

# Citizen Potawatomi Nation



Ordinance #11-02-J&PS-11-02-T12

## CHAPTER 1

### GENERAL MATTERS

#### **SECTION 12-2-175. CITATION**

This act establishes, and shall be known as, "The Citizen Potawatomi Nation Criminal Sexual Crimes Registration Code".

#### **SECTION 12-2-176. PURPOSE**

- A. The Citizen Potawatomi Nation finds it to be in the best interest of all members and affiliates to clarify the procedures and evidence used by the Citizen Potawatomi Nation for sex offender prosecution, registration, and notification.
- B. Having elected to function as a registration jurisdiction on May 29, 2007, by Tribal Resolution 07-145, the Citizen Potawatomi Nation bears the responsibility of implementing sex offender registration and notification decisions and for assuring compliance with the federal Sex Offender Registration and Notification Act of 2007 (SORNA) (Title I of Public Law 109-248), the Citizen Potawatomi Nation Constitution, and this Act.
- C. The intent of this code is to implement the federal Sex Offender Registration and Notification Act of 2007 (SORNA) and shall be interpreted liberally to comply with the terms and conditions of that Act as presently written or hereafter amended.

**SECTION 12-2-177.****Constitutional Authority**

The Tribal Legislature has the power to enact ordinances governing future criminal law and criminal procedures in the Citizen Potawatomi Nation pursuant to Article VII of the Constitution of the Citizen Potawatomi Nation.

**SECTION 12-2-178.****Preamble**

**BE IT ENACTED** by the Tribal Legislature of the Citizen Potawatomi Nation assembled to establish a criminal sexual crimes registration code in accordance with Article VII of the Constitution of the Citizen Potawatomi Nation, establish such code to be called, “The Citizen Potawatomi Nation Criminal Sexual Crimes Registration Code” (“Act”).

In order to implement this code to its fullest, the Nation is hereby authorized to work cooperatively with necessary state, federal, or tribal agencies. However, in doing so, the Nation shall not waive any tribal sovereign immunity.

**SECTION 12-2-179.****Establishment of Registries**

- A. This Act hereby authorizes the Citizen Potawatomi Nation Police Department to serve as the Nation’s Sex Offender Registration Office, which shall maintain and operate a sex offender registration pursuant to the provisions of this code.
- B. This Act hereby establishes a Citizen Potawatomi Nation Sex Offender Registration and Notification system, which shall be maintained and operated pursuant to the provisions of this code.
- C. This Act hereby establishes a Citizen Potawatomi Nation Sex Offender registry website, which shall be maintained and operated pursuant to the provisions of this code.
- D.

**SECTION 12-2-180.**

**Criminal and Civil Sanctions**

- A. Offenders who reside or enter within the territorial jurisdiction of the Citizen Potawatomi Nation or otherwise reside on property owned by the Citizen Potawatomi Nation in fee or trust regardless of location, who are employed within the exterior boundaries of the Citizen Potawatomi Nation or on property owned in fee or trust regardless of location, or who attend school within the exterior boundaries of the Citizen Potawatomi Nation or on property owned in fee or trust regardless of location, that have been convicted of the offenses listed in this Act are subject to the requirements of this code.
- B. Any violation of a provision of this code by a sex offender who is an Indian shall be considered a felonious crime and subject to the penalty of one (1) year imprisonment and/or a fine of five thousand dollars (\$5,000.00) or both.
- C. Any violation of a provision of this code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including but not limited to the issuance of fines, forfeitures, civil contempt, and banishment.
- D.

**CHAPTER 2**

**TERMINOLGY**

**SECTION 12-2-181.**

**Definitions**

Words and phrases as used herein and elsewhere in Title 12 shall be defined as follows:

- A. “Absconder” shall mean a convicted sex offender who goes in a clandestine manner out of the jurisdiction of the Court, or lies concealed, in order to avoid process of law.
- B. “Advocate” shall mean a person who speaks or writes in support or defense of a person, cause, etc.

- C. “Bodily injury” shall mean, but is not limited to, bodily harm (however slight), disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- D. “Citizen Potawatomi Nation” shall mean the Government of the Citizen Potawatomi Nation and its membership as defined in Article III of the Constitution of the Citizen Potawatomi Nation.
- E. “Citizen Potawatomi Nation Sex Offender Registration Office” shall mean the office designated by the Citizen Potawatomi Nation to register sexual offenders and maintain the sex offender registry, pursuant to the Constitution and applicable laws of the Citizen Potawatomi Nation.
- F. “Consanguinity” shall mean a relationship by descent from a common ancestor.
- G. “Consent” shall mean to voluntarily give permission, approval, or agreement.
- H. “Convicted” shall mean a sex offender who has been subject to penal consequences based on a conviction, however it may be styled. This includes adults as well as juvenile offenders.
- I. “Court” shall mean the Citizen Potawatomi Nation District Court and all proceedings under this Act shall refer to the same.
- J. “Developmental Disability” shall mean an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:
  - 1. It originated before the person became 18 year of age;
  - 2. It has been continuous since its origination and can be expected to continue indefinitely;
  - 3. It constitutes a substantial burden to the impaired person’s ability to perform in society; and
  - 4. It is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other condition found to be

closely related to mental retardation because it produces a similar impairment or requires treatment and services to those required for a person who is mentally retarded.

- K. “Digitized Format” shall mean information kept digitally on an electronic data base and does not mean hard copies or physical objects.
- L. “Dru Sjodin National Sex Offender Public Website (NSOPW)” shall mean the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.
- M. “Employee” shall mean any individual who is self-employed or works for any entity whether compensated or not. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.
- N. “Force” or “Coercion” shall mean the exercise of physical control or threatening influence over a victim sufficient to negate voluntary consent, including but not limited to any of the following circumstances:
  - 1. When the perpetrator overcomes the victim through the actual application of physical force or physical violence;
  - 2. When the perpetrator coerces the victim to submit by threatening to use force or violence on the victim;
  - 3. When the perpetrator coerces the victim to submit by threatening to retaliate in the future (including threats of physical punishment, kidnapping, or extortion) against the victim or against any other person, and the victim believes the perpetrator has the ability to execute this threat; and
  - 4. When the perpetrator, through concealment or by the element of surprise, is able to overcome the victim.
- O. “Foreign Conviction” shall mean one obtained outside of the United States.
- P. “Gender”-Throughout this code, the terms “he,” “his,” “him” and the like shall be deemed to include “she,” “her,” etc.

- Q. “Immediate” or “Immediately” shall mean within four (4) hours of first entry onto lands within the Nation’s territorial jurisdiction. Any participants of the Citizen Potawatomi Festival, who are subject to mandatory registration in any jurisdiction, must register with the Citizen Potawatomi Nation Police Department prior to entering the Festival grounds.
- R. “Imprisonment” shall mean incarceration pursuant to a conviction, regardless of the nature of the institution which the offender serves the sentence. The term is to be interpreted broadly rather than in a narrow sense, and includes for example confinement in a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, local or tribal “jail” or mental health facility. Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of “house arrest”.
- S. “Indecent” shall mean morally or sexually offensive.
- T. “Indian” shall mean a person of any age who is a member of a federally recognized Indian tribe, as defined by 25 U.S.C. 450(b) et seq., and who resides or is found within, or is subject to, the jurisdiction of the Citizen Potawatomi Nation.
- U. “Intimate Parts” shall mean parts of the human body primarily in, but not limited to, the genital area, groin, inner thigh, buttocks, and breast.
- V. “Jurisdiction” shall mean, unless otherwise specified, the 50 states, District of Columbia, the five principal U.S. Territories – i.e. Commonwealth of Puerto Rico; Guam; American Samoa; the Northern Mariana Islands; the United States Virgin Islands – and Indian tribes that elect to function as registration authorities under 42 U.S.C. § 16927.
- W. “Lewd” shall mean, obscene, wicked, immoral, or lascivious.
- X. “Mental Illness” shall mean a substantial disorder of thought or mood, which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with ordinary demands of life.

- Y. “Minor” shall mean an individual who has not attained the age of 18 years of age.
- Z. “Perpetrator” shall mean a person accused of criminal sexual conduct.
- AA. “Physically Helpless Person” shall mean a person who is unconscious, asleep, or who for any other reason is physically unable to communicate unwillingness to an act.
- BB. “Predisposition” shall mean to give an inclination or tendency to commit an act beforehand.
- CC. “Resides” shall mean, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives.
- DD. “Sex Offender” shall mean a person convicted of a sex offense under state, federal, military, territorial, local, maritime, foreign, or tribal law.
- EE. “Sex Offender Registry” shall mean the registry of sex offenders and notification program maintained by the Citizen Potawatomi Nation.
- FF. “Sex Offense” shall mean, a criminal offense that has an element involving a sexual act or sexual contact with another. The term sex offense or sexual offense is not used to refer to any and all crimes of a sexual nature, but rather to those covered by definition of “sex offenses” appearing in 42 U.S.C. § 16911(5) and under this Act.
- GG. “Sexual Act” shall mean (i) oral-genital or oral-anal contact, (ii) any degree of genital or anal penetration, (iii) direct genital touching of a child under the age of 16 years, and (iv) touching of oneself in a manner to humiliate, embarrass, or harass another person.
- HH. “Sexual Contact” shall mean the intentional touching of the victim’s or perpetrator’s intimate parts by the perpetrator or by the victim through the action or initiation of the perpetrator, including the intentional touching of the clothing covering the immediate area of the victim’s or the perpetrator’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual

arousal or gratification, or done for a sexual purpose, or in a sexual manner, including such actions for revenge, to inflict humiliation, or out of anger.

- II. "Sexual Penetration" shall mean sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.
- JJ. "SMART Office" shall mean the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16920.
- KK. "SORNA" shall mean the federal Sex Offender Registration and Notification Act of 2007.
- LL. "Student" shall mean an individual who enrolls or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institutions of higher education.
- MM. "Temporarily Incapacitated Person" shall mean a person who is rendered temporarily incapable of appraising or controlling his conduct due to the influence of a controlled substance, alcohol, anesthetic, or other substance, regardless of the voluntary or involuntary nature or method of the consumption or use, or due to any other act committed upon that person with or without his consent.
- NN. "Victim" shall mean the person alleged to have been subjected to the criminal sexual conduct.
- OO. "Weapon" shall mean any object, although not inherently dangerous, which is used in a way that is likely to cause serious injury or death. Weapons include, without limitation, firearms, whether or not loaded and whether or not capable of being fired, knives, brass knuckles, clubs, iron bars, baseball bats, and any other device capable of causing serious injury.



**SECTION 12-2-182. Consideration of Foreign Sex Offenses Under This Act**

- A. Convictions which require registration under this Act include convictions for sex offenses by any country, including, but not limited to, any U.S. jurisdiction, Canada, the United Kingdom, Australia, and New Zealand, including sex offenses under federal, military, state, territorial, maritime, tribal, or local law, where an independent judiciary generally enforces the right to a fair trial in that country during the year in which the conviction occurred. Sex offense convictions under the laws of any foreign country shall require registration on the same footing as domestic convictions.
- B. The following are considered sex offenses that require registration under this Act:
1. Sexual acts and sexual contact offenses that have an element involving a sexual act or sexual contact with another. The offenses covered include all sexual offenses whose elements involve:
    - a. Oral-genital or oral-anal contact;
    - b. Any degree of genital, anal, or oral penetration;
    - c. Direct genital touching of a child under the age of 16 years; and
    - d. Touching of oneself in a manner to humiliate, embarrass, or harass another person.
  2. Specified offenses against a minor that involves any of the following:
    - a. An offense (unless committed by a parent or guardian) involving kidnapping;
    - b. An offense (unless committed by a parent or guardian) involving false imprisonment;
    - c. Solicitation to engage in sexual conduct;
    - d. Use in a sexual performance;

- e. Any sexual touching of, or contact with, a person's body, either directly or through the clothing;
  - f. Solicitation to practice prostitution; use of other persons in prostitution, including, but not limited to the crimes of pandering, procuring, or pimping;
  - g. Video voyeurism;
  - h. Possession, production, or distribution of child pornography;
  - i. Criminal sexual crime involving a minor, or the use of the internet to facilitate or attempt such crimes; and
  - j. Any crimes that by its nature is a sex offense against a minor.
3. Any offenses listed within the Citizen Potawatomi Nation Code which are specifically set out as Sex Offenses or have an element involving a Sexual Act or Sexual Contact with another person.

**SECTION 12-2-183. Offenses Considered Felony Offenses under this Act**

- A. Attempts and conspiracies to commit offense that are otherwise covered by the definition of "sex offenses."
- B. A conviction for any of the following included within SORNA, or offenses prosecuted under the Assimilative Act (18 U.S.C. § 1752 or § 1753), or any similar offense, and any other offense listed hereafter in this code, shall be considered a felony offense:
  1. 18 U.S.C. § 1591 (sex trafficking of children),
  2. 18 U.S.C. § 1801 (video voyeurism of a minor),
  3. 18 U.S.C. § 2241 (aggravated sexual abuse),
  4. 18 U.S.C. § 2242 (sexual abuse),

5. 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
6. 18 U.S.C. § 2244 (abusive sexual contact),
7. 18 U.S.C. § 2245 (offenses resulting in death),
8. 18 U.S.C. § 2251 (sexual exploitation of children),
9. 18 U.S.C. § 2251A (selling or buying of children),
10. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor),
11. 18 U.S.C. § 2252A (material containing child pornography),
12. 18 U.S.C. § 2252B (misleading domain names on the internet),
13. 18 U.S.C. § 2252C (misleading words or digital images on the internet),
14. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import in to the United States),
15. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity),
16. 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity),
17. 18 U.S.C. § 2423 (Mann Act),
18. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual),
19. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual crimes).

### CHAPTER III TIERED OFFENSES

#### SECTION 12-2-184. “Tier I” Offenses

A. A Tier I offense includes any sex offense not included in Tier II or Tier III for which a person has been convicted by any jurisdiction, local government, tribal law, or a foreign country that involves any sexual act or sexual contact with another person, including, but not limited to any tribal offense listed under this Act which expressly states that it is a Tier I offense or is included in following list of tribal offenses as they are defined by Title 12 of the Citizen Potawatomi Nation Criminal Code:

1. Incest
2. Indecent Exposure
3. Sexual Assault
4. Deviate Sexual Intercourse
5. Coercion and Enticement
6. Offense Resulting in Death
7. Attempt
8. Criminal Conspiracy
9. Solicitation
10. Child Pornography; Possession or Receipt of Child Pornography
11. Child Abuse
12. Duty to Report Child Abuse and Obscene or Pornographic Material Depicting Minors
13. Child Endangerment by Permitting Child Abuse
14. Indecent Solicitation of Minors
15. Kidnapping
16. False Imprisonment of a Minor
17. Prostitution
18. Misleading Domain Name on the Internet
19. Misleading Words or Digital Images on the Internet
20. And any other offense not covered in this Act, but addressed in the Citizen Potawatomi Nation Tribal

Statutes, that would require registration in a sex offender database pursuant to federal guidelines.

**SECTION 12-2-185.    “Tier II” Offenses**

It is the intent of the Citizen Potawatomi Nation to reclassify all crimes which would be considered Tier II offenses under federal law as Tier III offenses pursuant to the Tribal Code.

**SECTION 12-2-186.    “Tier III” Offenses**

- A. Any sex offense where the offender is punishable by more than one (1) year in jail, is a Tier III offense. Tribal offenses specifically specified under this section need not include a punishment by more than one (1) year.
- B. A Tier III offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, tribal law, or a foreign country, that involves:
  - 1. The use of minors in prostitution, including solicitations,
  - 2. Enticing a minor to engage in criminal activity,
  - 3. Sexual contact with a minor, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing,
  - 4. The use of a minor in a sexual performance, or
  - 5. The production for distribution of child pornography,
  - 6. Non-parental kidnapping of a minor,
  - 7. A sexual act with another by force or threat, or
  - 8. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the crimes or declining to participate.

C. Conviction of any of the following federal offenses, or similar offenses, shall be considered Tier III Offenses:

1. 18 U.S.C. § 1801 (video voyeurism of a minor),
2. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor),
3. 18 U.S.C. § 2252 A (possession or receipt of material containing child pornography),
4. 18 U.S.C. § 2252 B (misleading domain name),
5. 18 U.S.C. § 2252 C (misleading words or digital images),
6. 18 U.S.C. § 2422 (a) (coercion to engage in prostitution),
7. 18 U.S.C. § 2423 (b) (travel with the intent to engage in illicit conduct),
8. 18 U.S.C. § 2423 (c) (engaging in illicit conduct in foreign places),
9. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual),
10. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).
11. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion),
12. 18 U.S.C. §2241 (aggravated sexual abuse),
13. 18 U.S.C. §2242 (sexual abuse),
14. 18 U.S.C. §2243 (sexual abuse of a minor or ward),
15. 18 U.S.C. § 2244 (abusive sexual contact).
16. 18 U.S.C. § 2251 (sexual exploitation of children),
17. 18 U.S.C. §2251 A (selling or buying of children),
18. 18 U.S.C. §2252 (production, sale, or distribution of material involving the sexual exploitation of a minor),
19. 18 U.S.C. §2252 A (production, sale, or distribution of material containing child pornography),

20. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
  21. 18 U.S.C. §2421 (transportation for prostitution),
  22. 18 U.S.C. §2422 (b) (coercing a minor to engage in prostitution),
  23. 18 U.S.C. §2423 (a) (transporting a minor to engage in illicit conduct).
  24. Any military offense specified by the Secretary of Defense of the United States under section 175(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. §951).
- D. A Tier III offense includes any tribal offense listed under this Act which expressly states that is a Tier II or Tier III offense.
- E.

## **CHAPTER V**

### **COURT PRACTICES AND PROCEDURES**

#### **SECTION 12-2-189.     Procedures**

All criminal procedures regarding this Act shall follow and be bound by Title 11, Criminal Court Procedures.

#### **SECTION 12-2-190.     Rights of the Accused**

- A. An accused sexual offender shall have the same rights as a non-sexual criminal offender under Title 5 of the Citizen Potawatomi Nation Code, including but not limited to the following:
1. The right to jury trial upon request;
  2. The right to counsel;
  3. If the accused is indigent, the right to have counsel appointed to him free of charge by the Nation.

- B. An accused sexual offender shall have any other rights conferred by tribal law.

**SECTION 12-2-191. Inadmissible Evidence**

- A. Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided:
  - 1. Evidence offered to prove that any alleged victim engaged in other sexual behavior; or
  - 2. Evidence offered to prove any alleged victim's sexual predisposition.
- B. Exceptions. In a criminal case, the following evidence is admissible:
  - 1. Evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of the semen, injury, or other physical evidence; or
  - 2. Evidence of specific instances of sexual behavior by the alleged victim with respect to the person other than the accused was the source of the semen, injury, or other physical evidence; or
  - 3. Evidence, which the exclusion of, would violate the constitutional rights of the defendant.
- C. In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible only if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.
- D. Procedure to Determine Admissibility. A party intending to offer evidence under subdivision (B) must:
  - 1. File a written motion at least fourteen (14) days before trial specifically describing the evidence and stating



the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

2. Serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's parent, guardian, or legal representative; and
3. Request the court to conduct a hearing out of the presence of the jury, if any, and afford the victim and parties a right to attend and be heard. The hearing shall be closed except to motion and related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

**SECTION 12-2-192. Testimony, Resistance and Suppression of Victim Information**

- A. Testimony. In order to convict a person of any crime defined in this Act it shall not be necessary that the testimony of the alleged victim be corroborated.
- B. Resistance. A victim need not resist the perpetrator in the perpetrator's commission of an offense under any section or subsection of this Act. Resistance by a victim is not an element of any offense and the absence of a victim's resistance is not a defense in a prosecution under this Act.
- C. Suppression of Names and Details. Upon the request of the victim or the perpetrator in a prosecution under this Act, or by the court's own motion, the court shall order the names of the victim and the perpetrator and the details of the alleged offense to be confidential until such time as the perpetrator is convicted by a jury, the charge dismissed, or the case is otherwise concluded, whichever occurs first.

**SECTION 12-2-193.**

**Prior Bad Acts**

- A. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another sexual offense or offenses or sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.
- B. In a case in which the prosecutor intends to offer evidence under this rule, the prosecutor shall disclose this evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fourteen (14) days before the scheduled date of trial or at such later time as the court may allow for good cause.
- C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

**SECTION 12-2-194.**

**Court Orders**

- A. Court Orders of Judgment and Sentence shall contain all of the following:
  - 1. The exact language of the Tribal criminal code under which the sex offender was convicted;
  - 2. If possible, the analogous federal crime statute and the maximum possible penalty for that crime under federal law;
  - 3. That a lengthier sentence of imprisonment for the crime would have been imposed but for the restrictions of the Indian Civil Rights Act of 1968 prohibiting a sentence of greater than one year of incarceration;
  - 4. The tier of the offense and the registration requirements of that tier offense. *If different than the three-tiered system under SORNA, the tier that the conviction falls in under SORNA. Offender shall not be*

excused from mandatory registration requirements in the event that the court order fails to contain this information;

5. Whether the defendant had a right to counsel;
6. Whether the defendant was represented by counsel;
7. If applicable, whether the defendant knowingly and voluntarily waived his right to counsel;
8. Court order may also contain any additional information that the court deems necessary and appropriate.

#### **SECTION 12-2-195. Victim-Advocate Privilege**

- A. For the purposes of this section, a victim advocate is a person who is an employee or volunteer at a sexual assault or sexual abuse shelter or is a service provider for victims of sexual assault or sexual abuse and who has had at least ten (10) hours of training or experience regarding sexual assault and sexual abuse or sexual assault or sexual abuse victims.
- B. The victim-advocate privilege is applicable in all sexual assault cases and in domestic violence cases.
- C. Except as otherwise provided in this section, a victim of sexual assault may prevent an advocate from disclosing confidential oral communications between the victim and the advocate and written records and reports concerning the victim unless the privilege is waived.
- D. The privilege does not relieve a person from any duty imposed in the mandatory reporting of sexual child abuse. A person may not claim privilege when providing evidence in proceedings concerning sexual child abuse.
- E. The court may order the advocate to disclose *information* only if the information's probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party and only directly to the court in

chambers. The court may then decide if such information shall be given to a jury.

**SECTION 12-2-196. Mandatory Restitution**

Notwithstanding any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this Act.

A. Scope and Nature of Order:

1. Directions. The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (B).
2. Enforcement. An order of restitution under this section shall be issued and enforced in accordance with laws of the Citizen Potawatomi Nation.

B. Definitions. For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for:

1. Medical services relating to physical, psychiatric, or psychological care;
2. Physical and occupational therapy or rehabilitation;
3. Necessary transportation, temporary housing, and child care expenses;
4. Lost income;
5. Attorneys' fees, as well as other costs incurred; and
6. Any other losses suffered by the victim as a proximate result of the offense.

C. Order mandatory. The issuance of a restitution order under this section is mandatory. The court may not decline to issue an order under this section because of the economic circumstances of the defendant or the fact that a victim has received, or is entitled to receive, compensation for his or

her injuries from the proceeds of insurance or any other source.

**SECTION 12-2-197. Criminal Forfeiture – Property Subject to Criminal Forfeiture**

- A. A person who is convicted of an offense under this Act shall forfeit to the Citizen Potawatomi Nation such person's interest in:
  - 1. Any visual depiction or child pornography described in this Act, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this Act;
  - 2. Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
  - 3. Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property.
- B. The procedure for forfeiture shall follow tribal law. If not tribal law has been enacted then the court shall follow procedures directed by federal law for forfeitures.

**SECTION 12-2-198. Juveniles**

- A. The term "convicted" or a variant thereof, used with respect to sex offenses, includes an adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse or was an attempt or conspiracy to commit such an offense.
- B. Juvenile offenders not prosecuted as adults are not required to register in the sex offender registry unless the offender is

14 years of age or older at the time of the offense and has been adjudicated delinquent for an offense comparable to or more severe than aggravated sexual assault as described in this Act or an attempt or conspiracy to commit such an offense.

- C. Juveniles who are prosecuted and convicted as adults of a sex offense covered by this Act shall be treated the same as an adult sex offender.
- D. The court may, at the request of the juvenile, seal the juvenile's court record when the juvenile reaches the age of majority, however, the court shall not remove or expunge the status of the conviction under SORNA. The juvenile must continue to comply with all the requirements of sex offender registration.

**SECTION 12-2-199.      Sex Offender Mental Health**

- A. Any person who has been clinically diagnosed with a mental illness, mental retardation, or a developmental disability that is convicted of any offense in this Act, shall be required to undergo a psychiatric assessment to determine if incarceration is an appropriate penalty.
- B. A psychiatric assessment may be done by a psychiatrist or a psychologist with a current license in good standing to practice in that field.
- C. If the psychiatrist or psychologist administering the psychiatric assessment determines that incarceration is not appropriate, then the convicted person may be involuntarily civilly committed to an institution or other facility for treatment. However, the offender must continue to comply with all the requirements of the sex offender registration.
- D. Such treatment shall last until the convicted person has been released by the facility under the direction of a psychiatrist or psychologist and that psychiatrist or psychologist believes that the convicted person is no longer a risk to society.

- E. Periodic review hearings may be requested by the court or by the prosecutor to inquire as to the ongoing treatment of the convicted person.
- F. If the person is released from a treatment facility, he shall immediately report to the Citizen Potawatomi Nation Sex Offender Registration Office and register as a sex offender.

**SECTION 12-2-200.     Notice to the Offender**

The Citizen Potawatomi Nation District Court shall notify and explain to the offender the requirements of registration either before his release from incarceration or immediately after sentencing. The Nation shall require the offender to sign a form that indicates he has been notified and explained such registration requirements and that he understands the registration requirements. The form shall be filed in the offender's criminal case.

**CHAPTER VI  
REGISTRATION**

**SECTION 12-2-201.     Registry Requirements for Offenders**

- A. All persons convicted under this Act must register as a sex offender. Registration is required for all offenses under this Act unless specifically stated to the contrary.
- B. Where to Register:
  - 1. Sex offenders shall initially register with the Citizen Potawatomi Nation Sex Office within three (3) days of sentencing, if no jail time is ordered.
  - 2. If the offender is incarcerated, he shall register at the facility in which he is detained before his release.
  - 3. All offenders must also register within three (3) days in the jurisdiction in which he:
    - a. Was convicted,

- b. Resides,
  - c. Is employed, and
  - d. Goes to school.
- C. Current information. All sex offenders convicted under this Act shall keep their information current in the registry at all times. A sex offender is required to appear in person at the Citizen Potawatomi Nation Sex Offender Office to update any change in the offender's information within three (3) days of such change. The information required to be updated includes but is not limited to: (a) name, (b) address, (c) employment or termination of employment, (d) school, or termination of school (e) termination of residence.
- D. Current information. All sex offenders convicted under this Act shall keep their information current in the registry at all times. A sex offender is required to inform the Citizen Potawatomi Nation Sex Offender Office to update any change in the offender's information within three (3) days of such change. The information required to be updated includes but is not limited to: (a) email address, (b) instant message address, (c) any other designations used in internet communications, postings, or telephone communications, (d) vehicle information, or (e) temporary lodging information in order to notify jurisdictions where the offender will be temporarily staying.
- E. Registration Period. The registration period begins to run upon release from custody for an incarcerated offender, or at sentencing for sex offenders not incarcerated.
- F. Clean Record. A Tier I sex offender who has maintained a clean record for at least ten (10) years may petition the court to reduce the registration period. A clean record is satisfied if:
  - 1. The offender has not been convicted of any offense for which imprisonment for more than one year may be imposed;
  - 2. The offender has not been convicted of any sex offense;



3. The offender has successfully completed any periods of supervised release, probation, and parole; and
  4. The offender has successfully completed an appropriate sex offender treatment program certified by the jurisdiction which convicted the offender or by the Attorney General (42 U.S.C. § 16915(b)(1)). Such jurisdiction shall decide what program design is sufficient and what “successful completion” is.
- G. Clean Record. A Tier III sex offender who is required to register because of a juvenile adjudication may have a registration and notification requirement terminated if the following conditions are met:
1. The offender is required to register based on a delinquency adjudication for an offense which required Tier III registration;
  2. The offender has had twenty-five (25) years with a “clean record”;
    - a. The offender has not been convicted of any offense for which imprisonment for more than one year may be imposed;
    - b. The offender has not been convicted of any sex offense;
    - c. The offender has successfully completed any periods of supervised release, probation, and parole; and
    - d. The offender has successfully completed an appropriate sex offender treatment program certified by the jurisdiction which convicted the offender or by the Attorney General (42 U.S.C. § 16915(b)(1)). Such jurisdiction shall decide what program design is sufficient and what “successful completion” is.
- H. A Tier I sex offender is required to personally appear to take a photograph, and review and verify registration information at least one (1) time per year with the Citizen Potawatomi

Nation Sex Offender Office. The offender's date of review shall be on or before the last date of registration.

This in-person appearance and requirements will occur at least one (1) time per year for fifteen (15) years unless otherwise established.

- I. All Tier II offenses are classified by the Citizen Potawatomi Nation as Tier III offenses for purposes of this Act and, as such, all Tier II sex offenders are required to personally appear to take a photograph, and review and verify registration information every three (3) months with the Citizen Potawatomi Nation Sex Offender Office.

This in-person appearance and requirements will occur at least every three (3) months.

- J. A Tier III sex offender is required to personally appear to take a photograph, and review and verify registration information every three (3) months with the Citizen Potawatomi Nation Sex Offender Office.

This in-person appearance and requirements will occur every three (3) months for life unless otherwise established.

- K. Upon entering the Nation's jurisdiction for residency, work, or school, a sex offender from another jurisdiction must register with the Citizen Potawatomi Nation Sex Offender Office within twenty-four (24) hours of entering.

- L. Failure to register in any jurisdiction, or update current information, shall carry a maximum penalty of incarceration of not more than one (1) year, or a civil penalty of not more than Five Thousand Dollars (\$5,000.00) or both.

- M. When a new jurisdiction is informed an offender intends to reside, be employed, or attend school in their jurisdiction, and that offender fails to appear for registration as required in a new jurisdiction, the jurisdiction receiving notice must inform the jurisdiction that provided notification (that the offender was to commence employment, residence, and/or school in the new jurisdiction) that the offender failed to appear for registration.

**SECTION 12-2-202. Registry Requirements of The Citizen Potawatomi Nation**

- A. This Act applies to all sex offenders, including those convicted of sexual offenses prior to its enactment. The Nation is specifically required to register offenders if they are in the tribal judicial system as prisoners, supervisees, or registrants or if they re-enter the system due to another conviction. The Nation shall develop a plan to notify such offenders of the new requirement. The Nation shall register:
1. Sex offenders convicted by a tribal court who are sentenced and released on probation or post-imprisonment supervision prior to the jurisdiction's passage of this Act and registration was not required at that time.
  2. Sex offenders who were not required to register previously, or who have completed any registration or probation requirements, and have been convicted of any new offense.
  3. Tier I offenders within three (3) months of becoming subject to the Act.
  4. Tier II offenders within three (3) months of becoming subject to the Act.
  5. Tier III offenders within three (3) months of becoming subject to the Act.
- B. If a sex offender fails to register, cannot be located, or may have absconded in the Nation's jurisdiction, as required by this Act, the Nation shall:
1. Put forth an effort to determine whether the sex offender has absconded;
  2. If no determination can be made, then a law enforcement agency with the jurisdiction to investigate must be notified;

3. If another jurisdiction or federal authorities gave notice of the possibility of a sex offender absconding, the jurisdiction proving such shall be notified.
- C. If a sex offender fails to register, cannot be located, or has absconded in the Nation's jurisdiction, as required by this Act, the Nation shall:
1. Petition the court for a warrant to arrest and detain the offender until a hearing can be set to determine the penalty, if any, for the offender's non-compliance;
  2. Revise the information in the tribal registry and the Nation Sex Offender Registry to reflect that the sex offender has failed to register and the offender's new status as an absconder;
  3. Notify the United States Marshal Service; and
  4. Enter the sex offender into the National Crime Information Center Wanted Person File.

**SECTION 12-2-203. Maintenance and Management of Registry**

- A. The Citizen Potawatomi Nation shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of the national Sex Offender Registration and Notification Act of 2007
- B. The Nation may manage and enforce the registration of all tiers of offenders who are convicted, reside, go to school, or work within this jurisdiction.
- C. The Citizen Potawatomi Nation may implement and maintain an electronic database of information and ensure that such information can be immediately transmitted to others and immediately accessed.
- D. The Citizen Potawatomi Nation shall procure and maintain all times computer software to enable the Nation to establish and operate a uniform sex offender registry and Internet web sites. Such software shall facilitate (a) the immediate exchange of information among jurisdictions, (b) public

access over the Internet to appropriate information, including the number of registered sex offenders in the Nation's jurisdiction, (c) full compliance with the requirements of the Sex Offender Registration and Notification Act of 2007, (d) communication of information to community notification program participant.

- E. Sex Offender Website. The Nation's registered sex offender information shall be made available on the Internet, and in a manner that is readily accessible to all jurisdictions and to the public. The website shall:
1. Allow for immediate exchange of information among other jurisdictions;
  2. Provide for public access to appropriate information on sex offenders in the Nation's jurisdiction;
  3. Be able to receive information from other participating jurisdictions regarding offenders entering the tribal jurisdiction;
  4. Work in conjunction with the Dru Sjodin National Sex Offender Public Website;
  5. Allow for data links to sex offender safety and education resources;
  6. Have instructions on how to correct erroneous information on a sex offender listed on the website;
  7. Give notice and warning that information on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry, or residing, or working at any reported address. The warning shall note that any action could result in civil and criminal penalties;
  8. Implement field search capabilities, including but not limited to, name, telephone numbers, county, city, or town, zip code, and geographical radius; and
  9. Provide an automated notification system which incorporates substantially the following features;

- a. The information required to be included on sex offender websites is posted on the Nation's sex offender website within three (3) business days;
  - b. The Nation's sex offender website includes a function under which members of the public and organizations can request notification when sex offenders commence residence, employment, or school at attendance within zip codes or geographic radius areas specified by the requester, where the requester provides an e-mail address to which the notice is to be sent; and
  - c. Upon posting on the Nation's sex offender website of new residence, employment, or school attendance information for a sex offender within an area specified by the requester, they system automatically send an e-mail notification to the requester which identifies the sex offender sufficiently that the requester can then access the Nation's website and view the information about the sex offender on the website.
- F. In addition to the public website, the Nation shall notify, within three (3) business days of an offender registering or updating information, the following:
1. The U.S. Attorney General or national database;
  2. All States, including the District of Columbia, the five principal U.S. Territories, and any tribe operating as a SORNA registration jurisdiction;
  3. All law enforcement agencies, including, but not limited to police departments, sheriff's offices, prosecutor's offices, probation agencies, and any other agencies with criminal investigation, prosecution, or sex offender supervision functions, schools, and the public housing agency in the area where the offender resided;

4. Each jurisdiction where the offender is or will be employed, attends school, and resides;
5. Agencies in the immediate area that conduct employment background checks under section 3 of the National Child Protection Act of 1993;
6. Social Service or volunteer entities in the area responsible for protecting minors;
7. Any organization or individual that has requested notification.

**SECTION 12-2-204. Registry Information Required to be Reserved by The Potawatomi Nation**

- A. The following information on each sex offender is required to be kept by the Citizen Potawatomi Nation Sex Offender Office, and shall be used on the public website unless specifically excluded:
  1. Name including a legal name, a nickname, a tribal or traditional name, any aliases;
  2. Date of Birth, and dates that the offender uses at a birth date;
  3. Detailed physical description. This includes a general appearance of the offender including tattoos, scars, or other identifying marks;
  4. Current Photos. At least one photograph of the offender shall be posted. If available, more than one photographs should be used showing the front and back of the offender, and the offender in other presentations;
  5. All internet identifiers or monikers for purposes of routing or self-identification in the Internet communications or postings and email and instant messaging addresses;
  6. Telephone numbers including cell, work, and residential locations or any other designations used by

- sex offender for purposes of routing or self-identification in telephonic communication;
7. Residence address. Past and current street addresses only, no post office boxes. If no street address is available, then a reasonable description of where the person's home is located shall be used;
  8. Other residences or temporary lodging information. This includes any place where the offender has stayed or will stay for seven (7) accumulative days or more, including the address and period of time the offender stays there;
  9. Employer name and address, which included self-employment whether compensated or not. If the sex offender has no fixed place of employment, list other employment information concerning places where the sex offender works such as a normal travel route or the general area(s) in which the offender works;
  10. Professional licenses;
  11. School or educational information. Name and address of any educational institution where the offender is currently enrolled and physically present;
  12. Vehicle information. License plate, registration number or identifier, description of any vehicle owned or regularly operated by the offender for personal or work use, and permanent or frequent location where all vehicles are kept. This includes watercraft, aircraft, and any other land vehicles, such as ATV's;
  13. Text of provision of law defining the criminal offense for which the offender is registered. This can be electronic text or a data link;
  14. Fingerprints and palm prints. This can be digitized form, or links to the central registry.
  15. Driver's license or identification card (digitized photocopy);
  16. Tribal affiliation and CDIB card (digitized photocopy);



17. Passport and immigration documents. However, all document numbers must be digitized;
  18. Criminal History, including the date of all arrests, the date of all convictions, any outstanding warrants, the registration status, and the status of parole, probation, or supervised release;
  19. A DNA sample taken from the sex offender for analysis and entry into the Combined DNA Index System (CODIS); and
  20. Social Security number.
- B. Such information shall be promptly shared among registration jurisdiction and disclosure of all of the information, except that which is mandatorily excluded, to the general public and specified entities.

**SECTION 12-2-205. Mandatory Exclusions**

The following information shall not be placed for public viewing on the sex offender registry web site: a) the identity of any victims of a sex offense, b) the offender's social security number, c) arrests that did not result in conviction, d) travel and immigration document number, or e) internet identifiers.

**SECTION 12-2-206. Review Information**

- A. Each time an offender appears before the Citizen Potawatomi Nation Sex Offender Office for review and verification of his information, the attending officer shall take a new photo of the offender and provide additional forms to the offender to verify or correct the offender's information.
- B. The updated information must be immediately entered into the register and transmitted by electronic means to all participating jurisdictions.

**SECTION 12-2-207. Citizen Potawatomi Nation as Residence, Employer, and School Jurisdictions**

- A. If the Citizen Potawatomi Nation registers a sex offender because he resides, works, or attends school within its jurisdiction, the Nation shall immediately notify all jurisdictions where the offender intends to reside, work, or attend school and shall immediately notify other jurisdictions where the offender is currently registered, or is required to register.
- B. If a sex offender is currently registered in the Citizen Potawatomi Nation jurisdiction because he was convicted, resides, works, or attends school therein, and the offender gives notice that he intends to take up residence outside the Citizen Potawatomi Nation Jurisdiction, the Nation must immediately notify all jurisdictions where the offender is currently registered or is required to register. The Nation shall also notify the U.S. Marshals Service and update all of the offender's registry information.

**SECTION 12-2-208. Registration Not Required**

The nation shall not require registration with the sex offender registry based on a tribal court conviction if the defendant was denied the right to the assistance of counsel and the defendant would have had a right to the assistance of counsel under the United States Constitution in comparable state court proceedings.

**SECTION 12-2-209. Miscellaneous**

- A. Immunity for Good faith Conduct:  
The Citizen Potawatomi Nation and their agencies, officers, and employees, shall be immune from liability for good faith conduct under this Act.
- B. Employee of the Citizen Potawatomi Nation:

Any employee of the Citizen Potawatomi Nation who fails to inform the Citizen Potawatomi Nation that he is a registered sex offender, or who fails to register as a sex offender, or who fails to keep sex offender registration current, may be discharge from employment with the Citizen Potawatomi Nation without further notice.

#### **SECTION 12-2-144 through 12-2-147.**

Sections 12-2-144 through 12-2-147 shall be renumbered as Sections 12-2-148 through 12-2-151 to facility the placement of the following crimes in the Tribal Criminal Code (as required by federal law).

#### **SECTION 12-2-144. Incest**

- A. It shall be unlawful for any persons, who being within the degree of consanguinity within which marriages are by the Citizen Potawatomi Nation declared incestuous and void, to the intermarry with each other, or commit adultery or fornication with each other.
- B. Tier I offense-Penalty. The penalty for incest shall be incarceration for not more than one (1) year and a fine of not more than Five Thousand Dollars (\$5,000.00), or both, plus costs.

#### **SECTION 12-2-145 Misleading Domain Name on the Internet**

- A. It shall be unlawful for a person to knowingly use a misleading domain name on the Internet with the intent to deceive a minor or adult person into viewing material constituting obscenity.
- B. For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as “sex” or “porn”, is not misleading.
- C. For the purposes of this section, the term “material that is harmful to minors” means any communication, consisting of

nudity, sex, or excretion, that, taken as a whole and with reference to its context:

1. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  2. Lacks serious literary, artistic, political, or scientific value for minors.
- D. Tier I offense-Penalty. Any person found to be in violation of this section shall be punished by imprisonment of not more than one (1) year or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

**SECTION 12-2-146. Misleading Words or Digital Images on the Internet**

It shall be unlawful for any person to:

- A. Knowingly embed words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity.
- B. Knowingly embed words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet.
- C. Construction. For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as “sex” or “porn”, is not misleading.


Tier I offense-Penalty. Any person found to be in violation of this section shall be punished by imprisonment of not more than one (1) year or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

**NOW, THEREFORE BE IT ENACTED BY THE LEGISLATURE OF THE CITIZEN POTAWATOMI NATION** that the above Criminal Sexual Conduct ordinance, of the Tribal Code of the Citizen Potawatomi Nation **IS HEREBY APPROVED.**

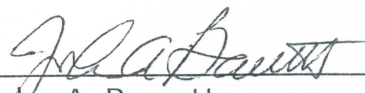
**EFFECTIVE DATE:** This ordinance shall become effective upon adoption by the Legislature of the Citizen Potawatomi Nation.

**CERTIFICATION**

In his capacity as Secretary-Treasurer of the Citizen Potawatomi Nation, the undersigned hereby certifies that the above and foregoing ordinance is a true and correct copy of Ordinance #11-02J&PS-11-02-T12, as approved on the 28<sup>th</sup> day of June, 2010, with 15 voting for, 0 opposed, 1 absent and 0 abstaining.

  
\_\_\_\_\_  
D. Wayne Trousdale  
Secretary-Treasurer

Executive Approval:  
 Approved  
 Disapproved

  
\_\_\_\_\_  
John A. Barrett  
Tribal Chairman

# Citizen Potawatomi Nation



Ordinance #11-01-NR-11-01-T40

## CHAPTER 2

### FLOOD DAMAGE PREVENTION ORDINANCE OF THE CITIZEN POTAWATOMI NATION

#### **SECTION 40-2-101. CITATION**

This ordinance shall be known as the “Flood Damage Prevention Ordinance” and shall apply to tribally-owned lands of the Citizen Potawatomi Nation subject to periodic flooding.

#### **STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS**

#### **SECTION 40-2-102. STATUTORY AUTHORIZATION**

The Citizen Potawatomi Nation, pursuant to legislative authority granted by Article 4 Section 3 of the Citizen Potawatomi Nation Constitution, does ordain as follows:

#### **SECTION 40-2-103. FINDINGS OF FACT**

(A) The flood hazard areas of Citizen Potawatomi Nation Tribal lands are subject to periodic inundation which results in loss of property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

#### **SECTION 40-2-104. STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- F. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

#### **SECTION 40-2-105. METHODS OF REDUCING FLOOD LOSSES**

In order to accomplish its purposes, this ordinance uses the following methods:

- A. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- D. Control filling, grading, dredging and other development which may increase flood damage;
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

## **SECTION 40-2-106. DEFINITIONS**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**ALLUVIAL FAN FLOODING** - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

**APEX** - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

**AREA OF SHALLOW FLOODING** - means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD** - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

**BASE FLOOD** - means the flood having a one percent chance of being equaled or exceeded in any given year.

**BASEMENT** - means any area of the building having its floor subgrade (below ground level) on all sides.

**CRITICAL FEATURE** - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT** - means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.



**ELEVATED BUILDING** - means a non-basement building: (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water; and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program regulations.

**EXISTING CONSTRUCTION** - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD OR FLOODING** - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. the overflow of inland or tidal waters.
2. the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM)** - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** - is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

**FLOODPLAIN OR FLOOD-PRONE AREA** - means any land area susceptible to being inundated by water from any source (see definition of flooding).

**FLOODPLAIN MANAGEMENT** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROTECTION SYSTEM** - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOOD PROOFING** - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY (REGULATORY FLOODWAY)** - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FUNCTIONALLY DEPENDENT USE** - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** - means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
  - a) by an approved state program as determined by the Secretary of the Interior or;
  - b) directly by the Secretary of the Interior in states without approved programs.

**LEVEE** - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM** - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood insurance Program regulations.

**MANUFACTURED HOME** - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**NEW CONSTRUCTION** - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**RECREATIONAL VEHICLE** - means a vehicle which is:

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projections;
3. designed to be self-propelled or permanently towable by a light duty truck; and
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use

**START OF CONSTRUCTION** - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part

of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** - means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE** - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or;
2. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**VARIANCE** - is a grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

**VIOLATION** - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** - means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**Section 40-2-107. GENERAL PROVISIONS**

**A. LANDS TO WHICH THIS ORDINANCE APPLIES**

The ordinance shall apply to all tribally-owned lands of the Special Flood Hazard Areas of the Citizen Potawatomi Nation.

**B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The areas of special flood hazard identified by FEMA in a scientific and engineering report entitled, "The Flood Insurance Study for Pottawatomie County, Oklahoma and Incorporated Areas" dated September 3, 2010, with the accompanying Flood Insurance Rate Map (FIRM) are hereby adopted on September 3, 2010, by reference and declared to be a part of this ordinance. However, until this date the current effective flood maps for the City of Shawnee dated April 2, 1992, shall be used for this purpose until September 3, 2010.

**C. ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Development Permit shall be required to ensure conformance with the provisions of this ordinance.

**D. COMPLIANCE**

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

**E. ABROGATION AND GREATER RESTRICTIONS**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**F. INTERPRETATION**

In the interpretation and application of this ordinance, all provisions shall be:

1. considered as minimum requirements;
2. liberally construed in favor of the governing body; and
3. deemed neither to limit nor repeal any other powers granted under State statutes.

**G. WARNING AND DISCLAIMER OR LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance

shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**Section 40-2-108. ADMINISTRATION**

**A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

The Citizen Potawatomi Nation Floodplain Board shall appoint the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

**B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

Duties and responsibilities of the Floodplain Administrator shall include, but shall not be limited to the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance;
2. Review permit applications to determine whether proposed construction or other development, including the placement of manufactured homes, will be reasonably safe from flooding;
3. Review, approve or deny all applications for development permits required by adoption of this ordinance;
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required;
5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;
6. When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5; and
7. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial

improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

### **C. PERMIT PROCEDURES**

Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
3. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section B(2);
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
5. Maintain a record of all such information in accordance with Article 4, Section (B)(1).

Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The compatibility of the proposed use with existing and anticipated development;



5. The safety of access to the property in times of flood for ordinary and emergency vehicles;
6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
8. The necessity to the facility of a waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

#### **D. VARIANCE PROCEDURES**

1. The Citizen Potawatomi Nation Floodplain Board shall hear and render judgment on requests for variances from the requirements of this ordinance.
2. The Citizen Potawatomi Nation Floodplain Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
3. Any person or persons aggrieved by the decision of the Citizen Potawatomi Nation Floodplain Board may appeal such decision in the Citizen Potawatomi Nation Tribal Court System.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C of

this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

7. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Article 1, Section C).
8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
  - a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - b) Variances shall only be issued upon:
    - 1) showing a good and sufficient cause;
    - 2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    - 3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - c) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
11. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

- a) the criteria outlined in Article 4, Section D(1)-(9) are met, and
- b) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

#### **Section 40-2-109. PROVISIONS FOR FLOOD HAZARD REDUCTION**

##### **A. GENERAL STANDARDS**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and
7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

##### **SECTION B. SPECIFIC STANDARDS**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Article 3, Section B the following provisions are required:

1. **Residential Construction** - new construction and substantial improvement of

any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C(1) is satisfied.

2. **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.
3. **Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
  - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b) The bottom of all openings shall be no higher than one foot above grade.
  - c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
4. **Manufactured Homes** -
  - a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this

requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

- b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites: (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
  - c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
    - 1) the lowest floor of the manufactured home is at or above the base flood elevation, or
    - 2) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
5. **Recreational Vehicles** - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
- a) be on the site for fewer than 180 consecutive days,
  - b) be fully licensed and ready for highway use, or
  - c) meet the permit requirements of Article 4, Section C(1), and the elevation and anchoring requirements of "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

### **C. STANDARDS FOR SUBDIVISION PROPOSALS**

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this ordinance.
2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this ordinance.
3. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

### **Section 40-2-110. PENALTIES FOR NON-COMPLIANCE**

#### **A. GENERAL REQUIREMENTS**

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the National Flood Insurance Program (NFIP) regulation, to qualify for the sale of federally-subsidized flood insurance, a community must adopt floodplain management regulation that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions."

In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e. mudflow) or floodrelated erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or

#### **B. ENFORCEMENT**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a

misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$10,000 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Citizen Potawatomi Nation from taking such other lawful action as is necessary to prevent or remedy any violation.

It is hereby found and declared by the Citizen Potawatomi Nation that severe flooding has occurred on tribally-owned lands and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this ordinance become effective immediately.

Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

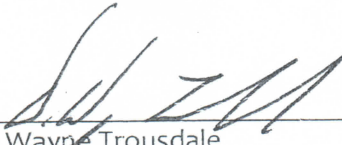
Therefore, Potawatomi Ordinance No. 11-01-NR-11-01-T40 entitled "Flood Damage Prevention Ordinance of the Citizen Potawatomi Nation" supersedes all other flood damage prevention ordinances of the Citizen Potawatomi Nation.

**NOW, THEREFORE BE IT ENACTED BY THE LEGISLATURE OF THE CITIZEN POTAWATOMI NATION** that the above Flood Damage Prevention Ordinance, of the Tribal Code of the Citizen Potawatomi Nation **IS HEREBY APPROVED.**


**EFFECTIVE DATE:** This ordinance shall become effective upon adoption by the Legislature of the Citizen Potawatomi Nation.

**CERTIFICATION**

In his capacity as Secretary-Treasurer of the Citizen Potawatomi Nation, the undersigned hereby certifies that the above and foregoing ordinance is a true and correct copy of Ordinance #11-01-NR-11-01-T40, as approved on the 28<sup>th</sup> day of June, 2010, with 15 voting for, 0 opposed, 1 absent and 0 abstaining.

  
\_\_\_\_\_  
D. Wayne Trousdale  
Secretary-Treasurer

Approved  
 Disapproved

  
\_\_\_\_\_  
John A. Barrett  
Tribal Chairman