

# POKAGON BAND OF POTAWATOMI INDIANS



## USE RESTRICTIONS FOR ALL RESIDENTS

Current through May 21, 2012; Res. 12-05-21-04



*"Our People, Our Homes."*

Department of Housing  
58620 Sink Rd.  
P.O. Box 180  
Dowagiac, MI 49047  
Bus: (269) 783-0443  
Fax: (269) 783-0452  
Toll Free: (877) 983-0385  
Jim Coleman, Director

## TABLE OF CONTENTS

<b>ARTICLE 1 PREAMBLE.....</b>	<b>3</b>
<b>1.1 Purpose .....</b>	<b>3</b>
<b>1.2 Scope .....</b>	<b>3</b>
<b>1.3 Nature of Restrictions.....</b>	<b>3</b>
<b>1.4 Definitions.....</b>	<b>3</b>
 <b>ARTICLE 2 AMENDMENT AND TERMINATION .....</b>	<b>4</b>
<b>2.1 Amendment .....</b>	<b>4</b>
<b>2.2 Termination.....</b>	<b>4</b>
<b>2.3 Continuation.....</b>	<b>5</b>
 <b>ARTICLE 3 USE AND OCCUPANCY RESTRICTIONS.....</b>	<b>5</b>
<b>3.1 Residential Use .....</b>	<b>5</b>
<b>3.2 Home Occupations.....</b>	<b>5</b>
<b>3.3 Common Areas.....</b>	<b>6</b>
<b>3.4 Use and Occupancy Restrictions .....</b>	<b>6</b>
<b>3.5 Controlled Burns.....</b>	<b>10</b>
 <b>ARTICLE 4 COMPLIANCE AND ENFORCEMENT .....</b>	<b>10</b>
<b>4.1 Compliance .....</b>	<b>10</b>
<b>4.2 Rules of Conduct .....</b>	<b>10</b>
<b>4.3 Enforcement .....</b>	<b>10</b>
<b>4.4 Self-Help.....</b>	<b>11</b>
 <b>ARTICLE 5 GENERAL PROVISIONS.....</b>	<b>11</b>
<b>5.1 Severability .....</b>	<b>11</b>
<b>5.2 Notices .....</b>	<b>11</b>
<b>5.3 Conflicts .....</b>	<b>12</b>
<b>5.4 Transfer of Responsibility .....</b>	<b>12</b>

## **ARTICLE 1 PREAMBLE**

### **1.1 Purpose**

The purpose of these Restrictions is to establish use and occupancy restrictions to maintain a consistent and beneficial environment that meets the unique cultural, governmental and other needs and objectives of the Band and provides a positive, high-quality living environment within Developments.

### **1.2 Scope**

These Restrictions apply to all Residents of any Development. Entering into any Lease or occupying any Housing Unit shall constitute acceptance and agreement to comply with the terms of these Restrictions. All Residents shall ensure that their Household members, guests and invitees comply fully with these Restrictions.

### **1.3 Nature of Restrictions**

These Restrictions are intended to be restrictive covenants and are hereby automatically incorporated into any Lease of Band Land, and shall run with the land.

### **1.4 Definitions**

For purposes of these Restrictions, the following terms are defined.

(a) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign, federally recognized Indian tribe, along with its instrumentalities, agencies, departments, and programs.

(b) “Band Land” means all real property which is held in trust for the benefit of the Band or owned in fee by the Band upon which a Development is located.

(c) “Common Areas” means all areas of a Development that are not Housing Units, including but not limited to Open Space and road and utility easements.

(d) “Department of Housing” means the Band’s Department of Housing.

(e) “Development” means any Band housing development.

(f) “Housing Unit” means all or any portion of any house, home, building or other structure used as a residence within a Development.

(g) “Immediate Family” means spouse or life-partner; children and grandchildren, whether biological or by marriage or adoption; foster children and foster grandchildren; parents and grandparents; siblings, including siblings by half-blood; aunts,

uncles, nieces, and nephews; the following in-laws: sister, brother, son, daughter; and the foregoing persons related to the Tenant's spouse or life-partner.

(h) "Lease" means any written agreement for the possession of a Housing Unit or of Band land for residential purposes and includes any sublease or lease-to-purchase agreement.

(i) "Open Space" means any portion of the Development designated as such in the site plan for the Development.

(j) "Resident" means all present and future owners, tenants or other persons who may occupy a Housing Unit at the Development or who otherwise have any rights to use the Development, including any Resident Owner, head of household and household members.

(k) "Resident Owner" means any person who has entered into a Lease of Band land for the purpose of purchasing or constructing a Housing Unit.

(l) "Restrictions" means these policies and procedures.

(m) "Tenant" means any person entitled under a Lease to occupy a Housing Unit to the exclusion of others.

(n) "Tribal Court" means the Band's Tribal Court.

## **ARTICLE 2 AMENDMENT AND TERMINATION**

### **2.1 Amendment**

The Band may amend these Restrictions at any time and from time to time without the consent of any Resident; provided the use of the Open Space may be subject to permanent restrictions in accordance with a site plan approved by a township, and the Band may not be able to amend such use without the township's further approval. Written notice of any such amendments shall be sent to all Residents of the Development.

### **2.2 Termination**

The Band may terminate these Restrictions at any time without the consent of any Resident; provided the use of the Open Space may be subject to permanent restrictions in accordance with a site plan approved by a township, and the Band may not be able to terminate such restrictions without the township's further approval. Written notice of any such termination shall be sent to all Residents of the Development.

### **2.3 Continuation**

The Band's right to amend or terminate these Restrictions shall continue even if the Band places the land into trust with the United States of America.

## **ARTICLE 3 USE RESTRICTIONS**

### **3.1 Residential Use**

Housing Units shall be used exclusively for residential occupancy, and no Housing Unit shall be used for any purpose other than that of a single family residence or purposes incidental to residential use.

### **3.2 Home Occupations**

(a) Notwithstanding Section 3.1, home occupations conducted entirely within the residence and participated in solely by a member of the Tenant's Immediate Family residing in the residence, which do not generate unreasonable traffic by members of the general public and do not change the residential character of the Housing Unit or Development, are permitted as incidental to primary residential use.

(b) To be permitted as a home occupation, there must be: (1) no sign or display which indicates from the exterior that the residence is being utilized for any purpose other than that of a single family dwelling; (2) no goods or commodities shall be kept for viewing or sale upon the Housing Unit or within the Development; and (3) no mechanical or electrical equipment used, other than personal computers and other office type equipment.

(c) In no event shall any rooming house, place of lodging, auto repair shop, auto body shop, engine or mechanical repair shop, barber shop, styling salon, beauty parlor, tea room, coffee house, animal hospital, or any other form of animal care or treatment, such as dog trimming, be considered a home occupation.

(d) In no event shall any "Child Care Center", as defined under Section 2.06(a)(1) of the Band's Health, Environmental Protection and Building Codes Act, be considered a home occupation. However, specific arrangements involving the care of children may be exempted from the definition of a "Child Care Center," and therefore, may qualify as a home occupation, including:

(1) For Developments located in Michigan: (A) to care for children who are related to the provider by blood, marriage or adoption for up to four (4) weeks during a calendar year; or (B) to babysit any children if the annual compensation does not equal or exceed \$600.00 or such other amount that would require issuance of IRS Form 1099-MISC; or

(2) For Developments located in Indiana: (A) to care for less than six (6) children, not including children from whom the provider is the parent, stepparent, guardian, custodian, or other relative; (B) to care for only children who are related to the provider; or (C) to care for children when the provider does not receive regular compensation; provided in no event shall care of migrant children qualify as a home occupation.

(e) In no event shall any foster care residence be considered a home occupation, except that Residents may provide foster care within a Housing Unit, provided that HUD density and all other applicable requirements are met.

### **3.3 Common Areas**

(a) The Development, including Common Areas, shall be used only by Tenant, Residents, and their family members, guests, and invitees.

(b) Any parking areas, storage facilities or other Common Areas designed for a specific purpose shall be used only for those purposes or other uses approved by the Band.

(c) The use, maintenance and operation of the Common Areas shall not be obstructed, damaged or unreasonably interfered with by any Resident, and shall be subject to any Lease or easement presently in existence or entered into by the Band at some future date which affects all or any part of the Common Areas.

(d) No Resident shall in any way restrict access to any utility line or other area that must be accessible to service the Common Areas.

(e) Without the prior written permission of the Band, the Common Areas shall not be used for hunting, wood gathering, mushroom hunting, construction of any structure whatsoever, or storage of supplies or personal property.

(f) In general, no activity shall be carried on nor condition maintained by any Resident upon the Common Areas which despoils the appearance of the Development.

(g) Areas designated as Open Space shall only be used in accordance with the applicable restrictions and requirements imposed by a township.

### **3.4 Use and Occupancy Restrictions**

In addition to all other requirements imposed under Band law or policies and procedures of the Band, the use of the Development and its Common Areas by any Resident shall be subject to the following specific restrictions:

(a) **Exterior Changes.** No Resident shall make any additions, alterations, or modifications to any of the Common Areas, nor make any changes to the exterior appearance or structural elements of any Housing Unit without the prior written approval

of the Band. The Band shall not approve any alterations or structural modifications which would jeopardize or impair the soundness, safety, or appearance of the Development. Notwithstanding the foregoing, a Resident Owner may make non-structural alterations, additions, or improvements within the Resident Owner's Housing Unit, but the Resident Owner shall be responsible for any damage to other Housing Units, the Common Areas, or the Development, resulting from such alterations, additions or improvements.

(b) **Housing Unit Rental.** No transient tenants may be accommodated in any Housing Unit, other building, facility, structure or vehicle unless approved by the Band in writing.

(c) **Nuisances.** No nuisances shall be permitted on the Development nor shall any use or practice be permitted which is a source of annoyance to, or which interferes with the peaceful possession or proper use of the Development by the Residents. No Housing Unit shall be used in whole or in part for the storage of rubbish or trash, nor for the storage of any property or thing that may cause the Development to appear in an unclean or untidy condition. No substance or material shall be kept by any Resident at a Housing Unit or elsewhere within the Development that will emit foul or obnoxious odors, or that will cause excessive noise which will or might disturb the peace, quiet, comfort or serenity of the Residents.

(d) **Prohibited Uses.** No immoral, improper, offensive or unlawful use shall be conducted on Band Land, and nothing shall be done or kept in any Housing Unit or on the Common Areas which will increase the rate of insurance for the Development without the prior written consent of the Band, or which will be in violation of any law.

(e) **Signs.** No signs or other advertising devices shall be displayed on any Housing Unit which are visible from the exterior of the Housing Unit without written permission from the Band.

(f) **Personal Property.** No Resident shall display, hang or store any clothing, sheets, blankets, laundry or other articles of personal property outside a Housing Unit, except that laundry may be hung for drying purposes for a period not to exceed twenty-four (24) hours on a line or device for such purpose, provided such device is separate and self-supporting, not attached to any trees, Housing Unit or other structure and has no adverse effect on the view, aesthetics or landscaping of the Development or other Residents. This restriction shall not be construed to prohibit a Resident from placing and maintaining (1) outdoor furniture and accessories and decorative foliage of a customary nature and appearance on a patio, deck or balcony appurtenant to a Housing Unit; or (2) play-sets; provided, that no such furniture or other personal property shall be stored during the winter season on any open patio, deck or balcony, and any play-sets shall be installed in back yards only.

(g) **Firearms and Weapons.** No Resident shall use, or permit the use by any occupant, agent, Tenant, invitee, guest or any other person, of any firearms, air rifles,

pellet guns, B-B guns, bows and arrows, illegal fireworks or other dangerous weapons, projectiles or devices anywhere on or about the Development.

(h) **Pets and Animals.**

(1) No animals of any kind may be kept or maintained in any Housing Unit or the Development without the prior written consent of the Band, which consent, if given, may be revoked at any time by the Band. No exotic, savage or dangerous animal shall be kept on the Development and no animal may be kept or bred for commercial purposes. Common household pets permitted under the provisions of this subsection shall be kept only in compliance with Band law and any rules and regulations promulgated by the Band from time to time, and must at all times be kept under care and restraint so as not to be obnoxious on account of noise, odor or unsanitary conditions. No animal shall be permitted to run loose upon the Common Areas or within any Housing Unit (except the Housing Unit owned by the owner of such animal), and the owner of each pet shall be responsible for cleaning up after it and for all damage caused by such pet.

(2) The Band may charge any Resident maintaining animals a reasonable supplemental assessment if the Band determines that such an assessment is necessary to defray additional maintenance costs to the Band of accommodating animals within the Development. The Band may also, without liability to the owner of the pet, remove or cause any animal to be removed from the Development which it determines to be in violation of the restrictions imposed under by Band law or this Article. Any person who causes or permits any animal to be brought to or kept on the Band Land shall indemnify and hold the Band harmless from any loss, damage or liability which the Band may sustain as a result of the presence of such animal on the Band Land.

(i) **Recreational Vehicles.** Recreational vehicles, boats or trailers shall be parked or stored only in the garage or driveway. No snowmobile, all-terrain vehicle or other motorized recreational vehicle shall be operated on the Band Land, except as permitted under Band law. No maintenance or repair shall be performed on any boat or recreational vehicle except within a garage where totally isolated from public view.

(j) **Occupancy Limitations.** Housing Units may only be occupied by that number of persons permitted by HUD regulations, and Band law and policies and procedures.

(k) **Satellite Dishes.** A Resident may install a satellite dish in the rear yard of such Resident's Housing Unit, subject to reasonable prior written approval by the Band as to size, location, color and screening. To the extent required by applicable federal law, the Band's regulations shall not unreasonably impair a Resident's installation, maintenance, or use of the satellite dish.



(l) **Yards and Gardens.** Grass in Housing Unit yards (excluding ornamental grass plantings in localized beds) shall not exceed six inches in height, and lawns and yards shall generally be maintained to present a pleasant, well-kept appearance. Residents shall take all reasonable and necessary actions to prevent any growth of noxious weeds or rank vegetation, as determined by the Band, and any accumulation of dead weeds, grass or brush. Vegetable gardening will only be allowed in areas designated by the Department of Housing.

(m) **Vehicles; Parking.** No vehicles shall be parked on or along the private drive(s) without the prior written permission of the Band. There shall be no parking in yards or unpaved areas, and Residents shall not personally use or obstruct any guest parking areas which may be located on the Common Areas of the Development without the prior consent of the Band. There shall be no exterior storage of inoperable, unregistered or uninsured vehicles, and maintenance or repair of vehicles shall be conducted only within a Resident's garage. Maintenance or repair does not include normal and customary washing and waxing of vehicles which is permitted outside of garages or other enclosures. Parking shall be limited to passenger vehicles and trucks and not more than one commercial vehicle of light delivery type per Housing Unit. Such commercial vehicles shall not exceed three quarter (3/4) ton. The reckless, careless or dangerous operation of any motor vehicle in and around the grounds of the Development is prohibited. Motor vehicles are to be operated only on the roadways and designated parking areas.

(n) **Refuse.** All garbage, refuse, trash and rubbish shall be contained within an appropriate receptacle and maintained unobtrusively in the front or rear of the Housing Unit served except upon the designated day of collection, when the same shall be placed at the road edge or other location designated by the Band so as to facilitate efficient pick up and collection. No garbage, refuse, trash or rubbish shall be burned. Residents shall promptly pick up and properly discard all garbage, refuse, trash and rubbish which is located upon the premises, or which has spilled or blow from their receptacle.

(o) **Fuel Storage.** Installation and maintenance of fuel storage tanks, other than transportable cans, either above or below ground, is prohibited.

(p) **Exterior Lighting.** All exterior lighting must receive the prior written approval of the Band before installation and shall be designed and installed so as to minimize or restrict glare or spillover into adjacent lots and Common Areas.

(q) **Fire Pits.** Fire pits are permitted; provided they are not unsafe or unsightly; are located in backyards only; are not used for the burning of trash, rubbish, refuse, waste or garbage of any kind; and have been pre-approved by the Band in writing.

(r) **Water softeners.** Residents shall not be permitted to install or operate water softeners unless approved in writing by the Band. Any such approval may include conditions and requirements regarding the type and amount of salt and other water

amendments and treatments that may be used. The Band shall have access to all Housing Units to inspect for compliance with any such conditions and requirements.

(s) **Restrictions on Sewers and Garbage Disposals.** Because of the unique nature of the constructed wetland wastewater treatment system that will service the Housing Units, the Band may issue regulations and restrictions from time to time that regulate and restrict the types of materials that may be disposed of in toilets, drains, garbage disposals and sewers. The Band shall have access to Housing Units to inspect for compliance with any such regulations and restrictions.

### **3.5 Controlled Burns**

The Band shall have the right to conduct controlled burns on appropriate portions of the Common Areas in accordance with fire department approval and the recommendations of the Band's environmental advisors in order to promote the native species and unique environmental characteristics of the Development, and all persons, including but not limited to Residents, shall cooperate fully with safety measures and other operational measures as determined by the fire department and Band in connection therewith. All Residents waive any and all rights to object to controlled burns and accept the same as part of the necessary maintenance of the Development.

## **ARTICLE 4 COMPLIANCE AND ENFORCEMENT**

### **4.1 Compliance**

In addition to these Restrictions, the use or occupancy of any Housing Unit must satisfy: (a) the requirements of any applicable zoning ordinances in effect at the time of the contemplated use, unless a variance for such use is obtained; and (b) all requirements imposed under Band law and policies and procedures of the Band, including but not limited to the Band's Housing Act.

### **4.2 Rules of Conduct**

Additional policies and procedures concerning the use or occupancy of Housing Units or the Development may be promulgated by the Band or the Department of Housing. Copies of such policies and procedures shall be furnished by the Department of Housing to each Resident upon request.

### **4.3 Enforcement**

(a) These Restrictions are for the benefit of the Band and all Residents, and accordingly if a Resident or other person does not comply with these Restrictions, then:

(1) The Band may enforce these Restrictions against any Resident or any other person; and

(2) An aggrieved Resident may initiate an enforcement action in Tribal Court; subject to the following.

(A) the aggrieved Resident must provide the Department of Housing and the subject Resident or other person with written notice describing the noncompliance and requesting the Department of Housing to initiate enforcement;

(B) the aggrieved Resident must attend a resolution meeting on the date and time scheduled by the Department of Housing; and

(C) the aggrieved Resident shall be permitted to initiate an enforcement action only if the Department of Housing does not initiate such an action within thirty (30) calendar days after the date of the resolution meeting, or the Director indicates in writing that the Department of Housing does not intend to initiate such an action within such time period.

(b) The Band and any aggrieved Resident shall be entitled to exercise all available remedies, including but not limited to, equitable relief to enforce compliance with these Restrictions, as well as money damages caused by any such violation of these Restrictions.

#### **4.4 Self-Help**

In addition to all other available remedies, the Band may enter any Housing Unit or any other area of the Development to remove and abate any condition constituting a violation of these Restrictions, or may discontinue the furnishing of services to any Resident in default under any of the provisions of these Restrictions, upon seven (7) calendar days written notice, or such shorter notice as provided under Band law, to such Resident of the Band's intent to do so. Such entry shall not constitute a trespass, and the Resident of the Housing Unit shall reimburse the Department of Housing for all costs of removal or correction. A Resident in default shall not be entitled to utilize any of the Common Areas of the Development so long as the default continues; provided that this provision shall not operate to deprive any Resident of ingress and egress to and from the Resident's Housing Unit.

### **ARTICLE 5 GENERAL PROVISIONS**

#### **5.1 Severability**

In the event that any provision of these Restrictions is held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair any remaining portion of such provision or any other provision of these Restrictions.

#### **5.2 Notices**

(a) Notices provided for herein shall be in writing, and shall be addressed as required under this Policy to the Department of Housing offices or to the Resident at the address of the Housing

Unit on file with the Department of Housing. The Band may designate a different address for notices to it by giving written notice of such change of address to the Participant.

(b) All notices required or permitted under these Restrictions shall be delivered either in person or by first class United States mail with postage prepaid. Any notice mailed in such manner shall be deemed delivered two (2) days after being sent.

### **5.3 Conflicts**

These Restrictions are intended to be interpreted in a manner consistent with applicable law, including Band law. If any provision of these Restrictions conflicts with applicable law, then such applicable law shall control.

### **5.4 Transfer of Responsibility**

If the Band so desires, the Band may in the future assign or transfer its duties, obligations, powers and authority under these Restrictions to any Association of Residents of the Development (the "Association"). The powers, procedures and bylaws of the Association will be established by the mutual consent of the Band and a majority in interest of the Resident Owners at the time such powers are transferred to the Association, it being understood that at a minimum the Association will assume and accept responsibility for maintenance of the roads, waste treatment system, and other Common Areas of the Development. Any such assignment or transfer shall be made by an appropriate document in writing, signed by the Band and recorded in the public records. Upon such action, the Association will have the same duties, obligations, rights and powers as those granted to or reserved by the Band in these Restrictions.