

**POKAGON BAND OF POTAWATOMI INDIANS  
SIGN AND LEAFLETING ACT**

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# **CHAPTER 1**

## **General Provisions**

### **Section 1.01 Short Title**

This Act shall be known, and may be cited as, the "Sign and Leafleting Act".

### **Section 1.02 Authority**

The Tribal Council enacts this Act pursuant to Article III, Sections 1 and 2 of the Band Constitution and the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a) and 2(d) of the Band Constitution and in accordance with the duties of the Tribal Council stated in Article IX, subsections 1(a) and 1(c) of the Band Constitution.

### **Section 1.03 Findings**

The Tribal Council finds as follows:

(a) As a sovereign nation predating the U.S. Constitution, the Band is not constrained by the U.S. Constitution or jurisprudence interpreting the U.S. Constitution, including the First Amendment;

(b) The Band is governed by the Band Constitution;

(c) Under Article IX, subsection 1(a) of the Band Constitution, the duties of the Tribal Council include to “promote and protect the peace, health, safety . . . and general welfare of the Band;”

(d) Under Article XVI of the Band Constitution, the Band is prohibited from making or enforcing any law abridging “freedom of speech” in exercising the powers of self-government;

(e) The right of “freedom of speech” under the Band Constitution is not absolute; and

(f) The right of “freedom of speech” may be subordinated to certain community interests, including without limitation:

(1) Protecting drivers and pedestrians from injury and property damage caused by, or attributable to, obstructing or distracting Signs or by Leafleting;

(2) Preserving community appearance by regulating the character, design and placement of Signs and the distribution of Leaflets;

(3) Preserving the shared use of Band Land, including recreation areas and common areas;

(4) Protecting freedom of speech and association of Individuals who reside in multi-family housing units;

(5) Preserving Land Preserves for intended purposes consistent with Article IV of the Band Constitution;

(6) Ensuring continued economic growth in furtherance of self-sufficiency and self-determination; and

(7) Ensuring continued delivery of essential services to Citizens in an efficient manner; and

(g) This Act is necessary to protect self-governance and control internal relations of the Band.

#### **Section 1.04 Purpose**

The purpose of this Act is to establish reasonable standards regulating Signs and Leafleting on Band Land that preserve the right of “freedom of speech” protected under the Band Constitution while serving certain community interests.

#### **Section 1.05 Applicability**

This Act shall apply to all Persons on Band Land.

#### **Section 1.06 Construction**

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

(b) This Act shall be liberally construed in order to accomplish its purpose as set forth in Section 1.04 of this Act.

(c) Nothing in this Act shall be deemed an admission by the Band regarding the applicable framework governing interpretation of “freedom of speech” under the Band Constitution.

#### **Section 1.07 Severability**

(a) If any provision of this Act, or the application thereof to any Person or circumstance, 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.

(b) To the extent this Act conflicts with any provision of any Band law, except the Election Code or Housing Act, or any resolution or motion of the Tribal Council or any rule, regulation,

policy or procedure of the Band, the provisions of this Act shall govern and the conflicting provisions are hereby superseded and repealed.

### **Section 1.08 Effective Date**

This Act shall become effective on the date of its enactment.

### **Section 1.09 Definitions**

The following terms are defined under this Act:

- (a) “Act” means this Sign and Leafleting Act.
- (b) “Band” means the Pokagon Band of Potawatomi Indians.
- (c) “Band Constitution” means the Constitution of the Band, as amended.
- (d) “Band Land” means any land held in trust for the Band or owned by the Band or any entity that is wholly-owned by the Band, along with all rights-of-way under the jurisdiction of the Band.
- (e) “Citizen” means a duly enrolled member of the Band.
- (f) “Civil Citation” means a written direction issued by the Sign Official that requests a Person to appear before the Tribal Court by a stated time and place to answer for an alleged violation of this Act.
- (g) “Code of Offenses” means the Code of Offenses of the Band, as amended.
- (h) “Department of Housing” means the Department of Housing of the Band.
- (i) “Election Code” means the Election Code of the Band, as amended.
- (j) “Housing Act” means the Housing Act of the Band, as amended.
- (k) “Individual” means any natural person.
- (l) “Land Preserve” means any Band Land classified as a land preserve in accordance with Article IV, Section 1(c) of the Band Constitution.
- (m) “Leaflet” means any printed information, including without limitation, any pamphlet, booklet, brochure, circular, flyer, handout, fact sheet or bulletin.
- (n) “Leafleting” means to distribute Leaflets.
- (o) “Person” means any Individual or any entity regardless of form.

(p) “Personally Attended To” means an Individual being physically present within ten (10) feet of a Sign.

(q) “Prosecutor” means the prosecutor of the Band.

(r) “Public Forum” means:

(1) Public streets, sidewalks and parks located on Band Land, excluding Residential Land and all Band Land utilized by the Pokagon Gaming Authority or Mno Bmadsen or any entity wholly owned by Mno Bmadsen;

(2) The rented or assigned portion of Band facilities utilized by Citizens for non-Band sponsored events, but only for the specified time period; and

(3) Any other area designated as a Public Forum by resolution of the Tribal Council, subject to all limitations set forth in such resolution.

(s) “Residential Land” means any Band Land leased to a tenant for residential use.

(t) “Sign” means any sign, banner, flag, pennant, sticker or similar display, but does not include any image which is incorporated into clothing worn by an Individual, including any button.

(u) “Sign Official” means the Band Planner or Building Official, or any other Person designated to serve in such capacity by resolution of the Tribal Council.

(v) “Tribal Council” means the Tribal Council of the Band established under Article X of the Band Constitution.

(w) “Tribal Court” means the trial level court of the Band.

(x) “Trust Land” means any land held in trust for the Band, along with all rights-of-way under the jurisdiction of the Band.

(y) “Vehicle Sign” means a Sign affixed to a vehicle, such as a bumper sticker or door placard.

## **CHAPTER 2**

### **Prohibition and Exceptions within Band Land**

#### **Section 2.01 Prohibition**

Except as otherwise authorized by this Act, no Person shall display any Sign or engage in Leafleting on Band Land.

## **Section 2.02 Exceptions**

(a) This Act shall not apply to:

(1) Any Sign displayed, or Leafleting engaged in, on Band Land by, or on behalf of, the Band or another government, in furtherance of a government function, including without limitation, traffic control, directional signs, warning signs, and official notices and postings;

(2) Any Sign displayed, or Leafleting engaged in, on Band Land by, or on behalf of, the Band or any entity wholly owned by the Band, in furtherance of any economic development or commercial purpose;

(3) Any Sign displayed, or Leafleting engaged in, on Band Land that is leased by, or on behalf of, or assigned to, a Person for any economic development or commercial purpose, provided that the Sign shall only advertise, and the Leaflet shall be related to, business conducted on the same premises where the Sign is located and shall be subject to all applicable laws; or

(4) Any Vehicle Sign displayed on a vehicle which is lawfully operated or parked on Band Land, subject to all applicable laws, including without limitation, traffic laws, the Housing Act and the Election Code, provided that a Vehicle Sign shall:

- (i) Not obstruct any vehicle window;
- (ii) Not obstruct any vehicle light or signal;
- (iii) Be affixed properly and securely to the vehicle; and
- (iv) Not pose a threat to public health, safety and welfare.

(b) The exceptions stated in Sections 2.02(a)(2), (3) and (4) of this Act shall not apply to Land Preserves.

(c) Any Sign displayed in any Land Preserve under the exception stated in Section 2.02(a)(1) of this Act shall, to the greatest extent practicable, be consistent with returning such area to “natural state” in accordance with Article IV, Section 1(c) of the Band Constitution.

## **CHAPTER 3 Signs within Public Forum**

### **Section 3.01 Authorization**

A Person may display in a Public Forum, a Sign with a noncommercial message that is protected under Article XVI(a) of the Band Constitution, in accordance with all applicable laws, including without limitation, Chapter 3 of this Act and the Election Code.

### **Section 3.02 Display Limitations**

A Sign displayed in a Public Forum described in Section 1.09(r)(1) or 1.09(r)(3) shall:

- (a) Be held by an Individual or Personally Attended To at all times while it is displayed; and
- (b) Be displayed only during the time period between sunrise and sunset.

### **Section 3.03 Physical Limitations**

A Sign displayed in a Public Forum shall not:

- (a) Exceed six (6) square feet in size if held or Personally Attended To by one (1) Individual;
- (b) Exceed twelve (12) square feet in size if held or Personally Attended To by more than one (1) Individual;
- (c) Be inflated or air activated;
- (d) Be illuminated or have any lights;
- (e) Contain moving parts, including caused by wind;
- (f) Contain any sharp edges or points;
- (g) Emit smoke, fumes or sounds; or
- (h) Pose a fire hazard or other threat to public health, safety and welfare.

### **Section 3.04 Location Limitations**

An Individual displaying a Sign within a Public Forum shall not:

- (a) Stand in any traffic lane when a road is open for use by moving vehicles;
- (b) Obstruct the view of any traffic or intersection;
- (c) Obstruct the view of any traffic sign or signal;
- (d) Obstruct any pedestrian travel;
- (e) Be within twenty-five (25) feet of any entrance to a Band building;
- (f) Be within twenty-five (25) feet of any Land Preserve; or
- (g) Be disorderly or disruptive.

## **CHAPTER 4**

### **Signs within Residential Land**

#### **Section 4.01 Authorization**

A Person may display Signs on Residential Land, subject to all applicable laws, including without limitation, this Act, the Housing Act and the Election Code.

#### **Section 4.02 Approval of Tenant**

A Person shall not display a Sign on Residential Land without the prior approval of the tenant of such Residential Land.

#### **Section 4.03 Multi-Family Limitation**

A Person shall not display a Sign on Residential Land if a multi-family housing unit (other than a duplex) is located on the Residential Land without the prior written approval of every tenant of such Residential Land.

#### **Section 4.04 Use Restriction Limitations**

A Person shall not display a Sign on Residential Land in violation of Section 3.2(b) of the Department of Housing Use Restrictions All Residents (prohibiting display of signs in connection with home occupations).

#### **Section 4.05 Physical Limitations**

No Sign shall be displayed on Residential Land that:

- (a) Is larger than nine (9) square feet;
- (b) Is higher than four (4) feet high when installed, excluding flags;
- (c) Contains moving parts, including caused by wind;
- (d) Is illuminated or has any lights;
- (e) Is inflated or air activated;
- (f) Emits smoke, fumes or sounds; or
- (g) Poses a fire hazard or other threat to public health, safety and welfare.

#### **Section 4.06 Construction Limitations**

- (a) Signs shall be structurally sound and properly constructed.



(b) Signs may be self-supporting, including a-framed, or secured to the ground by stakes or metal rods.

(c) No Person shall install a Sign so as to damage any improvements, systems or equipment, including underground utilities and, in the event of any such damage, the Person shall, upon demand of the Band in accordance with Chapter 5 of this Code, reimburse the Band for all costs, expenses and fees arising from all such damage.

#### **Section 4.07 Location Limitations**

No Sign shall be displayed on Residential Land:

(a) In any manner or location that obstructs:

- (1) The view of any traffic or intersection;
- (2) The view of, or creates confusion with, any traffic sign or signal;
- (3) Ingress or egress from any window or door;

(b) Within:

- (1) Three (3) feet from the curb or edge of any road;
- (2) Three (3) feet from any public sidewalk; or
- (3) Five (5) feet from any property line of the leased Residential Land;

(c) On:

- (1) Any utility pole or tree;
- (2) The exterior of any housing unit; or
- (3) Any Band building, facility, structure or equipment.

### **CHAPTER 5 Leafleting Within Public Forum and Residential Land**

#### **Section 5.01 Authorization**

(a) A Person may engage in Leafleting in a Public Forum in a manner protected under Article XVI(a) of the Band Constitution, in accordance with all applicable laws, including without limitation, Chapter 3 of this Act and the Election Code.

(b) A Person may engage in Leafleting on Residential Land with the prior approval of the tenant, subject to all applicable laws, including without limitation, this Act, the Housing Act and the Election Code.

### **Section 5.02 Limitations**

An Individual engaging in Leafleting within a Public Forum shall not:

- (a) Stand in any traffic lane when a road is open for use by moving vehicles;
- (b) Obstruct the view of any traffic or intersection;
- (c) Obstruct the view of any traffic sign or signal;
- (d) Obstruct any pedestrian travel;
- (e) Be disorderly or disruptive;
- (f) Be within twenty-five (25) feet of any entrance to a Band building;
- (g) Be within twenty-five (25) feet of any Land Preserve;
- (h) Place a Leaflet on any:
  - (1) Utility pole or tree;
  - (2) Band building, facility, structure or equipment; or
  - (3) Vehicle.

## **CHAPTER 6 Enforcement**

### **Section 6.01 Sign Official**

- (a) The Sign Official shall be responsible for enforcement of this Act.
- (b) The Sign Official shall have the authority to implement the following enforcement measures for any violation of this Act:
  - (1) Remove any unattended Signs displayed on Band Land;
  - (2) Issue verbal or written warnings; and
  - (3) Issue Civil Citations to:

- (i) Any Citizen for any violation within Band Land; or
- (ii) Any Person, other than a Citizen, for any violation within Trust Land.

(c) The Sign Official shall have discretion to determine the appropriate level of enforcement.

### **Section 6.02 Civil Citation**

(a) The Prosecutor shall prosecute all civil infractions arising from the issuance of a Civil Citation.

(b) The Prosecutor shall bear the burden of proof to establish by a preponderance of evidence that a Person violated this Act.

### **Section 6.03 Civil Penalties**

(a) Any Person to whom a Civil Citation is issued for a violation of this Act shall be liable for:

- (1) A civil fine not to exceed \$5,000;
- (2) Restitution for all damages arising in connection with the violation of this Act;
- (3) All costs of arising from the removal of any unattended Signs displayed on Band Land in violation of this Act.

(b) The Tribal Court may find any Person who was issued a Civil Citation and fails to either attend a Tribal Court hearing, or to comply with a Tribal Court order, to be guilty of civil contempt.

(c) Each day during which a violation continues shall constitute a separate violation of this Act.

(d) All civil fines accruing under this Act shall be cumulative, and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

### **Section 6.04 Disposition of Signs**

(a) If the Sign Official did not issue a Civil Citation to a Person in connection with any unattended Sign removed under this Act, then the Sign Official shall store the Sign for at least ten (10) calendar days, provided that:

(1) Within such time period, a Person may reclaim any unattended Sign removed under this Act by paying the Band a reasonable administrative fee set by the Sign Official, which shall not exceed ten dollars and 00/100 (\$10.00) per Sign; or

(2) If no Person reclaims in accordance with the above any unattended Sign removed under this Act, then the Sign Official may destroy or discard the Sign.

(b) If the Sign Official issued a Civil Citation to a Person in connection with any unattended Sign removed under this Act, then the Sign Official shall store the Sign during the duration of the civil action, including any appeal, provided that except as otherwise ordered by the Tribal Court, the Sign Official may destroy or dispose of the Sign if the Band prevails in the civil action.

### **Section 6.05 Other Remedies**

(a) The exercise of any remedy under this Act shall not limit any other available rights or remedies of the Band, including without limitation, under the Election Code, Housing Act or Code of Offenses.

(b) In accordance with Section 1(L) of the Code of Offenses, through the resolution approving this Act, the Tribal Council hereby expressly designates the Sign Official as a “Public Official” for purposes of the Code of Offenses.

### **Section 6.06 Tribal Court Jurisdiction**

The Tribal Court shall have exclusive jurisdiction over civil infractions arising from the issuance of a Civil Citation.

### **Section 6.07 Sovereign Immunity**

(a) The Sign Official is an officer of the Band government and shall be immune from suit when acting in an official capacity to the fullest extent permitted by law.

(b) Nothing in this Act shall waive the sovereign immunity of the Band or any of its officials, employees or representatives.

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## **LEGISLATIVE HISTORY**

Sign and Leafleting Act, enacted March 31, 2016, by Res. No. 16-03-31-02.