

Pokagon Band of Potawatomi Indians

Salary Commission Code

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Section 1. Purpose. The purpose of this Salary Commission Code is to:

- A. Create standards and procedures for establishing just compensation for Pokagon Band Officials based on the guiding principle that such compensation should accurately reflect the value of such positions in the marketplace.
- B. Create an independent Salary Commission that is empowered to make recommendations to the Tribal Council on the compensation levels to be paid to Pokagon Band Officials pursuant to the Constitution and this Code.

Section 2. Authority. Pursuant to the duties and powers of the Tribal Council in Article IX, subsections 1(a), 1(c), and 2(i) of the Constitution, the constitutional mandate in Article X, section 7 of the Constitution, and the inherent authority of the Band as a sovereign tribal nation to provide for the health, safety, and welfare of the Pokagon Band, the Tribal Council hereby enacts this Salary Commission Code.

Section 3. Definitions. The following terms, whenever used or referred to in this Code, shall have respective meanings stated below, which shall apply regardless of whether such terms are used in their singular or plural form:

- A. **“Band” or “Pokagon Band”**: The Pokagon Band of Potawatomi Indians.
- B. **“Code”**: The Salary Commission Code.
- C. **“Constitution”**: The Constitution of the Pokagon Band of Potawatomi Indians adopted by the Pokagon Band membership in a Secretarial Election conducted on November 1, 2005 and deemed approved by the Secretary of the Interior by operation of law on December 16, 2005.
- D. **“Election Board”**: The Election Board of the Pokagon Band of Potawatomi Indians.
- E. **“Immediate Family”**: Until an ethics code is enacted into Pokagon Band law pursuant to Article XVII, subsection 3(e) of the Constitution, the term immediate family shall be defined as a person’s spouse, partner, parent, child, sibling, step-child and foster child, grandparent, grandchild, step-grand-child, any person so related to the spouse of that person.
- F. **“Member”**: An enrolled member of the Pokagon Band of Potawatomi Indians.
- G. **“Officials”**: Those elected or appointed Pokagon Band officials whose compensation shall be established by recommendation of the Salary Commission, specifically: all seats on the Pokagon Band Tribal Council; judicial officials serving on the Tribal Court or the Court of Appeals of the Pokagon Band of

Potawatomi Indians; and such other elected or appointed positions within the Pokagon Band as may be designated from time to time by the Tribal Council to be subject to this Code and the authority of the Commission to make recommendations regarding compensation.

Section 4. Salary Commission

- A. Establishment of the Salary Commission.** The Tribal Council establishes the “Pokagon Band Salary Commission”, which shall be composed of five (5) Pokagon Band Members elected by the Band’s membership in accordance with Article XIII of the Constitution.
- B. Governmental Instrumentality.** The Pokagon Band Salary Commission is an instrumentality of the Pokagon Band government and shall be clothed with all the rights, privileges, and immunities of the Band, including but not limited to the sovereign immunity of the Band from suit absent express consent from Tribal Council. Salary Commissioners shall be deemed officers of the Band government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law with respect to officers of the Band.
- C. Salary Commission Member Qualifications.** To serve on the Salary Commission, a Band Member shall meet the following criteria:
1. Be at least eighteen (18) years of age;
 2. Not be incarcerated for any criminal conviction;
 3. Not have been convicted within the last ten (10) years of a crime subject to imprisonment for a term of one (1) year or longer, excepting those crimes determined by the Election Board to related to the furtherance of the Band’s tribal sovereignty rights;
 4. Not be a member of the Tribal Council, the Tribal Judiciary, the Election Board, an Officer of the Elders Council, or an employee of the Band; and
 5. Not hold a Pokagon Band Elective office other than the one for which a seat is being sought or be a member of the Election Board, the Ethics Board, or any Personnel Committee the Tribal Council may establish.
- D. Salary Commission Officers.** The Salary Commission shall select from among its members a Chairperson, a Vice Chairperson, and a Secretary. The Salary Commission shall provide the Tribal Council with written notice regarding the selection of its officers. No two (2) offices may be held by any one Salary Commission member.

E. Quorum. Three (3) members of the Salary Commission shall constitute a quorum.

F. Terms of the Salary Commission.

1. Each Salary Commission member, once elected, shall serve a three (3) year term of office, following a staggered pattern as provided by this Code and Article X, subsection 7 of the Constitution.
2. The Salary Commission members shall continue in office until the expiration of their term, or earlier upon their resignation, removal, death, or their failure to meet any of the qualifications set out in this Code.
3. There are no limits on the number of terms that may be served, consecutively or otherwise.

G. Initial Election of Salary Commission. An election shall be held on all Salary Commission seats within ninety (90) calendar days following the enactment of this Code. The initial election of Salary Commission members under this Code shall be subject to all provisions of this Code and the Election Code, with the following exceptions:

1. The Election Board shall set the date for the initial election under this Code within twenty-one (21) calendar days following the enactment of this Code. When setting the date for the initial election, the Election Board shall endeavor to combine this election with any other election or referendum it may be conducting. Thereafter, elections for the Salary Commission shall be conducted on the second Saturday of July to maintain the staggered terms mandated by the Constitution and this Code.
2. The initial election shall implement a staggered pattern of terms for the Salary Commission. The three (3) candidates who receive the most votes for Salary Commissioner shall serve approximately three (3) year terms. The two (2) candidates who receive the next highest vote totals for Salary Commissioner shall serve approximately two (2) year terms.
3. The terms of office described in subsection 4(G).2 above are approximate in order to allow the elections for Salary Commissioners to fall in the month of July. The precise length of these initial terms are to be determined by the Election Board prior to the initial election of the Salary Commission under this Code.

H. Responsibilities of the Salary Commission.

1. The Salary Commission shall maintain a current list of all Pokagon Band Officials, descriptions of duties and responsibilities for each position derived from official Pokagon Band sources, and the compensation paid to each Official.
2. The Salary Commission shall prepare a report for Tribal Council with recommended compensation levels, which may include a compensation range with guidelines for each Official position. The report shall be prepared in accordance with Section 5 of this Code.
3. Prior to reporting its recommendations regarding compensation levels and compensation guidelines to Tribal Council, the Salary Commission shall afford the Band membership a reasonable opportunity to provide input on its proposed recommendations through such means as the Commission shall deem to be appropriate.

I. Authority of the Salary Commission. In carrying out its duties in this Code, the Salary Commission is authorized and empowered, subject to the limitations provided in this Code and other Pokagon Band law, to:

1. Obtain and have access to any and all documents and information described in this Code as within the scope of the Commission's responsibilities;
2. Conduct the research necessary for the preparation of the report required in Section 5 of this Code;
3. Obtain input from the Pokagon Band membership on its proposed compensation recommendations;
4. Obtain cooperation and assistance from the Band's Department of Human Resources in obtaining the information necessary to prepare the report required in Section 5 of this Code; and
5. Obtain information from Officials currently serving in office and the governmental units such Officials are constituent parts of to the extent the information is necessary for the report required in Section 5 of this Code.

J. Prohibited Activities. No member of the Salary Commission shall violate any standards applicable to the Salary Commission in an ethics code enacted into Pokagon Band law pursuant to Article XVII, subsection 3(e) of the Constitution provided further that, to the extent not preempted by or in conflict with the provisions of such ethics code, no member of the Salary Commission shall:

1. Serve as a member of the Salary Commission if such member is a Tribal Council member, Tribal Judge, Election Board member, or an employee of the Band;
2. Vote on the compensation recommendation for any office then occupied by the member's Immediate Family;
3. Vote on the compensation recommendation for any office or position if such member or such member's Immediate Family is a candidate for such office or position;
4. Vote on or otherwise participate in any Commission matter that would directly involve a member's personal financial interest; or
5. Vote on or otherwise participate in any Commission matter if the member's personal or financial interests compromise or in the view of a reasonable person, appear to compromise the ability of the member to fairly and objectively carry out his or her duties.

K. Removal, Recall, Resignation, and Vacancies.

1. **Removal.** The Salary Commission, on a majority vote, may request that the Tribal Council initiate a procedure for the removal of a Salary Commission member and the Tribal Council may call for the removal of any member of the Salary Commission by an affirmative vote of at least eight (8) members of Tribal Council for any of the following reasons:
 - a. Persistent failure to perform the duties of office;
 - b. Misconduct in office consisting of any knowing violation of this Code or other Pokagon Band law;
 - c. Physical or mental disability which prevents the performance of duties;
 - d. Ineligibility under the qualifications for Salary Commission members; or
 - e. Failure to attend three (3) consecutive meetings of the Salary Commission without a valid excuse.

Salary Commission members may only be removed through procedures that comply with the requirements of Article XV, Section 2 of the Constitution.

2. Recall.

- a. Any Salary Commission member, after holding office for one (1) year, may be recalled by the Band's membership through the initiative process in Article XIV, Section 2 of the Constitution.
 - b. A Salary Commission member shall be subject to only one (1) recall election per calendar year.
- 3. **Resignation.** Salary Commission members may resign from the Salary Commission by submitting, in writing, a signed letter of resignation to the Tribal Council Chairperson and Secretary. Resignation shall be deemed effective as of the date tendered unless stated otherwise in the resignation letter. A copy of the resignation letter shall be forwarded to the Salary Commission. The office of any Salary Commission member who becomes a member of the Tribal Judiciary or the Ethics Board shall be deemed to be vacant and the Salary Commission member shall be deemed to have resigned from office as of the date such Salary Commission member's appointment as a member of the Tribal Judiciary or Ethics Board becomes effective.

4. Vacancies.

- a. The office of any Salary Commission member who is recalled, is removed, or no longer meets the qualifications for office, shall be deemed to be vacant.
- b. The office any Salary Commission member who becomes certified by the Election Board as a candidate for an elective tribal office not presently held by such member shall be deemed to be vacant as of the first Regular Meeting of the Tribal Council following the General or Special Election involved or forty-five (45) days following the General or Special Election involved, whichever ever comes first.
- c. Vacancies on the Salary Commission may be filled by Tribal Council appointment for the balance of the unexpired term, *provided* that the length of such appointment shall not exceed a period of two years. If the length of the unexpired term is two or more years, the Tribal Council may fill the vacancy by appointment only until a Commissioner is elected and sworn into office for the balance of the unexpired term at the next election in July to be held following such appointment. The Tribal Council shall provide the Band's membership with reasonable notice of the vacancy and an opportunity to respond prior to filling the vacancy by appointment.

- d. Qualified Members willing to be considered for appointment to fill the vacancy on the Salary Commission shall submit written statements of interest to the Tribal Council within seven (7) days prior to the date the vacancy may be filled.
- e. When filling a vacancy on the Salary Commission, the Pokagon Band Election Board shall , with the assistance of the Tribal Police, make a determination regarding the eligibility of each prospective member of the Salary Commission in accordance with the standards and procedures set forth in subsection 4(C) of this Code.
- f. The Tribal Council shall take all reasonable steps to fill a Salary Commission vacancy by appointment within forty-five (45) days of the effective date of such vacancy, or as soon thereafter as possible in accordance with applicable law.

L. Compensation. The members of the Salary Commission shall be compensated at rates established by the Tribal Council. The Tribal Council shall, on the request of the Salary Commission, review the rates of compensation for the Salary Commission members every three (3) years and shall make adjustments to such rates as the Tribal Council determines to be appropriate. The Tribal Council shall not reduce the rate of compensation for any member of the Salary Commission during his or her term of office. Members of the Salary Commission shall be entitled to reimbursement for actual expenses incurred while on Commission business, including necessary travel expenses, subject to any written guidelines the Tribal Council may establish.

Section 5. Salary Commission Study, Report, and Recommendations.

- A. The Salary Commission shall collect such information as may be necessary for a thorough consideration of the compensation level to be established for each Official position and in order to properly explain and support the Commission's compensation recommendations. The information to be collected and the processes to be followed to evaluate the information are described hereunder.
 - 1. Description of Each Official's Position. Prepare an accurate, current, and complete description of the duties and responsibilities of each position. Information may be gathered from the following sources:
 - a. Official sources, including the Pokagon Band Constitution, enacted laws, resolutions, and motions;
 - b. Unofficial sources, such as information provided by the Official currently holding the position being evaluated. Information may

be gathered through such methods as questionnaires and/or personal interviews.

The Commission shall specifically identify any duties or responsibilities disclosed through unofficial sources that are inconsistent with the express requirements of the position obtained from official sources.

2. Analysis of Each Official's Position. The Commission shall identify and describe the nature and elements of each position being evaluated based on an application of the uniform factors set forth below.
 - a. Knowledge and Skill Requirements.
 - (i) knowledge base, whether acquired through formal education or training, work experience, or another process.
 - (ii) managerial capabilities, such as ability to plan, organize, coordinate, direct, execute, and control over time.
 - (iii) human relations skills, i.e., the ability to communicate with and influence individuals and groups, within and outside the organization in order to achieve results.
 - b. Problem-Solving Requirements.
 - (i) complexity of the duties.
 - (ii) level of mental challenge required to perform the required duties effectively within the work environment.
 - c. Accountability.
 - (i) degree of autonomy, i.e., freedom within the position to take an action or make a decision and extent to which the position is subject to control or guidelines.
 - (ii) level of responsibility, i.e., the extent to which the position is answerable for actions and decisions and for the results of such actions and decisions and
 - (iii) magnitude of potential impact, positive or negative, from such actions and decisions on the goals and objectives of the organization.
 - d. Working Conditions. The extent to which the position involves:

- (i) significant mental or physical demands;
 - (ii) unusual demands on time (irregular or unpredictable schedule, significant hours beyond a normal workweek, etc.);
 - (iv) mental or emotional stress; and
 - (v) exposure to unpleasant or hazardous conditions.
3. Development of Position Hierarchy. Compare Official positions within their respective sector of the government, e.g., the Tribal Council or the Tribal Judiciary.
- a. Determine whether a hierarchy or position ranking is provided in official sources, i.e., the Pokagon Band Constitution, enacted laws, resolutions, and other official sources.
 - b. To the extent information from official sources is unavailable or inadequate to determine a hierarchy or ranking for the positions, the Commission may compare the positions using either:
 - (i) a non-quantitative process, such as ranking positions within the sector by comparing the whole positions with each other; or
 - (ii) a quantitative process, such as assigning point values to the factors described above in subsection 2, determining the point values for each position, and comparing the positions based on their respective point totals.
4. Market Data Collection and Analysis.
- a. Identifying the Market. The Commission shall collect data from other organizations that compete with the Pokagon Band as to one or more of the positions being evaluated or that are, for other valid reasons, comparable to the Pokagon Band regarding the positions. The Commission may include in the market other tribal organizations and comparable non-tribal organizations and may define the market geographically (e.g., local area, state, region, continental U.S.), depending on the nature of the positions being evaluated. The Commission shall identify the market selected and explain its basis for selecting the market.
 - b. Analyzing the Market Data. When the Commission determines that it has acquired an adequate amount of data, the Commission

shall present the market data in an organized fashion, including compensation ranges and median amounts where applicable.

- c.** Comparing the Market Data with Data for Official Positions. The Commission shall compare the market data for each comparable position with the compensation, if any, for the position being evaluated.

B. The Salary Commission shall prepare a written report which shall contain:

- 1.** The results of the study in subsection 5(A);
- 2.** The recommendations of the Salary Commission as to the appropriate levels of compensation for each Official position;
- 3.** The recommendations of the Salary Commission, if any, as to the appropriate means for providing annual adjustments to such compensation levels to address inflation and other negative impacts on the real value of such compensation; and
- 4.** Any additional information that, in the judgment of the Salary Commission, is relevant to its recommendations.

C. The Salary Commission shall afford the Band's membership reasonable opportunity to provide input regarding the Salary Commission's proposed recommendations before it presents its final report to Tribal Council.

D. The report must be approved by the affirmative vote of at least three (3) Salary Commission members prior to its submission to Tribal Council.

E. No later than six (6) months after the swearing in of the initial members of the Salary Commission, and every three (3) years thereafter, the Salary Commission shall submit to the Tribal Council, a report that contains its recommendations and satisfies the requirements of this section 5.

F. Tribal Council may accept or reject the Salary Commission's recommendations contained in the report, but the Tribal Council shall take no action affecting compensation for the Officials except upon the recommendation of the Salary Commission.

G. Salary Commission recommendations and Tribal Council action on such recommendations shall be recorded and published in the tribal newsletter or other Tribal monthly publication.

- H. Despite Tribal Council's approval of the Salary Commission's recommendations, no increase or decrease in compensation shall take effect until after the next regularly scheduled Tribal Council election.
- I. Notwithstanding any approval of the Salary Commission's recommendations by the Tribal Council, no decrease in compensation for any sitting judge shall take effect during his or her current term.

Section 6. Meetings

- A. The Chairperson shall preside over all meetings of the Salary Commission. The Vice Chairperson shall assume the duties of the Chairperson in the Chairperson's absence. In the absence of the Chairperson and the Vice Chairperson, the Secretary shall assume the duties of the Chairperson. The Secretary shall create and maintain an official record of all Salary Commission meetings and other Commission activities.
- B. The Salary Commission shall prescribe its own rules of procedure regarding the conduct of its meetings, provided they do not conflict with this Code or other Pokagon Band law.
- C. The Salary Commission shall meet as often as necessary to perform its duties.
- D. Meetings of the Salary Commission may be called by the Chairperson, or by other Salary Commission officers when authorized by this Code to preside in the absence of the Chairperson.
- E. Commission meetings shall be open to all Pokagon Band members, except when a meeting in closed session is expressly authorized by Pokagon Band law.
- F. The Salary Commission records are the exclusive property of the Pokagon Band and shall be kept on file at a suitable location on Pokagon Band property.

Section 7. Repeal of Conflicting Laws; Severability

- A. All other laws, regulations, and policies that may be inconsistent with or in conflict with this Code are hereby repealed.
- B. If any section, subsection, paragraph, sentence, phrase or other portion of this Code is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion of this Code shall be deemed to be separate, distinct, and independent from the remaining portion of this

Code, which shall not be affected by the judicial decision and shall remain in effect.

LEGISLATIVE HISTORY

The “Salary Commission Code” was enacted on January 13, 2007, by Tribal Council Resolution No. 07-10-13-01. On August 18, 2007, by the adoption of Tribal Council Resolution No. 07-08-18-01, subsections 4(L) and 5(E) were amended. On August 29, 2007, by the adoption of Tribal Council Resolution No. 07-08-29-01, subsection 4(L) was amended.