media acting in such capacity, even if a Citizen, may only attend a Meeting and record the Meeting upon the affirmative vote of two-thirds (2/3) of the members of the Governmental Body in attendance at the Meeting.

Section 3.04 Closing to Non-Citizens or to News Media

Notwithstanding any other provision of this Act, a Governmental Body may at any time, at its discretion, upon the affirmative vote of a majority of the members of the

Governmental Body in attendance at the Meeting, close any Meeting to Non-Citizens or to representatives of any news media acting in such capacity, even if a Citizen.

Section 3.05 Recording

No Audience Member shall record, by any visual and/or audio means, any Meeting, but a Governmental Body may, by consensus, permit an Audience Member to record a ceremonial event that is part of a Meeting if the recording process does not disrupt or interfere with the Meeting. Any Audience Member that fails to cease recording when asked by the person presiding shall be considered "out of order".

Section 3.06 Opportunity to be Heard

(a) At any Meeting, any Audience Member shall have a reasonable opportunity to be heard. The Audience Member must be recognized by the person presiding before making any comments. An Audience Member may seek recognition by raising his or her hand. Prior to making comments, the Audience Member must identify himself or herself. Any Audience Member who speaks without first being recognized by the person presiding shall be "out of order", and the person presiding may remind the Audience Member of the requirement to remain silent until recognized.

(b) Any Audience Member who is recognized to speak by the person presiding shall address all questions or comments to the Governmental Body and shall restrict all questions or comments solely to the agenda item currently on the floor.

(c) Any comments or questions presented at a Meeting must be presented in a respectful manner, without shouting, making personal attacks, or using profanity. Any Audience Member who disregards such requirements after being reminded by the person presiding shall be "out of order".

(d) The person presiding may establish time limits for Audience Member questions and comments and may also schedule Audience Member questions and comments to occur at a specific time during the Meeting that the person presiding determines to be consistent with the orderly conduct of the Meeting.

Section 3.07 Removal of Disruptive Audience Members

(a) Any Audience Member who is "out of order" may be asked by the person presiding to remain silent and to abide by the requirements of this Chapter.

(b) If an Audience Member continues to be "out of order" after being cautioned or informed such Audience Member is "out of order", the person presiding may ask the Audience Member to leave the Meeting.

(c) If the Audience Member refuses to leave Meeting after being asked to do so, such Audience Member shall be considered to be trespassing, and the Pokagon Band Tribal Police shall remove such Audience Member from the Meeting.

Section 3.08 Written Comments

(a) Any Citizen or Non-Citizen may provide written comments to a Governmental Body on an agenda item.

(b) All written comments must be germane to the agenda item, shall be respectful, and must not contain personal attacks or profanity.

(c) Any person that provides written comments must sign the comments, which shall include the person's name and address and shall clearly identify the specific Meeting and agenda item upon which such person is commenting.

(d) Written comments must be received by the Governmental Body at least five (5) business days prior to the date of the Meeting of the Governmental Body at which the agenda item will be discussed.

(e) Written comments received in compliance with this Section shall be copied and distributed to the members of the Governmental Body prior to the Meeting at which the agenda item will be addressed.

CHAPTER 4 Penalties and Enforcement

Section 4.01 Penalties

Any person who intentionally violates this Act shall be subject to a fine of \$50.00 for the first offense and a fine of not less than \$50.00 and not more than \$300.00 for any subsequent offense.

Section 4.02 Jurisdiction

The Tribal Court shall have jurisdiction to enforce any penalty under Section 4.01 upon complaint of the Tribal Prosecutor.

Section 4.03 Reporting Violations

(a) Any member of a Governmental Body who reasonably believes that a Meeting of the Governmental Body is being held in violation of this Act, may promptly make a public statement at the Meeting objecting to the holding of the Meeting, 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.

(c) If a majority of those members of the Governmental Body attending the Meeting overrule such a member's objections to the holding of the Meeting, such member may continue to participate in the Meeting without penalty provided that the member has complied with the requirements of this Section 4.03.

Section 4.03 Proceeding to Void Action

(a) Any action taken by a Governmental Body at a Meeting that was not in conformance with Article VII, Section 2 of the Constitution or this Act shall be voidable in a proceeding commenced by a Citizen in the Tribal Court within thirty (30) days after the action sought to be voided is made public. Such action shall not be voidable solely due to a failure to conform with the Adequate Notice requirements of this Act.

(b) An action of a Governmental Body taken during a non-conforming Meeting may only be voided upon a finding by the Tribal Court of substantial non-compliance by the Governmental Body with the requirements of Article VII, Section 2 of the Constitution, or this Act, in taking such action and that the substantial non-compliance has actually impaired the rights of the Citizen who commenced the action.

(c) A Governmental Body may at any time after providing Adequate Notice take remedial action to correct an action taken at a non-conforming Meeting by reenacting such action at a subsequent Meeting held in full conformity with Article VII, Section 2 of the Constitution and this Act. Such remedial action shall not be deemed an admission of non-compliance by the Governmental Body contrary to its interest. An action that is reenacted in the manner described in this Subsection 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 4.04 Declaratory and Injunctive Relief

(a) Any Citizen may commence an action in Tribal Court and apply to the Tribal Court for declaratory and injunctive relief to ensure compliance with Article VII, Section 2 of the Constitution, or this Act, or to enjoin further noncompliance. The Tribal Court may issue such orders and provide such equitable remedies as the Tribal Court determines to be necessary to ensure such compliance. To the extent the interest of justice so requires, the Tribal Court may expedite such proceedings.

(b) If any Citizen commences an action seeking declaratory and injunctive relief, the Citizen shall not be required to post security as a condition for obtaining an injunction.

(c) If any Citizen commences a civil action against the Governmental Body for declaratory and injunctive relief to compel compliance or to enjoin further noncompliance with Article VII, Section 2 of the Constitution or this Act and succeeds in obtaining relief in the action, the Citizen shall be entitled to recover court costs and actual attorney fees for the action.

LEGISLATIVE HISTORY

Open Meetings Act, enacted January 28, 2008 by Res. No. 08-01-28-11; amended October 13, 2021 by Res. No. 21-10-13-01.