

**POKAGON BAND OF POTAWATOMI INDIANS  
TRIBAL COUNCIL MEMBER CODE OF CONDUCT**

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## **CHAPTER 1**

### **General**

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

This Code shall be known and may be cited as the "Tribal Council Member Code of Conduct."

#### **Section 1.02 Authority**

The Tribal Council enacts this Code pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsection 2(a) of the Constitution and the duties of the Tribal Council stated in Article IX, subsections 1(a), (c), and (d) of the Constitution.

#### **Section 1.03 Findings**

(a) Under Article IX of the Constitution, the Tribal Council serves as the governing body of the Band.

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

(c) Consistent with the power granted under Article IX, Section 2 of the Constitution, the Tribal Council has enacted certain laws regulating behavior, including the Code of Offenses, the Ethics Code, and the Tribal Council Procedures Act.

(d) It is in the best interest of the Band to establish additional standards of conduct for Tribal Council Members while In the Performance of Duties or at any Band Workplace as set forth in this Code.

#### **Section 1.04 Purpose**

The purpose of this Code is to:

(a) Establish additional standards of conduct for Tribal Council Members while In the Performance of Duties and at any Band Workplace; and

(b) Establish a process and procedure for filing, reviewing, and investigating complaints alleging a violation of this Code by a Tribal Council Member.

#### **Section 1.05 Construction**

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

(b) To the extent this Code conflicts with any provision of Band law, the provisions of this Code shall govern.

(c) This Code is not intended to and shall not supplant any other Band law regulating behavior, including the Code of Offenses, Ethics Code, and the Tribal Council Procedures Act.

(d) This Code shall be liberally construed in order to accomplish the purpose set forth in Section 1.04 of this Code.

(e) Except as otherwise expressly stated in this Code, the reference to any Chapter, Section or Subsection in this Code shall refer to a Chapter, Section or Subsection of this Code.

### **Section 1.06 Severability**

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

### **Section 1.07 Definitions**

As used in this Code:

(a) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign federally recognized Indian tribe.

(b) “Band Employee” means an employee of the Band, whether full-time, part-time, or temporary, but does not include employees of any instrumentalities or subsidiaries of the Band.

(c) “Band Equipment” means any Band equipment or account used for conducting the business of the Band, including Band email accounts, facsimile machines, computers, tablets, telephones (conventional and cellular), and copy machines but does not include any equipment or accounts of any boards, committees, commissions, or other instrumentalities or subsidiaries of the Band.

(d) “Band Workplace” means any Band building or office where a Band Employee regularly works.

(e) “Bully” means repeated incidents or a pattern of behavior which is intended to intimidate, belittle, degrade, or humiliate a person.

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

(g) “Classification” means race, color, religion, sex, national origin, disability, age, or sexual orientation or any other classification protected under applicable law.

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

(i) “Code” means this Tribal Council Member Code of Conduct.

(j) “Code of Offenses” means the Band’s Code of Offenses, as may be amended.

(k) “Controlled Substance” means as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 801, et seq., as may be amended.

(l) “Complaint” means the document alleging a violation of Chapter 2 by a Tribal Council Member, in accordance with the requirements of Chapter 3.

(m) “Constitution” means the Band’s Constitution, as may be amended.

(n) “Ethics Code” means the Band’s Code of Ethics, as may be amended.

(o) “Harass” means verbal or physical conduct that denigrates, belittles or shows hostility or aversion towards a person, including because of a Classification. Harassment has the purpose or effect of creating an intimidating, hostile, or offensive Band Workplace, or unreasonably interfering with Band Workplace performance. The term “Harass” includes epithets, slurs, intimidating or hostile acts, including that relate to a person’s Classification or written or graphic material that denigrates, belittles or shows hostility or aversion towards a person, including because of a Classification which is posted or otherwise distributed in or at a Band Workplace.

(p) “Including” whether capitalized, shall be deemed to be followed by “without limitation”.

(q) “In the Performance of Duties” means while acting in the capacity of a Tribal Council Member, including attending a Tribal Council meeting or any event that is organized, sponsored, or supported, in whole or part, by the Band, regardless of location. The term “In the Performance of Duties” shall not include acting in the capacity of a board, committee, or commission member, unless such responsibilities are assigned to such Tribal Council Member under the Constitution or specifically assigned to such Tribal Council Member by the Tribal Council in his or her capacity as a Tribal Council Member.

(r) “Outside Counsel” means outside legal counsel selected by the Tribal Council to perform certain duties under Chapter 3 in connection with the investigation of a Complaint.

(s) “Petitioner” means a Tribal Council Member, Band Employee, or Band Citizen who files a Complaint.

(t) “Report” means the written report prepared by Outside Counsel following the completion of the investigation by Outside Counsel of a Complaint.

(u) “Respondent” means a Tribal Council Member who is the subject of a Complaint.

(v) “Sexually Harass” means sexual harassment, including unwelcome sexual advances, flirtations, propositions, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, verbal abuse of a sexual nature, subtle pressure or requests for sexual activities, unwelcome physical conduct of a sexual nature, graphic or verbal commentaries about an individual's body, sexually degrading words used to describe an individual, a display in the Band Workplace of sexually suggestive objects or pictures, sexually explicit or offensive jokes, physical assault of a sexual nature, or repeatedly leering, standing too close or brushing up against a person, asking a person to socialize during off-duty hours when the person has said no or has indicated that he or she is not interested, or off-duty, unwelcome conduct of a sexual nature that affects the Band Workplace.

(w) “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.

(x) “Tribal Council Member” means a Citizen seated on the Tribal Council.

(y) “Tribal Council Procedures Act” means the Band’s Tribal Council Procedures Act, as may be amended.

## **CHAPTER 2 Standards of Conduct**

### **Section 2.01 Drugs and Alcohol**

(a) No Tribal Council Member shall consume, possess, or be under the influence of alcohol or any Controlled Substance while In the Performance of Duties or while at any Band Workplace.

(b) Except as prohibited under applicable law, Tribal Council Members may consume, possess, or be under the influence of prescription drugs while In the Performance of Duties or while at any Band Workplace, but only in accordance with a valid prescription.

(c) Subsection 2.01(a) shall not prohibit any Tribal Council Member, who is not In the Performance of Duties, from otherwise lawfully consuming, possessing, or being under the influence of alcohol, while on the grounds of any tribal commercial operation that is licensed to serve alcohol to the public.

(d) Subsection 2.01(a) shall not prohibit any Tribal Council Member, who is not In the Performance of Duties, from otherwise lawfully consuming, possessing, or being under the influence of cannabis, while on the grounds of any tribal commercial operation that lawfully permits the public to consume, possess, or be under the influence of cannabis on the premises.

### **Section 2.02 Harassment**

(a) No Tribal Council Member shall In the Performance of Duties or while at any Band Workplace:

- (1) Harass any person, including based on a Classification; or
- (2) Sexually Harass any person.

(b) No Tribal Council Member shall threaten or insinuate, either explicitly or implicitly, that another person's refusal to submit to sexual advances will affect:

(1) In the case of another Tribal Council Member, the other Tribal Council Member's wages, duties, continued service, or any other aspect of the duties and responsibilities or rights and benefits of the other Tribal Council Member;

(2) In the case of a Band Employee, the Band Employee's employment, wages, fringe benefits, advancement, assigned duties, or any other condition of employment or career development; or

(3) In the case of a Citizen, any benefits provided by the Band to Citizens generally pursuant to law, policy, or program, or result in preferential treatment for such benefits in connection with engaging in sexual conduct.

### **Section 2.03 Bullying**

No Tribal Council Member shall In the Performance of Duties, or while at any Band Workplace, Bully any person.

### **Section 2.04 Band Equipment**

(a) All Business Equipment issued to a Tribal Council Member shall remain the property of the Band.

(b) The Band, through its Department of Information Technology, may, upon authorization of the Tribal Council or the Tribal Council Member for his or her Business Equipment, at any time, with or without notice, even if password protected, monitor, record and access for legitimate business purposes any Business Equipment provided or assigned to the Tribal Council Member. Prior Tribal Council or Tribal Council Member authorization shall not be required for software installation, routine software updates, security installation or security updates. Tribal Council Members have no expectation of privacy in connection with any Business Equipment.

(c) No Tribal Council Member shall:

- (1) Purposely or knowingly damage or destroy any Band Equipment;
- (2) Purposely or knowingly remove or deface any identification label, tag, number or serial number of any Band Equipment;

(3) Use, or permit any other person to use, any Business Equipment for any personal use, but excluding de minimus personal use of Business Equipment in accordance with this Code; provided that any use of Business Equipment in connection with performing any constituent service, including communicating through email or social media, shall not be personal use;

(4) Lease, sell, encumber, or otherwise transfer any Band Equipment; or

(5) Use Business Equipment to transmit, view, retrieve, or store any communication considered obscene or pornographic.

### **Section 2.05 Smoke Free Environment**

(a) Except as may be expressly permitted while on the grounds of any tribal commercial operation that allows the public to smoke, no Tribal Council Member shall smoke inside of any Band Workplace.

(b) Subsection 2.05(a) does not prohibit the ceremonial burning of tobacco, sage, cedar, and sweet grass.

### **Section 2.06 Bulletin Boards**

No Tribal Council Member shall post or remove any information from any bulletin board located inside of any Band Workplace without the prior authorization of the Tribal Council.

## **CHAPTER 3 Complaints**

### **Section 3.01 Filing a Complaint Alleging a Violation**

(a) Only a Tribal Council Member, Band Employee, or Citizen may file a Complaint.

(b) The Complaint shall be filed on a form approved by the Tribal Council, which shall:

(1) Be entitled “Tribal Council Member Code of Conduct Complaint”;

(2) Identify as the Petitioner, the Tribal Council Member, Band Employee, or Band Citizen who filed the Complaint;

(3) Include the Petitioner’s name, address, telephone number and any email address;

(4) Identify as the Respondent, the Tribal Council Member who is the subject of the Complaint;

(5) Identify the date(s) the Respondent allegedly committed the violation(s), which date(s) must be when the Respondent was a Tribal Council Member;

- (6) Identify the specific Section(s) of Chapter 2 that were allegedly violated;
- (7) Allege facts, which if true, satisfy each element of the alleged violation(s);
- (8) Identify the evidence to prove the alleged facts;
- (9) Be dated and be signed by the Petitioner; and
- (10) Contain the following declaration of truth immediately above the signature:

“I, the undersigned hereby certify, under penalty of perjury, that to the best of my knowledge, the information contained in this Complaint is true, accurate and complete.”

(c) A single Complaint may only be filed against one Tribal Council Member. If there are substantially similar claims based on the same facts against more than one Tribal Council Member, then a separate Complaint must be filed against each Tribal Council Member.

(d) The Complaint shall be filed by U.S. mail, private courier, or hand delivery, with the Tribal Council Chairperson at the Band’s main administrative office, unless the Tribal Council Chairperson is the Respondent, in which case the Complaint shall be filed with the Tribal Council Vice-Chairperson at the Band’s main administrative office.

(e) The Tribal Council Chairperson or, if applicable, the Tribal Council Vice-Chairperson, shall provide the entire Tribal Council, including the Respondent, with a copy of the Complaint by not later than five (5) business days after receipt of the Complaint, or at the next Tribal Council meeting, whichever is later.

(f) A Complaint must be filed not more than three (3) years from the date of the alleged violation, and the Tribal Council shall not consider a Complaint that is not filed within such time.

(g) A Complaint shall not be confidential.

### **Section 3.02 Review of a Complaint**

(a) Not earlier than ten (10) calendar days and not later than thirty (30) calendar days from the Tribal Council’s receipt of the Complaint, the Tribal Council shall meet to review the Complaint. The purpose of the Tribal Council review shall be solely for the Tribal Council to determine whether:

- (1) The Complaint meets the requirements of Section 3.01;
- (2) Assuming the facts alleged in the Complaint are true, a reasonable person could find, by Clear and Convincing Evidence, that the Respondent violated Chapter 2; and



(3) An investigation of the Complaint is necessary.

(b) The Tribal Council shall cause to be provided a separate written notice informing the Petitioner and Respondent of the time, date, and location of the Tribal Council meeting where the Tribal Council will review Complaint. The notice shall be delivered to the Petitioner and the Respondent at least three (3) calendar days prior to such Tribal Council meeting by at least one of the following methods: (i) in person; (ii) U.S. mail to the address on file; (iii) private courier; or (iv) electronic mail to the email address on file. Such meeting shall be open, unless permitted to be closed under Band law.

(c) The Respondent may file with the Tribal Council a written answer to each allegation in the Complaint, which shall either admit or deny each factual allegation or state that the Respondent lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which shall have the effect of a denial. Any such written answer must be filed with the Tribal Council prior to the Tribal Council's review of the Complaint. Alternatively, in lieu of a written answer, at the Tribal Council's review of the Complaint, the Respondent may provide a verbal answer to each allegation in the Complaint, which shall be recorded by the Tribal Council Secretary. Any written answer or verbal response provided by the Respondent shall be entered into the record. If the Respondent does not file a written answer or any verbal response to any specific allegation, it shall be deemed a denial.

(d) Other than the Respondent answering the Complaint in accordance with Subsection 3.02(c), neither the Petitioner nor Respondent shall be permitted to speak to the validity of the Complaint at the Tribal Council meeting where the Tribal Council reviews the Complaint, because the sole purpose of such review shall be for the Tribal Council to make the determinations in Subsection 3.02(a).

(e) The determinations in Subsection 3.02(a) must be made by the affirmative vote of at least eight (8) members of the Tribal Council. The Respondent shall not vote in the Tribal Council determinations under Subsection 3.02(a). If the Petitioner is a Tribal Council Member, the Petitioner shall not vote in the Tribal Council determinations under Subsection 3.02(a). Such determinations shall be by Tribal Council resolution. If the determinations in Subsection 3.02(a) do not receive the affirmative vote of at least eight (8) members of the Tribal Council, the Complaint shall automatically be dismissed, with prejudice, without further action of the Tribal Council.

(f) The Tribal Council may proceed with a review of a Complaint under this Section regardless of whether the Petitioner or the Respondent are present at the Tribal Council meeting or whether the Respondent answered the Complaint, subject to notice being delivered in accordance with Subsection 3.02(b).

(g) If the Tribal Council determines that an investigation of a Complaint is necessary, which may include because the alleged violation did not occur at a Tribal Council meeting or the Respondent denied the violation, it shall refer the Complaint to Outside Counsel for investigation.

(h) If the Tribal Council makes affirmative determinations under Subsections 3.02(a)(1) and (2) but determines under Subsection 3.02(a)(3) that an investigation of the Complaint is not necessary, including because the alleged violation occurred at a Tribal Council meeting or the Respondent admitted the violation, then Tribal Council may proceed under Section 3.05.

(i) In addition to automatic dismissal under Subsection 3.02(e), the Tribal Council shall dismiss a Complaint after review if:

(1) The Complaint does not meet the requirements of Subsections 3.01(a), (b), (c), (d), or (f); or

(2) The Respondent was not a Tribal Council Member at the time of the alleged violation or is not currently a Tribal Council Member.

(j) Except for an automatic dismissal under Subsection 3.02(e), any dismissal of a Complaint by the Tribal Council shall be by resolution and shall specify the reason(s) for dismissal.

(k) A Complaint that is dismissed under Subsection 3.02(i)(1), excluding 3.01(f), may be amended and refiled by the Petitioner, subject to the limitations of this Code.

(l) The Tribal Council Chairperson, or if the Tribal Council Chairperson is the Petitioner or the Respondent, then Tribal Council Vice-Chairperson, shall cause to be provided a separate written notice informing the Petitioner and Respondent of its determinations under this Section or, if applicable, the automatic dismissal of a Complaint under Subsection 3.02(e).

### **Section 3.03 Investigation of a Complaint**

(a) If the Tribal Council determines that an investigation of the Complaint is necessary, which may include because the alleged violation did not occur at a Tribal Council meeting or the Respondent denied the violation, it shall direct that an investigation be promptly conducted by Outside Counsel. Any such investigation shall, at a minimum, include interviews with the Petitioner and Respondent.

(b) The Petitioner, Tribal Council Members, and Band Employees shall cooperate with Outside Counsel in the performance of the investigation.

(c) Outside Counsel shall, in the performance of the investigation, have the power to subpoena records and to compel testimony.

(d) Outside Counsel shall, upon the conclusion of the investigation, produce a Report for the Tribal Council, which at a minimum, shall:

(1) Summarize the Complaint, including the allegations;

(2) Summarize the relevant records and documents reviewed and witnesses interviewed;

(3) Summarize the evidence, including the persons interviewed and the records and documents reviewed;

(4) Include a reasoned opinion that is broken down with respect to each alleged violation of Chapter 2 and that is supported by findings of fact and conclusions of law; and

(5) For each alleged violation of Chapter 2, state whether the investigation substantiates, by Clear and Convincing Evidence, the existence of the violation; and

(6) Have a copy of the Complaint attached.

(e) Outside Counsel shall deliver the Report to the Tribal Council Chairperson, but if the Tribal Council Chairperson is the Respondent, then the Report shall be delivered to the Tribal Council Vice-Chairperson.

(f) The Tribal Council Chairperson, or if applicable, the Tribal Council Vice-Chairperson, shall provide the entire Tribal Council, including the Respondent, and the Petitioner, but only if the Petitioner is a Tribal Council Member, with a copy of the Report not later than five (5) business days after receipt of the same or the next Tribal Council meeting, whichever is later.

#### **Section 3.04 Tribal Council Review of Report**

(a) Not later than thirty (30) calendar days from the date of the Tribal Council's receipt of the Report, the Tribal Council shall review the Report at a meeting. Such meeting shall be open, unless permitted to be closed under Band law.

(b) The Tribal Council Chairperson, or if the Tribal Council Chairperson is the Respondent, then Tribal Council Vice-Chairperson, shall cause to be provided a separate written notice informing the Petitioner and Respondent of the time, date, and location of the Tribal Council meeting where the Tribal Council will review the Report. The notice shall be delivered at least three (3) calendar days prior to such Tribal Council meeting, by at least one of the following methods: (i) in person; (ii) U.S. mail to the address on file; (iii) private courier; or (iv) electronic mail to the email address on file.

(c) If, following the Tribal Council's review of the Report, the Tribal Council determines that the Report does not substantiate, by Clear and Convincing Evidence, the existence of a violation of this Code by Respondent, then the Tribal Council shall inform the Petitioner and Respondent of such determination and dismiss the Complaint in accordance with this Section.

(d) If, following the Tribal Council's review of the Report, the Tribal Council determines that the Report does substantiate, by Clear and Convincing Evidence, the existence of a violation of this Code by Respondent, then the Tribal Council shall proceed under Section 3.05.

(e) The Respondent shall not vote in the Tribal Council determination under this Section. If the Petitioner is a Tribal Council Member, the Petitioner shall not vote in the Tribal Council

determination under this Section. The Tribal Council may make a determination under this Section regardless of whether the Petitioner or the Respondent are present at the Tribal Council meeting.

(f) The determination of the Tribal Council under this Section shall be by resolution, shall be final, and there shall be no appeal. Additionally, the determinations in Subsection 3.04(d) must be made by the affirmative vote of at least eight (8) members of the Tribal Council. If the determinations in Subsection 3.04(d) do not receive the required affirmative vote, the Complaint shall automatically be dismissed, with prejudice, without further action of the Tribal Council.

(g) The Tribal Council shall inform the Petitioner and Respondent of such determination in writing and, with such notice, shall provide the Petitioner with a copy of the Report. Unless the Petitioner is a Tribal Council Member, the Petitioner shall not receive a copy of the Report prior to being informed of the determination in Subsection 3.04(f). The Report shall remain confidential until the determination of the Tribal Council in Subsection 3.04(f).

### **Section 3.05 Action Upon Determining Violation**

(a) After a determination that the Report substantiates, by Clear and Convincing Evidence, the existence of a violation of this Code, the Tribal Council may:

(1) Issue a written warning to the Respondent;

(2) Refer the matter for consideration of censure of the Respondent under Chapter 9 of the Tribal Council Procedures Act; or

(3) Refer the matter for consideration of a call for removal of the Respondent under Chapter 10 of the Tribal Council Procedures Act, if applicable. If the Tribal Council refers the matter for consideration of a call for removal, the investigation and Report of Outside Counsel under this Code shall serve as the investigation required of Outside Counsel under Chapter 10 of the Tribal Council Procedures Act.

(b) In proceeding pursuant to Subsection 3.05(a), the Tribal Council shall consider relevant factors, including:

(1) The nature of the violation, including whether it violates the Ethics Code or the Code of Offenses;

(2) Whether the violation was intentional or unintentional; and

(3) Any possible mitigating factors or aggravating factors.

(c) Action taken by the Tribal Council under Subsection 3.05(a) shall be final, and there shall be no appeal.

### **Section 3.06 Tribal Council Records**

(a) For every Complaint filed under this Code, the Tribal Council shall cause to be maintained as Tribal Council records, a copy of the following, as applicable:

- (1) Any Complaint filed under Section 3.01;
- (2) Any written response to a Complaint filed under Section 3.02(c), or if the Respondent filed a verbal response, any record of such recording by the Tribal Council Secretary;
- (3) Any determination made by the Tribal Council under Section 3.02;
- (4) Any Report prepared for the Tribal Council pursuant to Section 3.03;
- (5) Any determination made by the Tribal Council under Section 3.04;
- (6) Any written warning issued, or referral made by, the Tribal Council under Subsection 3.05(a); and
- (7) Any sanction imposed by the Tribal Council under Section 4.03.

## **CHAPTER 4 Other Actions**

### **Section 4.01 Similar Complaints**

If the Tribal Council determines under Sections 3.02 or 3.04 that a Complaint does not substantiate the existence of a violation of this Code, and a subsequent Complaint is filed against the Respondent based on the same or substantially similar facts and issues to those contained in the earlier Complaint, then the Tribal Council shall not accept such subsequent Complaint.

### **Section 4.02 No Bar to Other Action**

(a) Nothing in this Code shall limit the Tribal Council, the Tribal Court, or any other Band entity or forum from exercising its authority and power under other applicable law, including the Ethics Code, the Code of Offenses, or the Tribal Council Procedures Act.

(b) Nothing in this Code shall bar the any applicable civil or criminal action in connection with any conduct identified in a Complaint or Report. The Tribal Council may report to the appropriate law enforcement authority any act or omission that the Tribal Council reasonably believes may violate applicable criminal law.

### **Section 4.03 Frivolous Complaint**

(a) If the Tribal Council, finds at its review under Sections 3.02 or 3.04, that a Complaint is frivolous, the Tribal Council may prohibit the Petitioner from filing any additional Complaint for up to one (1) year.

(b) Any sanction imposed by the Tribal Council under Subsection 4.03(a) shall be final, and there shall be no appeal.

### **Section 4.04 No Waiver of Immunity**

Nothing in this Code shall be construed to waive the sovereign immunity of the Band or any of its governmental officers, representatives or employees.

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#### **LEGISLATIVE HISTORY**

Tribal Council Member Code of Conduct was enacted on December 12, 2020, by Res. No. 20-12-12-02.