

POTAWATOMI LAW AND ORDER CODE

TITLE 13
BUSINESS LICENSING

CHAPTER 13-1..... 1
LEGISLATIVE FINDINGS AND PURPOSE 1
 Section 13-1-1. Sovereign Power to Regulate and License Business and Impose License Fees Therefore..... 1
 Section 13-1-2. Purpose..... 1
 Section 13-1-3. Definitions..... 1
 Section 13-1-4. Administration of Title..... 3
 Section 13-1-5. Administrative Action..... 3
 Section 13-1-6. Agreements with Federal, State and Local Governments..... 3

CHAPTER 13-2..... 3
BUSINESS LICENSES 3
 Section 13-2-1. Applicability..... 3
 Section 13-2-2. Application and Issuance..... 3
 Section 13-2-3. Term of License..... 4
 Section 13-2-4. Denial of License and Appeal..... 4
 Section 13-2-5. Exemptions..... 5
 Section 13-2-6. Classes of Licenses..... 5
 Section 13-2-7. Conditions of License..... 5

CHAPTER 13-3..... 6
SANCTIONS 6
 Section 13-3-1. Revocation of License; Failure to Obtain License; Show Cause Hearing..... 6
 Section 13-3-2. Civil Penalties and Restitution..... 6
 Section 13-3-3. Removal and Exclusion of Non-Indians..... 7
 Section 13-3-4. Other Remedies..... 7

CHAPTER 13-4..... 8
NON-PROFIT CORPORATIONS..... 8
 Section 13-4-1. Short Title..... 8
 Section 13-4-2. Definitions..... 8
 Section 13-4-3. Applicability..... 9
 Section 13-4-4. Purpose..... 9
 Section 13-4-5. General Powers..... 9
 Section 13-4-6. Defense of Ultra Vires..... 11
 Section 13-4-7. Corporate Name..... 11
 Section 13-4-8. Registered Office and Registered Agent..... 11
 Section 13-4-9. Registered Agent as an Agent for Service..... 12
 Section 13-4-10. Members..... 12
 Section 13-4-11. By-laws..... 12

Section 13-4-12. Meetings of Members.....	12
Section 13-4-13. Notice of Meeting to Members	13
Section 13-4-14. Voting.....	13
Section 13-4-15. Quorum.....	14
Section 13-4-16. Board of Directors	14
Section 13-4-17. Number, Election, Classification and Removal of Directors	14
Section 13-4-18. Vacancies.....	15
Section 13-4-19. Quorum of Directors	15
Section 13-4-20. Committees.....	15
Section 13-4-21. Place and Notice of Directors' Meetings	16
Section 13-4-22. Officers	16
Section 13-4-23. Removal of Officers	16
Section 13-4-24. Books and Records.....	17
Section 13-4-25. Shares of Stock and Dividends Prohibited.....	17
Section 13-4-26. Loans to Directors and Officers Prohibited.....	17
Section 13-4-27. Incorporators	17
Section 13-4-28. Articles of Incorporation	17
Section 13-4-29. Filing of Articles Incorporation.....	18
Section 13-4-30. Effect of Issuance of Certificate of Incorporation.....	19
Section 13-4-31. Organization Meeting.....	19
Section 13-4-32. Right to Amend Articles of Incorporation	19
Section 13-4-33. Procedure to Amend Articles of Incorporation	19
Section 13-4-34. Articles of Amendment	20
Section 13-4-35. Filing of Articles of Amendment	20
Section 13-4-36. Effect of Certificate of Amendment.....	21
Section 13-4-37. Voluntary Dissolution	21
Section 13-4-38. Distribution of Assets.....	22
Section 13-4-39. Plan for Distribution.....	22
Section 13-4-40. Revocation of Involuntary Dissolution	23
Section 13-4-41. Articles of Dissolution.....	23
Section 13-4-42. Filing of Articles of Dissolution.....	24
Section 13-4-43. Involuntary Dissolution.....	25
Section 13-4-44. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation	25
Section 13-4-45. Procedure in Liquidation of Corporation by Court	26
Section 13-4-46. Qualification of Receivers.....	27
Section 13-4-47. Filing of Claims in Liquidation Proceedings	27
Section 13-4-48. Discontinuance of Liquidation Proceedings.....	28
Section 13-4-49. Decree of Involuntary Dissolution	28
Section 13-4-50. Filing of Decree of Dissolution.....	28
Section 13-4-51. Deposits with Tribal Secretary	28
Section 13-4-52. Annual Report of Domestic and Foreign Corporations.....	28
Section 13-4-53. Filing of Annual Report of Corporation.....	29
Section 13-4-54. Penalties Imposed Upon Corporations	29
Section 13-4-55. Fees for Filing Documents and Issuing Certificates	29
Section 13-4-56. Certificates and Certified Copies to be Received in Evidence.....	30
Section 13-4-57. Forms to be Furnished by the Tribal Secretary	30

Section 13-4-58. Greater Voting Requirements..... 30
Section 13-4-59. Waiver of Notice 30
Section 13-4-60. Action by Members or Directors Without a Meeting..... 31
Section 13-4-61. Effect of Invalidity of Part of This Chapter 31

POTAWATOMI LAW AND ORDER CODE

TITLE 13 BUSINESS LICENSING

CHAPTER 13-1 LEGISLATIVE FINDINGS AND PURPOSE

Section 13-1-1. Sovereign Power to Regulate and License Business and Impose License Fees Therefore.

The power to regulate business conducted within the Prairie Band of Potawatomi Indian Reservation by all persons, Indian and non-Indian, and to impose license fees therefore, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Prairie Band of Potawatomi Tribe except where it has been limited or withdrawn by applicable laws of the United States. The Tribe is a sovereign Indian tribe governed pursuant to the Constitution and Bylaws approved by the Commissioner of Indian Affairs. Pursuant to the Constitution and Bylaws, the Prairie Band of Potawatomi Tribal Council is the governing body of the Tribe.

Section 13-1-2. Purpose.

The Tribal Council finds that the regulation of persons engaged in trade and business on the Reservation is necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe. Accordingly, the Tribal Council declares that the Tribe has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business within the Reservation, except where such authority is limited or withdrawn from the Tribe by the applicable laws of the United States.

Section 13-1-3. Definitions.

The following terms, whenever used or referred to in this Title, shall have the following meanings, unless a different meaning clearly appears from the context:

(A) **Agent.** “Agent” means the individual or individuals designated by any licensee to receive and accept service to process.

(B) **Applicant.** “Applicant” means any person who submits an application to the Tribe for a business license and who has not yet received such license.

(C) **Business.** “Business” means any regular or temporary business activity engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services; provided, however, that an isolated sale of property or services shall not be considered to be business under this Title.

(D) Company. “Company” means any person or group of people engaged in business.

(E) Governmental Entity. “Governmental entity” means the United States, the Prairie Band of Potawatomi Indian Tribe, a state or any political subdivision, agency, or any subordinate organization of the foregoing, including economic enterprises or other entities owned or controlled by the Tribe.

(F) Licensee. “Licensee” means any person who is granted a business license by the Tribe.

(G) Notice. “Notice” means actual notice by hand delivery or by certified mail. For time computations as provided for in this Title, which are to begin upon notice, such notice shall be at delivery, except that where delivery is not possible after three consecutive postal days due to the inaction of the agent, notice shall be at the time of the first attempted delivery. Upon return of the forms of notice to the Tax Commission, the forms shall be mailed by regular mail.

(H) Sale. “Sale” means all sales, barter, trades, exchanges, or other transfers of ownership for value of property from a retailer to any person.

(I) Service of Process. “Service of process” means the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents of the Tax Commission or District Court.

(J) Services. “Services” means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.

(K) Tax Commission. “Tax Commission” means the Potawatomi Tax Commission as established in Title 10 of this Code.

(L) Tribal Law. “Tribal law” means the Tribal Constitution, and the Tribal Law and Order Code, as amended hereafter, the Tribal Common Law and any other law made applicable by order of the District Court.

(M) Tribal Member or Member of the Tribe. “Tribal member” or “member of the Tribe” means an enrolled member of the Tribe. A corporation, partnership or other entity shall be considered a tribal member, for purposes of this Chapter only, if 51% or more of the entity is owned by tribal members.

Section 13-1-4. Administration of Title.

Because of the close interrelationship between the Tribe's inherent sovereign powers to regulate the conduct of business on the Reservation and the Tribe's inherent sovereign powers to collect taxes from persons engaged in business on the Reservation, the Tax Commission is hereby delegated the responsibility to administer the provisions of this Title. The Tax Commission is hereby delegated all powers which are specifically provided for in this Title, or impliedly necessary to implement its provisions.

Section 13-1-5. Administrative Action.

The Tax Commission shall promulgate regulations pursuant to this Title, formulate revisions of or amendments to this Title, and take other actions necessary for the administration of the provisions of this Title.

Section 13-1-6. Agreements with Federal, State and Local Governments.

In the event it is deemed appropriate to effectuate the provisions of this Title, the Tribal Council shall negotiate Memoranda of Agreement concerning this Title with federal, state and local governments.

**CHAPTER 13-2
BUSINESS LICENSES**

Section 13-2-1. Applicability.

This Title shall be applicable to all person engaged in business within the exterior boundaries of the Reservation. No person shall engage in business upon the Reservation without a valid business license issued by the Tax Commission, except as provided in Section 13-2-5(A).

Section 13-2-2. Application and Issuance.

An application for a business license shall be submitted in writing to the Tax Commission on forms which it shall provide. Any person engaged in business at the time this Title is enacted shall have 30 days in which to obtain and submit to the Tax Commission an application for a license; provided, that a renewal application for an annual business license shall be made 30 days prior to expiration of such license. Each application shall include:

- (A) A description of the type of business;
- (B) The name and address of the owner or owners of the business;
- (C) The trade name, if any, to be used by the company;

- (D) The locations of the Reservation at which the business will be conducted;
- (E) A sworn statement that the applicant will comply with all tribal law applicable to the applicant's business;
- (F) A statement that the applicant consents to District Court jurisdiction and service of process in matters arising from the conduct of business;
- (G) The name, address and signature of the agent who will accept service of process on behalf of the company.

The Tax Commission shall notify the applicant by regular mail within 14 days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

Section 13-2-3. Term of License.

The term of each tribal business license shall be as follows:

- (A) **Temporary Business License.** The term of a temporary tribal business license shall be four days.
- (B) **Seasonal Business License.** The term of a seasonal tribal business license shall be three months.
- (C) **Annual Business License.** The term of a permanent business license shall be for one calendar year.

Section 13-2-4. Denial of License and Appeal.

If it is determined that:

- (A) the applicant has materially misrepresented facts contained in the application,
- (B) the applicant presently is in non-compliance with tribal law, or
- (C) the business will threaten the peace, safety, morals, or general welfare of the Tribe,

The Tax Commission shall issue an order of denial to the applicant by certified mail, return receipt requested, within 14 days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has 30 days from receipt of the order of denial to file a notice of appeal with the District Court.

Section 13-2-5. Exemptions.

- (A) The following shall not be required to obtain a license under this Title:
- (1) governmental entities;
 - (2) tribal members engaged in the creation of traditional Indian art or handicrafts in their home;
 - (3) tribal members engaged in the traditional practice of medicine; and
 - (4) employees of any person.
- (B) The following shall not be required to pay a fee for the issuance of a business license under this Title:
- (1) any church engaged in raising funds for religious or charitable purposes;
 - (2) any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual; and
 - (3) any accredited school, no part of the income of which accrues to the personal benefit of any individual.

Section 13-2-6. Classes of Licenses.

- (A) **Temporary Business License.** All persons engaged in business on the Reservation for a period of four days or less shall have a temporary business license. The fee for a temporary business license is \$10.00.
- (B) **Seasonal Business License.** All persons engaged in business on the Reservation for a period of three months or less shall have a seasonal business license. The fee for a seasonal business license is \$25.00.
- (C) **Annual Business License.** All persons engaged in business for a period exceeding three months shall have an annual business license. The fee for an annual business license is \$50.00. A licensee holding an annual business license shall apply for renewal each year on a renewal application form provided by the Tax Commission, but the licensee shall notify the Tax Commission of any change in the licensee's business activities. Renewal of an annual business license shall be made pursuant to the provisions in 13-2-2.

(Amended PBP TC No. 2012-034, February 13, 2012.)

Section 13-2-7. Conditions of License.

- (A) Each licensee shall comply with all applicable tribal laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

(B) Each licensee consents to the jurisdiction of the District Court as to any cause of action arising in connection with the transaction of any business within the Reservation, or any tortuous acts committed in connection with the transaction of any business within the Reservation. Each licensee consents to the service of process of the District Court with respect to all actions over which the District Court has subject matter jurisdiction, in accordance with this Code.

(C) Each licensee shall respond in a timely manner to requests by the Tax Commission for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Title.

CHAPTER 13-3 SANCTIONS

Section 13-3-1. Revocation of License; Failure to Obtain License; Show Cause Hearing.

(A) Whenever it is brought to the attention of the Tax Commission that any person is in non-compliance with any condition of his license or has failed to obtain a license as required by this Title, the Tax Commission may serve upon such person or any agent of such person an order to show-cause why his license should not be revoked or why he should not be enjoined from doing business on the Reservation without a license. Such notice shall state the reason for the order, the time and place for the show cause hearing before the District Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he shall deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding thirty (30) days and not less than twenty (20) days from the date of the notice. The hearing shall be governed in all respects in accordance with the Rules of Procedure of the District Court.

(B) In the event it is determined that any person's non-compliance with this Title is a direct and immediate threat to the peace, safety, morals, or general welfare of the residents of the Reservation, the Tax Commission shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with the District Court within thirty (30) days from receipt of the cease and desist order.

Section 13-3-2. Civil Penalties and Restitution.

(A) If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Title, the Tax Commission may bring an action in the District Court for an order requiring the person to appear and show cause why a monetary penalty should not be imposed and

restitution should not be ordered; provided, the amount of the penalty shall not exceed \$1,000.00 for each violation.

(B) The Tax Commission may submit a recommendation to the District Court regarding any restitution which the person should pay to any person or persons injured by his failure to comply with the conditions of his license or his failure to secure a license within the time requirements of this Title.

(C) The Tax Commission may submit a recommendation to the District Court regarding the amount of any civil penalty which the person should pay for failure to comply with the conditions of his license or failure to secure a license within the time requirements of this Title.

If the Tax Commission submits a suggested penalty amount, the Tax Commission shall expressly address in writing each and all of the following criteria:

- (1)** the good or bad faith of the violator;
- (2)** the injury to the public resulting from the violation;
- (3)** the benefits derived by the violator from the violation;
- (4)** the violator's ability to pay;
- (5)** the administrative costs of prosecution; and
- (6)** the need to deter similar behavior by the violator and others and to vindicate the Tribe's authority and the integrity of the Tax Commission's orders.

The purpose of the civil penalty provided for herein shall primarily to defray the costs of administration and enforcement of this Title, and secondarily, to deter continued violations of this Title by the violator or others; provided, however, that all funds collected by the District Court under this section shall be subject to disposition by the Council.

Section 13-3-3. Removal and Exclusion of Non-Indians.

In addition to the civil penalties and other remedies provided herein, the District Court may order any person in violation of this Title excluded from Potawatomi Indian land, and may direct the Tribal Police to remove such person from Potawatomi Indian land in accordance with Title 14.

Section 13-3-4. Other Remedies.

In addition to the civil penalties and other remedies provided herein, the Tax Commission may petition the District Court for any remedy provided in this Code which is necessary to enforce the provisions of this Title, including but not limited to a temporary restraining order and a preliminary or permanent injunction. The Tax Commission may also petition a court of competent jurisdiction for a writ of execution to enforce an order,

judgment or decree of the District Court off-Reservation. The order, judgment or decree must include findings showing:

- (A) the basis for the District Court's jurisdiction over the subject matter and the parties;
- (B) the order, judgment or decree was not obtained fraudulently; and
- (C) the defendant was afforded due process.

(Title 13 enacted by PBP TC No. 92-57, November 18, 1992)

CHAPTER 13-4 NON-PROFIT CORPORATIONS

Section 13-4-1. Short Title

This Chapter shall be known and may be cited as the Prairie Band Potawatomi Nation Nonprofit Corporation Act.

Section 13-4-2. Definitions

- (A) **Corporation** means a corporation chartered under the provisions of this Chapter.
- (B) **Not for Profit Corporation or Nonprofit Corporation** means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this Chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution or final liquidation as permitted in this Chapter.
- (C) **Articles of Incorporation** means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special ordinance or resolutions of the Tribal Council, means such special ordinance or resolution and any amendments thereto.
- (D) **By-laws** means the formal written rules adopted for the regulation or management of the affairs of a corporation irrespective of the names or names by which such rules are designated.
- (E) **Member** means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.
- (F) **Board of Directors** means the group of persons vested with the management of the affairs of a corporation irrespective of the name by which such group is designated.

(G) **Insolvent** means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(H) **Secretary** means the Secretary of the Tribal Council or the agent or agents designated by her or him to perform any function vested in the Secretary by this Chapter.

(I) **Reservation** means the Prairie Band Potawatomi Nation Reservation.

(J) **The Court** means, except where otherwise specified, the Prairie Band Potawatomi Tribal Court.

Section 13-4-3. Applicability

The provisions of this Chapter shall apply to all nonprofit corporations which are domiciled or which has its principal place of business on the reservation, or whose Board of Directors reside on the reservation, or which conducts its principal operations on the reservation, and is organized hereunder or which elects to accept the provisions of this Chapter.

Section 13-4-4. Purpose

Corporations may be organized under this Chapter for any lawful purpose or purposes including, but not limited to, one or more of the following purposes: benevolent; religious, missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civil; professional; commercial; industrial; business; or trade association; mutual or civic improvement; and promotion of the arts and culture.

Section 13-4-5. General Powers

Each corporation shall have the power:

(A) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(B) To sue and be sued, complain and defend, in its corporate name; provided that, notwithstanding any other provision of this Chapter or the Prairie Band Potawatomi Law and Order Code or other law, corporations formed by the Tribal Council or other public bodies with a substantial portion of their operations within the Reservation related to tribal purposes shall not be subject to suit except (i) to the extent that an express waiver of sovereign immunity has been adopted by the Tribal Council or General Council, in which further event sovereign immunity shall not be waived beyond the coverage of any insurance in place and (ii) that the corporation may be subject to suit for equitable relief to enforce compliance with this Chapter;

(C) To have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed in any other manner reproduced;

(D) To purchase, take, receive, lease, take by gift or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(E) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(F) To lend money to and otherwise assist its employees other than its officers and directors;

(G) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, whether or not incorporated under this Chapter and whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligation of the United States, or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof or any tribe;

(H) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchise and income;

(I) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(J) To conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Chapter;

(K) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(L) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws, ordinances, and regulations of the Prairie Band Potawatomi Nation and the United States, for the administration and regulation of the affairs of the corporation; and

(M) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized.

Section 13-4-6. Defense of Ultra Vires

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(A) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation, if the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party. The Court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract. No compensation for the loss or damages sustained by either of them which may result from the action of the Court in setting aside and enjoining the performance of the contract shall be awarded by the Court, except as otherwise specifically permitted by this Act.

(B) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustee of the corporation; and

(C) In a proceeding by the Tribal Secretary or Tribal Council as provided in this Chapter, to dissolve the corporation or in a proceeding by the Tribal Secretary or Tribal Council to enjoin the corporation from the transaction of unauthorized acts.

Section 13-4-7. Corporate Name

The Corporate Name:

(A) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and

(B) Shall not be the same as, or deceptively similar to the name of any corporation, whether for profit or not for profit, organized under this Chapter or any other Code or resolution of the Nation to transact business or conduct affairs on the Reservation. A name which contains the words "Prairie Band Potawatomi Nation" or other similar or shortened designation may not be used without prior written approval of the Tribal Council.

Section 13-4-8. Registered Office and Registered Agent

Each corporation shall have and continuously maintain on this Reservation:

(A) A registered office, and;

(B) A registered agent.

Section 13-4-9. Registered Agent as an Agent for Service

(A) The registered agent appointed by a corporation as provided in this Chapter shall be an agent of such corporation upon whom a process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(B) Whenever a corporation shall fail to appoint or maintain a registered agent in this Reservation or whenever its registered agent cannot, with reasonable diligence, be found at the registered office, then the Tribal Secretary shall be an agent of such corporation upon whom any such process, notice, or demand shall be made by delivering to and leaving with them, or with any clerk having charge of their office, duplicate copies of such process, notice or demand. In the event that any such process, notice or demand is served on the Tribal Secretary, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its last known registered office.

(C) The Tribal Secretary shall keep a record of all processes, notices, and demands served upon them under this Section, and shall keep a record therein of the time and date of such service and their action with respect thereto.

(D) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by tribal law.

Section 13-4-10. Members

A corporation may have members or may have no members. If the corporation has members, the manner of election or appointment and the qualifications and rights of the members shall be set forth in the articles of incorporation or the by-laws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein.

Section 13-4-11. By-laws

The initial by-laws of a corporation shall be adopted by its Board of Directors. The power to alter, amend, or repeal the by-laws or adopt new by-laws shall be vested in the Board of Directors unless otherwise provided in the articles of incorporation or the by-laws.

Section 13-4-12. Meetings of Members

(A) Meetings of members may be held at such place within or without the Reservation as may be provided in the by-laws or, where not inconsistent with the by-laws, in the notice of the meeting.

(B) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(C) Special meetings of the members may be called by the president, the secretary, the Board of Directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by at least one-third (1/3) of the members.

Section 13-4-13. Notice of Meeting to Members

Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall in the absence of a provision in the by-laws specifying a different period of notice, be delivered not less than ten (10) days or more than sixty (60) days before the date of the meeting, either personally, or by mail or at the direction of the president, or the secretary or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the corporation, with first class postage thereon prepaid.

Section 13-4-14. Voting

(A) Members shall not be entitled to vote except to the extent the right to vote is conferred by the articles of incorporation.

(B) A member may vote in person or, unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid after two (2) months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the by-laws so provide, voting on all matters including the election of directors or officers where they are to be elected by the members may be conducted by mail.

(C) The articles of incorporation or the by-laws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates, provided that where a member attempts to distribute votes in excess of the number of directors to be elected, that member's entire vote shall be invalidated.

(D) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted by members.

Section 13-4-15. Quorum

(A) The by-laws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provisions, one-third (1/3) of the members shall constitute a quorum and shall be necessary for the adoption of any matter voted upon by the members unless a greater proportion is required by this Chapter, the articles of incorporation or the by-laws.

(B) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, at which time any business may be transacted that may have been transacted at the meeting as originally called.

Section 13-4-16. Board of Directors

The affairs of a corporation shall be managed by a Board of Directors. Directors need not be residents of the Reservation or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors.

Section 13-4-17. Number, Election, Classification and Removal of Directors

(A) The number of directors of a corporation shall consist of at least one member, and such additional directors as shall be fixed by the by-laws from time to time, except that the number of the first Board of Directors shall be fixed by the articles of incorporation. If additional directors are authorized, the number of directors may be increased or decreased from time to time by amendment to the by-laws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a by-law fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(B) The names and addresses of the members of the first Board of Directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one (1) year.

(C) Directors may be divided into classes; the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(D) A director may be removed from office pursuant to any procedure therefore provided in the articles of incorporation or the by-laws, and if none be provided, may be removed at a meeting called expressly for that purpose, with or without cause, by affirmative vote of not less two thirds (2/3) of the then members of the Board of Directors. No special procedures need be used in the meeting to remove the Director.

Section 13-4-18. Vacancies

Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the Board of Directors though less than a quorum of the board, unless the articles of incorporation or the by-laws provide that a vacancy or directorship so created shall be filled in some other manner in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

Section 13-4-19. Quorum of Directors

A majority of the number of directors fixed by the by-laws, or in the absence of a by-law provision fixing the number of directors then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless otherwise provided in the articles of incorporation or the by-laws, but in no event shall a quorum consist of less than one-third (1/3) of the number of directors so stated or fixed. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by this Chapter or by the articles of incorporation or by-laws.

Section 13-4-20. Committees

If the articles of incorporation or the by-laws provide, the Board of Directors, by resolution adopted by a majority of the directors in office, may form committees each of which shall consist of two or more directors. These committees, to the extent provided in said resolution, in the articles of incorporation or in the by-laws of the corporation, shall have and exercise the authority of the Board of Directors in the management of the corporation. Other committees not exercising the authority of the Board of Directors in the management of the corporation may be designated and appointed by resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual director of any responsibility imposed upon it or him by law.

Section 13-4-21. Place and Notice of Directors' Meetings

Meetings of the Board of Directors, regular or special, may be held at such place within or without the Reservation, and upon such notice as may be prescribed by the by-laws, or where not inconsistent with the by-laws, by resolution of the Board of Directors. A director's attendance at any meeting shall constitute a waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such notice of such meeting, unless otherwise provided in the articles of incorporation or the by-laws.

Section 13-4-22. Officers

(A) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include one or more vice-presidents, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the Board of Directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(B) The articles of incorporation or the by-laws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the Board of Directors.

(C) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the by-laws.

(D) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be determined by resolution of the Board of Directors not inconsistent with the by-laws.

Section 13-4-23. Removal of Officers

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever, in their judgment, the best interest of the corporation will be served thereby, but such removal shall be without prejudice to accrued contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights.

Section 13-4-24. Books and Records

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors; and shall keep at its registered office or principle office on the Reservation, a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, or by the Tribal Secretary or his designee for any proper purpose at any reasonable time.

Section 13-4-25. Shares of Stock and Dividends Prohibited

A corporation organized under this Chapter shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members or others as permitted by this Chapter.

Section 13-4-26. Loans to Directors and Officers Prohibited

No loans shall be made by a corporation organized under this Chapter to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or an officer of the corporation, and any officer participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

Section 13-4-27. Incorporators

One (1) or more natural persons of the age of twenty-one (21) years or more may act as incorporators of a corporation by signing, certifying, and delivering in duplicate to the Tribal Secretary the articles of incorporation for such corporation.

Section 13-4-28. Articles of Incorporation

- (A) The articles of incorporation shall set forth:
- (1) The name of the corporation;
 - (2) The period of duration, which may be perpetual;
 - (3) The purpose or purposes for which the corporation is organized;
 - (4) If the corporation is to have no members, a statement to that effect;
 - (5) If the corporation is to have members, any provision which the incorporators elect to set forth in the articles of incorporation stating the qualifications and rights of members and conferring, limiting, or denying the right to vote;

(6) If the directors or any of them are not to be elected or appointed by members, a statement of the manner in which such directors shall be elected or appointed, or that the manner of such election or appointment of such directors shall be provided in the by-laws.

(7) Any provisions, not inconsistent with this Chapter or any other law or ordinance of the Prairie Band Potawatomi Nation which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provisions which under this Chapter is required or permitted to be set forth in the by-laws;

(8) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(9) The number of directors constituting the initial board of directors, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify; and

(10) The name and address, including street and number, if any, of each incorporator.

(B) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter.

(C) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the by-laws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with the by-law, the provision of the articles of incorporation shall be controlling.

Section 13-4-29. Filing of Articles Incorporation

(A) Duplicate originals of the articles of incorporation shall be delivered to the Tribal Secretary. The Tribal Council shall by regulation set fees for filing articles and other filings under this Chapter, provided that the minimum filing fee shall be not less than fifty dollars (\$50.00).

(B) If the Tribal Secretary finds that the articles of incorporation conform to law, he shall, when all fees and charges have been paid as under this Chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of filing thereof;

(2) File one of such duplicate original in his office;

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original; and

(4) Deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative.

Section 13-4-30. Effect of Issuance of Certificate of Incorporation

Upon the incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the corporation have been complied with and that the corporation has been incorporated under this Chapter, except as against the Prairie Band Potawatomi Nation in a proceeding to cancel or revoke the certificate of incorporation. A corporation organized under this Chapter, and its registered agent, directors and officers, shall in all matters be subject to the jurisdiction of the Prairie Band Potawatomi Nation and the Prairie Band Potawatomi Tribal Court.

Section 13-4-31. Organization Meeting

(A) After the issuance of the certificate of incorporation, an organization meeting of the Board of Directors named in the articles of incorporation shall be held within the Reservation at the call of a majority of the directors so named for the purpose of adopting by-laws, (unless the power to adopt by-laws has been reserved by the articles of incorporation to the members, in which event the by-laws shall be adopted by the members), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five (5) days notice thereof by mail to each director so named, which notice shall state the time and place of the meeting; provided, however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting, no notice shall be required of such meeting.

(B) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least five (5) days notice, for such purposes as shall be stated in the notice of the meeting.

Section 13-4-32. Right to Amend Articles of Incorporation

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment.

Section 13-4-33. Procedure to Amend Articles of Incorporation

Amendment to the articles of incorporation shall be made in the following manner:

(A) Where there are members having voting rights, the Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it is to be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting;

(B) Written or printed notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. If the meeting is an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

(C) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(D) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the Directors in office; and

(E) Any number of amendments may be submitted and voted upon at any one meeting.

Section 13-4-34. Articles of Amendment

The articles of amendment shall be executed in duplicate by the corporation; by its president or vice-president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth:

(A) The name of the corporation;

(B) The amendment so adopted;

(C) Where there are members having voting rights;

(1) A statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(2) A statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(D) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

Section 13-4-35. Filing of Articles of Amendment

(A) Duplicate originals of the articles of amendment shall be delivered to the Tribal Secretary.

(B) If the Tribal Secretary finds that the articles of amendment conform to law, they shall, when all fees and charges have been paid as in this Chapter prescribed:

- (1)** Endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (2)** File one of such duplicate originals in their office;
- (3)** Issue a certificate of amendment to which they shall affix the other duplicate original; and
- (4)** Deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

Section 13-4-36. Effect of Certificate of Amendment

(A) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(B) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Section 13-4-37. Voluntary Dissolution

A corporation may dissolve and wind up its affairs in the following manner:

(A) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual meeting or a special meeting. Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to each member entitled to vote at such meeting within the time frame and in the manner provided in this Chapter for the giving of notice of meetings to members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meetings;

(B) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the Board of Directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office; and

(C) Upon adoption of such resolution by the members, or by the Board of Directors where there are no members or members with voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof; shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and shall proceed to collect its assets and apply and distribute them as provided in this Chapter.

Section 13-4-38. Distribution of Assets

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(A) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provisions shall be made therefore;

(B) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;

(C) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, missionary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred, or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Chapter;

(D) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and

(E) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution is adopted as provided in this Chapter.

Section 13-4-39. Plan for Distribution

A plan providing for the distribution of assets, not inconsistent with the provisions of this Chapter, may be adopted by a corporation in the process of voluntary dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Chapter requires a plan for distribution.

Section 13-4-40. Revocation of Involuntary Dissolution

A voluntary dissolution may be revoked in the following manner:

(A) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at the meeting of members having voting rights, which may be either an annual or special meeting. Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each member entitled to vote at such a meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(B) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office; and

(C) Upon adoption of such resolution by the members, or by the Board of Directors where there are no members or no members with voting rights, the corporation may there upon again conduct its affairs. If the articles of dissolution have been delivered to the Tribal Secretary, notice of such revocation shall be given to the Secretary in writing.

Section 13-4-41. Articles of Dissolution

If voluntary dissolution proceedings have not been revoked; when all debts, liabilities, and obligations of the corporation shall have been made therefore, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter, articles of dissolution shall be executed in duplicate by the corporation; by its president or a vice-president, and the corporation seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth:

(A) The name of the corporation;

(B) Where there are members having voting rights;

(1) A statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds (2/3) of the votes entitled to be cast by members or represented by proxy at such meetings; or

- (2) A statement that such resolution was adopted by consent in writing signed by all members entitled to vote with respect thereto;
- (C) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the resolution to dissolve received the vote of a majority of the directors in office;
- (D) That all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefore;
- (E) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter; and
- (F) That there are no suits pending against the corporation in any Court, or that adequate provisions have been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(Title 13-4 enacted by PBP TC No. 2001-036, March 7, 2001)

Section 13-4-42. Filing of Articles of Dissolution

- (A) Duplicate originals of such articles of dissolution shall be delivered to the Tribal Secretary.
- (B) If the Tribal Secretary finds that such articles of dissolution conform to law, he shall, when all fees and charges have been paid:
 - (1) Endorse on each of such duplicate original the word "filed", and the month, day, and year of such filing thereof;
 - (2) File one of such duplicate original in his office;
 - (3) Issue a certificate of dissolution to which he shall affix the other duplicate original; and
 - (4) Deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.
- (C) Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers, and the tribe as provided in this Chapter.

(Title 13-4 enacted by PBP TC No. 2001-036, March 7, 2001)

Section 13-4-43. Involuntary Dissolution

(A) A corporation may be dissolved involuntarily by a decree of the Tribal Court in an action instituted by the Tribal Council in the name of the Prairie Band Potawatomi Nation, when it is made to appear to the Court that:

- (1) The franchise of the corporation was procured through fraud; or
- (2) The corporation has continued to exceed or abuse the authority conferred upon it by this Chapter; or
- (3) The corporation has failed for ninety (90) days to appoint and maintain a registered agent as provided in this Chapter; or
- (4) The corporation has failed for ninety (90) days after change of its registered office or registered agent to deliver to the Tribal Secretary statement of such change.

(B) At least thirty (30) days before any action for the involuntary dissolution of a corporation shall be filed by the Tribal Council, it shall notify the corporation by certified or registered mail addressed to such corporation at its registered office, a notice of intention to file such suit and the reasons therefore. If, before action is filed, the corporation shall submit evidence satisfactory to the Tribal Council that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this Chapter, or deliver to the Tribal Secretary the required statement of change or registered agent, the Tribal Council shall not file an action against such a corporation for such cause. If, after action is filed for a reason stated in paragraph 3 or 4 of the preceding subsection, the corporation shall, as the case may be, appoint or maintain a registered agent as provided in this Chapter, or shall deliver to the Tribal Secretary the required statement of change of registered agent, and shall pay the costs of such action and any reasonable attorney's fees incurred, then the action for such cause shall abate.

Section 13-4-44. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation

The Prairie Band Potawatomi Tribal Court shall have full power to liquidate the assets and affairs of a corporation:

- (A) In any action by a member or director when it is made to appear:
- (1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by that reason, and either that the members are unable to break the deadlock or there are no members having voting rights; or
 - (2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
 - (3) That the corporate assets are being misapplied or wasted; or

- (4) That the corporation is unable to carry out its purposes.
- (B) In an action by a creditor:
 - (1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or
 - (2) When the corporation has admitted in writing and the claims of the creditor is due and owing and it is established that the corporation is insolvent;
- (C) Upon application by a corporation to have its dissolution continued under the supervision of the Court;
- (D) When an action has been commenced by the Tribal Council to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;
- (E) It shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

Section 13-4-45. Procedure in Liquidation of Corporation by Court

- (A) In proceedings to liquidate the assets and affairs of a corporation, the Court shall have the power to issue injunctions, to appoint receivers pendente lite, with such powers and duties as the Court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on its affairs until a full hearing can be had.
- (B) After a hearing, upon such notice as the Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority subject to the order of the Court to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such power and duties may be increased or diminished for good cause at any time during the proceedings.
- (C) The assets of the corporation consisting of the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:
 - (1) All costs and expenses of the Court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefore;
 - (2) Assets held by the corporation upon conditions requiring return, transfer, or conveyance which conditions occurs by reason of dissolution or

liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the Court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of the members or any class or classes of members, or provide for distribution to others; and

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution or as the Court may direct.

(D) The Court shall have power to allow, from time to time, as expenses of the liquidation, reasonable compensation to the receiver or receivers and to the receiver's attorney in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(E) A receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The Court appointing such receiver shall, for the purposes of this Chapter have exclusive jurisdiction of the corporation and its property, wherever situated.

Section 13-4-46. Qualification of Receivers

A receiver shall in all cases be a natural person or a domestic corporation authorized to act as receiver, and shall in all cases give such bond as the Court may direct with such sureties as the Court may require.

Section 13-4-47. Filing of Claims in Liquidation Proceedings

In proceedings to liquidate the assets and affairs of a corporation, the Court may require all creditors of the corporation to file with the Clerk of Court or with the receiver, in such form as the Court may prescribe, proofs under oath of their respective claims. The Court shall fix a date which shall be not less than sixty (60) days from the date of the order as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the Court may extend the time for the filing of claims. Creditors and claimants failing to file proofs or claims on or

before the date so fixed may be barred, by order of the Court, from participating in the distribution of the assets of the corporation.

Section 13-4-48. Discontinuance of Liquidation Proceedings

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Section 13-4-49. Decree of Involuntary Dissolution

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Section 13-4-50. Filing of Decree of Dissolution

In case the Court shall enter a decree dissolving a corporation, it shall be the duty of the Clerk of Court to cause a certified copy of the decree to be delivered to the Tribal Secretary, who shall file the same. No fee shall be charged by the Tribal Secretary for the filing thereof.

Section 13-4-51. Deposits with Tribal Secretary

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any persons who are unknown or cannot be found, or who are under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and be deposited with the Tribal Secretary and shall be paid over to such person or to his legal representative upon proof satisfactory to the Court of his rights thereto.

Section 13-4-52. Annual Report of Domestic and Foreign Corporations

- (A) Each domestic corporation shall prepare an annual report setting forth:
- (1) The name of the corporation;
 - (2) The address of its registered office and the name of its registered agent;
 - (3) A brief statement of the character of the affairs which the corporation is actually conducting; and
 - (4) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(B) Such annual report shall be made on forms prescribed and furnished by the Tribal Secretary and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation; by its president, a vice-president, secretary, or assistant secretary, treasurer, or assistant treasurer, or if the corporation is in the hands of a receiver or receivers, or trustee, it shall be executed by such receiver, receivers, or trustee.

Section 13-4-53. Filing of Annual Report of Corporation

Such annual report of a corporation shall be delivered to the Tribal Secretary no later than March 1st of each year. If the Tribal Secretary finds that such report conforms to law, he shall file the same. If he or she finds that it does not so conform, he or she shall promptly return the same to the corporation for any necessary correction, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinafter provided shall not apply if such report is corrected to conform to the requirements of this Chapter and returned to the Tribal Secretary in sufficient time to be filed prior to the first day of March of the year in which it is due.

Section 13-4-54. Penalties Imposed Upon Corporations

Each corporation that fails or refuses to file its annual report for any year within the time prescribed by this Chapter shall be subject to a penalty of fifty dollars (\$50.00), to be assessed by the Tribal Secretary.

Section 13-4-55. Fees for Filing Documents and Issuing Certificates

The Tribal Secretary shall charge and collect for:

- (A) Filing articles of incorporation and issuing a certificate of incorporation (\$50.00);
- (B) Filing articles of amendment or issuing a certificate of amendment (\$50.00);
- (C) Filing a statement of change of address of registered office or change of registered agent, or filing both simultaneously (\$20.00);
- (D) Filing articles of dissolution (\$100.00);
- (E) Filing a statement of election to accept this Chapter and issuing certificate of acceptance (\$25.00);
- (F) Filing any other statement or report, including an annual report of a domestic or foreign corporation (\$20.00);
- (G) Indexing each document filed, except an annual report (\$5.00);

(H) Furnishing a certified copy of any document, instrument, or paper relating to a corporation (\$5.00, plus 50 cents per page);

(I) Furnishing a certificate as to the existence of a fact relating to a corporation (\$10.00).

The Tribal Council is authorized to make regulations providing for reasonable fees for other services not listed in this Section or to make changes in any and all fees for services set out in this Chapter.

Section 13-4-56. Certificates and Certified Copies to be Received in Evidence

All certificates issued by the Tribal Secretary in accordance with the provisions of this Chapter and all copies of documents filed in his or her office in accordance with the provisions of this Chapter, when certified by him or her, shall be taken and received in all Courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Tribal Secretary under the seal of his or her office, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

Section 13-4-57. Forms to be Furnished by the Tribal Secretary

All reports required by this Chapter to be filed in the office of the Tribal Secretary shall be made on forms which shall be prescribed and furnished by the Tribal Secretary. Forms for all other documents to be filed in the office of the Tribal Secretary shall be furnished by the Tribal Secretary on request therefore, but the use thereof, unless otherwise specifically prescribed in this Chapter, shall not be mandatory.

Section 13-4-58. Greater Voting Requirements

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation requires the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this Chapter with respect to such action, the provisions of the articles of incorporation shall control.

Section 13-4-59. Waiver of Notice

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Chapter, under the provisions of the articles of incorporation, or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice.

Section 13-4-60. Action by Members or Directors Without a Meeting

Any action required by this Chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if consent in writing setting forth the action so taken shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the Tribal Secretary under this Chapter.

Section 13-4-61. Effect of Invalidity of Part of This Chapter

If a Court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this Chapter, such judgment or decree shall not effect, impair, invalidate, or nullify the remainder of this Chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this Chapter so adjudged to be invalid or unconstitutional.

(Title 13-4 enacted by PBP TC No. 2001-036, March 7, 2001; amended PBP TC No. 2012-034, February 13, 2012.

