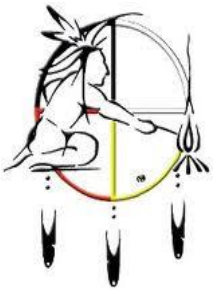
FOREST COUNTY POTAWATOMI FOSTER HOMES AND OUT-OF-HOME PLACEMENTS ORDINANCE

CHAPTER 3-2 (05/09/2015)

FOREST COUNTY POTAWATOMI
FOSTER HOMES AND
OUT-OF-HOME PLACEMENTS ORDINANCE

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FOREST COUNTY POTAWATOMI
FOSTER HOMES AND
OUT-OF-HOME PLACEMENTS
ORDINANCE

§ 1. General

1.1. Purpose

The Forest County Potawatomi Community recognizes that its children are its most important resource. It is the policy of the Forest County Potawatomi Community to preserve the identity and culture of Indian children who must be placed outside of the homes of their natural parents pursuant to powers delegated under Article IV, §1(d) of the Forest County Potawatomi Community Constitution and By-laws through enactment of this Ordinance. The intent of this Ordinance is to establish standards for the placement of Indian Children in Indian Foster Homes according to the Indian Child Welfare Act and to provide protection and promote the health, safety and welfare of Indian children in Foster Homes and other Out-of-Home Placements within Tribal Court's jurisdiction.

1.2. Authority

The Forest County Potawatomi General Council enacts this ordinance pursuant to its authority granted under the Forest County Potawatomi Tribal Constitution, Article IV, §1(d).

1.3. Effective Date and Title

This ordinance is hereby adopted immediately following the majority approval from the Forest County Potawatomi General Council and it shall be known as the Forest County Potawatomi Foster Homes and Out-of-Home Placements Ordinance.

1.4. Sovereign Immunity

The Tribe, by adoption of this ordinance, does not waive its Sovereign Immunity in any respect. The Tribal Executive Council may make or delegate the authority to make any exceptions to any of these rules for licensing Foster Homes when the Executive Council is assured that granting such exceptions best serves and is not detrimental to the health, safety or welfare of the children involved.

§ 2. Definitions

For the purpose of this ordinance, the following words and phrases shall have the meanings given to them in this Section and by law:

"Child" shall mean any person who is under eighteen (18) years of age.

"Child in Need of Care" shall mean any Child:

(A) Who has no parent, guardian or custodian available and willing to care for him or her, or

(B) Who has not been provided with adequate food, shelter, clothing, medical care or education necessary for his or her health and wellbeing, or

(C) Whose parent, guardian or custodian had knowingly, intentionally or negligently subjected the Child to cruel and inhumane treatment or placed the Child in a situation that seriously endangers his or her life or health, or

(D) Who is without proper parental care and control or supervision because of the neglect, disappearance or the prolonged absence of his or her parent, guardian or custodian, or

(E) Whose parents, guardian or custodian are unable to provide for the Child because of their incarceration or hospitalization for a physical or mental condition, or

(F) Who has been sexually abused by his or her parent, guardian or custodian, or

(G) Who has been placed in custodial care due to a violation of the law which resulted from parental pressure and/or trying to gain guidance or approval, or

(H) Who, being subject to compulsory school attendance, is habitually truant from school, or

(I) Who habitually disobeys the reasonable and lawful orders of his or her parent, guardian or custodian, who is ungovernable and beyond their control.

"Custodian" or "Legal Custody" shall mean any person other than a parent or legal guardian to whom legal custody of a Child has been granted by court order and it is the status created by order of Tribal Court or any other court of competent jurisdiction that vests the following rights and responsibilities:

(A) The right to have physical custody of the Child shall be determined by the Court; if physical custody is not with the person having legal custody.

(B) The rights and the duties to protect educate and discipline the Child in the Child's best interest.

(C) The responsibility to provide the Child with food, shelter, education, ordinary medical care and other basic needs according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs

"Executive Council" shall mean the Forest County Potawatomi Executive Council.

"Foster Child" shall mean any child who is a child without parental support and protection, placed with a person or family to be cared for pursuant to a court order.

"Foster Home" shall mean any home which is licensed by the Executive Council and/or applicable state licensing agency and maintained by any individuals suitable for placement of Children when taken into custody or pending a court disposition.

"Foster Parents" shall mean any person or persons who operate a facility required to be licensed under this ordinance and in accordance with the Indian Child Welfare Act. They shall have the rights of a physical custodian relative to foster children in their care while licensed.

"Guardian Ad Litem" shall mean any person appointed by Tribal Court to protect the best interests of the Child in a particular case before the court.

"Guardian" shall mean any person appointed by Tribal Court to care for and manage the person and estate of the Child or incompetent vulnerable person in a particular case before the Court.

"Guardianship of a Person" with respect to a minor, shall mean the duty and authority to make important decisions in matters affecting the life of a Child including but not necessarily limited either in number or kind to:

(A) The authority to consent to marriage, to enlistment in the armed forces of the United States and to major medical, psychiatric and surgical treatment, to represent the minor in legal action, and to make other decisions of substantial legal significance concerning the Child including but not limited to matters of education and religious and cultural upbringing.

(B) The authority and duty to provide reasonable visitation except to the extent that such right of visitation has been limited by court order.

(C) The rights and responsibilities of Legal Custody except where Legal Custody has been vested in another individual or in an authorized agency.

(D) When the parent/child relationship has been terminated by court order with respect to the parents, only living parent, or when there is no living parent, the

authority to consent to the adoption of the Child and to make any other decision concerning the Child which the Child's parent could make.

"Indian Child Welfare Worker" shall mean a person employed by the Forest County Potawatomi Tribal Executive Council to carry out the duties, objectives and provisions of this ordinance; but subject to the limitation of the Tribal Court Code. The Indian Child Welfare Worker shall have the authority and duty to:

(A) Receive and examine complaints and allegations that a Child is a Child in Need of Care for the purpose of determining the appropriate proceedings under the Children's Code.

(B) Make investigative reports and recommendations to the court.

(C) Make appropriate referrals of cases to other agencies if their assistance appears to be needed or desirable, except there shall be no referral to a state government without advance approval in writing from a Tribal Judge.

(D) Provide Child and/or family counseling and any other function designated by the Court.

(E) Identify and develop resources within the communities as designated by the court.

(F) Make predisposition reports and recommendations to the Court.

(G) Supervise and assist a Child and/or Children placed on probation.

(H) Shall not be employed as, or perform duties of a prosecutor or a law enforcement official for the community or elsewhere.

"Legal Guardian" shall mean any person having the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

"Out of Home Placement" shall mean the removal of a Child from the home of his or her parent or custodian for placement (including long term placement) in a foster home, group home, residential care center for children and youth, or shelter care facility, in the home of a relative other than a parent, or in the home of a guardian, from which placement the parent or custodian cannot have the child returned upon demand.

"Parent" shall mean the natural and/or adoptive parents of a Child whose parental rights have not been terminated. A Parent inherently has the powers of a custodian or guardian unless otherwise determined by the court.

"Parent/Child Relationship" shall mean and include all rights, privileges, duties and obligations existing between parent and Child.

“Physical Custodian” shall mean any person having the right to the care, custody and control of a child and duty to provide food, clothing, shelter, routine medical care, education and discipline for a child. A legal guardian's decision regarding medical care and educational placement shall take precedence over that of a foster parent or physical custodian.

“Protective Services” shall mean a child welfare program which seeks to prevent dependency and abuse of Children by providing family services to families where unresolved problems have created visible signs of dependency or abuse and the home situation presents actual and potential hazards to the physical or emotional well-being of Children.

“Relative” shall mean any parent, grandparent, brother, sister, uncle, aunt, first cousin, nephew, niece, step-parent, step-brother, step-sister or any other person who, in the discretion of Tribal Court, has a relationship with a child that is equivalent of one of the relationships described herein according to tribal custom.

“Rule” shall mean a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing), of general application and having the effect of law.

“Shelter Care” shall mean the care of a Child placed in a foster home or institution maintained by individuals or organizations licensed and/or approved by the Executive Council or a state licensing board, to receive and care or control Children taken into custody or pending medical examination and court disposition.

“Tribal Court” shall mean the Forest County Potawatomi Community Tribal Court.

“Tribal Lands” or “Reservation” shall mean any lands, the legal to which is held in trust by the United States for the benefit of Forest County Potawatomi Community and any other land which is part of the Forest County Potawatomi Community Reservation.

“Tribe” or “Tribal” shall mean the Forest County Potawatomi Community.

“Ward of the Court” shall mean a status declared by the Court in absence of an appointment of a guardian or custodian. Tribal Court shall have all legal and physical rights to a Child after parental rights have been terminated.

§ 3. License a Privilege; Rights of Applicants and Licensees

3.1. Foster placement licenses issued by the Community shall be deemed a privilege, not a right, and will be issued at the discretion of the Executive Council. Any person or entity shall have the right to apply for a foster home license and to the following:

(A) The right to be evaluated objectively on the basis of written rules;

(B) The right to written notice and statement of grounds for suspension or revocation of a license (NOTICE: not for initial denial);

(C) The right to a hearing before the Executive Council, within thirty (30) days of notice, when a license has been denied, suspended or revoked.

(D) The right to accept Children for care if/when licensed.;

§ 4. Foster Parents and Their Families

4.1. Application for License

(A) The person or persons seeking a license shall make an application on forms prescribed by the Executive Council. Married couples shall both be parties to the application. Couples living together shall have their eligibility determined on a case by case basis by the Executive Council.

(B) Foster parents wishing to continue to be licensed shall file a new application when:

(1) Their license will expire within 30-60 days.

(2) They plan to move from the address specified on their present license within 30 days or less.

(3) Their legal status has changed within the last 30 days.

(4) They wish to have conditions which are specified on their present license changed.

(5) They plan to move from on or near Tribal Lands.

4.2. Age of Foster Parents

The Executive council shall consider the age of the foster parents on a case by case basis and make a determination of an appropriate age based on the needs of the foster child.

4.3. Personal Qualifications Required of Foster Parents

Foster parents shall be responsible, mature individuals of reputable character who exercise sound judgment and display the capacity to provide good care for children. They shall give sufficient information to enable the Executive Council to verify whether or not they meet these requirements. Executive Council shall have the discretion to promulgate guidelines regarding character and fitness assessment as to the qualifications of a Foster Parent and/or Placement. All Foster Parents/Placements have the duty to report any change in current fitness or change in environment (such as being charged with a crime, divorce, eviction or any other significant

environment change which may affect the placement) during any period of time they have any Children in their care to the Family Services Division-ICW Unit.

4.4. Health of Foster Family

(A) The physical and mental health of all members of the foster family household shall be such that it will not adversely affect the health of children placed for care, or the quality and manner of their care.

(B) All members of the foster family household shall be drug free and not abuse alcohol.

(C) Foster parents shall have a physical examination at the time of application for a license. Foster parents shall authorize their physician to submit a statement to the Executive Council certifying that a physical examination and a TB test was completed in a licensed medical facility within the past year and that the foster parents are essentially free from medical conditions which might endanger foster children.

(D) If the Executive Council has reason to believe that drug use, alcohol abuse, or the physical or mental health of any child or adult member of the foster family household might endanger children in their care, the Executive Council may require the foster parents, for themselves or on behalf of their own children, or the other adult members of the household in question to obtain and authorize the submission of a statement to the Executive Council from a qualified physician and if required, a psychiatrist, certifying the condition of the person to be healthy, drug free and a non-abuser of alcohol.

4.5. Training

Foster parents shall take part in training programs as provided by the Forest County Potawatomi Executive Council, the Forest County Department of Social Services and/or the Division of Community Service.

4.6. Fiscal Responsibility of Foster Parents and Placements

(1) If the Foster Home and/or Placement is so lacking in funds or the responsible use of funds as to place the Child in physical jeopardy, the Child shall be removed from such an environment; and

(2) The income provided to the Foster Family or Placement for the care of the Child shall not be the sole or majority income for the Foster Home and/or Placement except at the discretion of court when in the best interest of a Child.

§ 5. Foster Homes and Out-of-Home Placements

5.1. General Requirements

(A) The home shall be so constructed, arranged and maintained as to provide adequately for the health and safety of all occupants. It shall be of size and space, and shall have furnishings and equipment to accommodate comfortably both the family and foster children in their care. The Executive Council shall require inspection of the home by fire, health, sanitation or safety officials when in its judgment such expert opinion is needed to assure the safety of the home for the care of foster children.

(B) Potentially dangerous items such as but not limited to household poisons, medicines, plastic bags, matches, knives, and firearms shall not be kept where they are easily accessible to children. Foster parents shall not permit illegal drugs to be present in the household.

(C) A Child's use of technology and electronics shall be closely monitored by a Foster Parent as to assure that the Child's best interests are being met while also being consistent with any court order.

5.2. Sleeping Arrangements

(A) Each foster child shall be provided with a separate bed except that two (2) brothers or two (2) sisters may share a bed. Each bed shall be of such size as to insure comfort of the Child, a clean and comfortable mattress with waterproof covering when necessary and provided with suitable bedding adequate for the season.

(B) No child ten (10) years or older shall be permitted to share a bedroom with a Child of the opposite sex.

(C) Foster Children shall not be permitted to sleep in any building, apartment, or other structure which is separate from the family home; nor shall any Child be permitted to sleep in an unfinished basement, or in a hall or any other room which is normally used for other than sleeping purposes.

(D) At night a responsible adult shall sleep within call of Foster Children.

5.3. Recreation and Play Space

The home shall have space for indoor play and access to outdoor play space. Foster parents shall provide for the safety of children in recreation and play areas.

§ 6. Care of Children

6.1. Supervision of Children

(A) Children under the age of twelve (12) years shall not be left without supervision by a responsible person.

(B) Children twelve (12) years of age and older shall receive responsible supervision appropriate to their age and maturity as might reasonably be provided by a prudent parent in the care of their own children.

(C) Failure to provide adequate supervision shall be the basis of revocation or sanction of a Foster Care License. Complaints of inadequate supervision shall be conducted by the Indian Child Welfare Worker and reported to the Executive Council.

6.2. Discipline

This section shall be followed in accordance to a reasonable person standard or what a reasonable person would conclude to be the meaning of the following:

(A) Child training shall be handled with reasonable care and understanding.

(B) No Child shall be subjected to verbal abuse, derogatory remarks about himself or herself, members of his or her family, or threats to expel the child unnecessarily from the Foster Home.

(C) No Child in care shall be subjected to unreasonable, excessive, unusual, severe, cruel or any corporal punishment.

(D) No child in care shall be deprived of meals, mail or family visits as a method of discipline.

(E) No Child shall be mechanically restrained or locked in any enclosed area or be subjected to ridicule, profanity or punishment by another Child.

(F) A Foster Child shall be a genuine part of the Foster Family and derogatory comments about a Foster Child's status for the purpose of humiliation shall not be tolerated to any extent.

(G) In the case of technology; the supervision and use of technology shall be reasonably limited so as to help the Child attain valuable life-skills but also making sure the Child is using the technology as such and not in a manner which would be negative to the Child's best interest. Technology use will be monitored according to the Child's age to assure the Child is not putting himself or herself at risk by chatting with predators, seeing violence, etc. Any inappropriate use of

technology shall be subject to confiscation and/or reasonable consequences which pertain to Child training consistent with the Child training goals in all sections of this ordinance.

6.3. Work Performed By Children

Children in care shall have opportunities to assume responsibility for household duties or chores appropriate to their age, sex, health and ability. Such duties shall be reasonable and shall be able to be performed during appropriate times as to not interfere with regular school hours, regular nighttime sleep patterns, recreation as a result of being a participant on a sports team or school activity, paid employment the Child obtains or regular study times for homework completion and schoolwork. Chores shall take precedence over regular recreational activity as chores are a necessary life skill.

6.4. Education

Foster parents shall make every reasonable effort to see that Children of school age in their care attend school regularly unless otherwise excused by school officials. If Foster Parents do encounter truancy problems, they shall make contact with the Truancy Prevention Specialist in the Division of Education and/or an Indian Child Welfare Worker in the Family Services Division.

6.5. Moral, Religious and Cultural Training

Foster parents shall provide for the moral training of foster children in their care and shall make opportunities available to each foster child for religious and cultural education and attendance at services and functions. These shall be consistent with the child’s religious and cultural heritage and the wishes of the child's legal guardian, if known.

6.6. Nutrition

Food shall be provided to children in sufficient quantities and varieties and shall provide for essential nutritional and dietary needs. In the event of a report of inadequate nutrition or inappropriate diet, there shall be an investigation by the Forest County Potawatomi Community Health Department and the Family Services Division-Indian Child Welfare Unit or other appropriate licensed health care professionals. Foster Parents agree to accept and follow recommendations relative to the dietary and nutritional needs of their Foster Children.

6.7. Clothing

Foster Parents shall see that funds provided for the purchase of clothing are used in such a way that Children in their care are comfortably and appropriately clothed within the limits of funds provided, and that Children's clothing is kept in a state of suitable repair and cleanliness.

6.8. Responsibilities of Foster Parents

(A) Foster Parents shall be responsible for seeing that they accept Children for care only in conformity with the conditions relating to number, age or other limitations specified on the license.

(B) Foster Parents shall notify the Indian Child Welfare Worker within four (4) days after the placement of a Child into their home from a source other than the Executive Council. If as a result there is a substantial change in the Foster Home, the Indian Child Welfare Worker shall notify the Executive Council.

(C) Foster Parents shall keep the Indian Child Welfare Worker and Legal Custodian informed of the Child's progress while in their care.

(D) Foster parents shall notify the Indian Child Welfare Worker and Legal Custodian as soon as possible of emergencies involving a foster child. This includes serious illness or injury requiring medical treatment, unauthorized absence from the home, or other situations where prudence suggests that the Indian Child Welfare Worker and Legal Custodian should be notified. This requirement in no way relieves foster parents from first taking action such as obtaining emergency medical treatment for the child before notifying the Indian Child Welfare Worker and Legal Custodian.

(E) Foster Parents shall allow the Executive Council and Legal Custodian a minimum of 30 days in which to make suitable plans for the Child when the foster parents have requested a Child's removal from their home.

(F) Foster Parents shall cooperate with the Indian Child Welfare Worker and Legal Custodian in seeing that an appropriate relationship is maintained between the Child and his or her relatives. Visits, letters and verbal communications shall be allowed by the Foster Parents at reasonable times and places, and will be arranged and supervised by the Indian Child Welfare Worker if necessary.

(G) All information regarding any Child placed in a Foster Home shall be held in a confidential manner. Foster Parents shall not disclose any information to any person except on a need to know basis regarding medical care, education or other situation which would merit release of such information. Nothing in this section shall prevent the Foster Parent from sharing a Child's confidential information with a doctor, therapist, or other professional who is assisting in the protection of a Child and his/her estate with a legitimate need to know such confidential information.

6.9. Enrollment, Rights and Benefits

(A) Foster parents along with the Executive Council and Legal Custodian shall make every effort to verify and/or obtain enrollment in the appropriate tribe for each Indian foster child. Information shall be sought as may be necessary for the

enrollment of an Indian child and to determine any rights or benefits associated with that membership.

(B) All income and inheritances shall be subject to the control of the guardian of the Foster Child's estate if known, and if not, to the control of the trustee appointed by the court.

6.10. Record to be Maintained by Foster Parents

(A) Foster parents shall maintain during the time a Child is in their care, a record on forms provided by the Executive Council. Such records shall contain the following information:

(1) Child's name or alias by which he or she is known;

(2) Child's birth date;

(3) Name of the person or agency to be notified in an emergency;

(4) Name of physician to be called in an emergency;

(5) Dates child received care;

(6) Medical information about the child while in their care, such as medical examinations, immunizations, illnesses and accidents including dates of each;

(7) Name of dentist and dates child is seen;

(8) Name of school and grades attended;

(9) Grades and attendance records received from the school;

(10) All income and inheritances received by the Child while in their care including paid employment; and

(11) Any and all legal notices which relate to the Child's care and or the Child directly.

(B) Foster parents shall make available for inspection any records of the Children placed with them for care at the request of the Indian Child Welfare Worker or the Legal Guardian.

6.11. Number of Children in Home

The number of Children Foster Parents may receive for care plus the number of their own Children who live in the household shall be determined by the Executive Council on a case by case basis. The Foster Home license shall specify how many Foster Children the home is licensed for and shall also note that special consideration is given in an attempt to keep sibling groups together.

6.12. Investigation of Applicant, Granting of License

After receipt of application for a license, the Executive Council shall direct the Indian Child Welfare Worker to investigate to determine if the applicant meets all minimum requirements for a license. Upon satisfactory completion of this investigation, the license may be granted by Executive Council action.

6.13. Provisions of License

(A) Licenses approved by the Executive Council shall be signed by the Tribal Chairman or Vice Chairman.

(B) Each license shall bear the names of the persons licensed, describe the premises included, and state the maximum number of children to be received specifying age and sex.

(C) The Executive council may impose special conditions (which may include drug testing, fingerprinting, etc.) and rules on individual licenses where it is deemed necessary in the best interests of a Foster Child.

6.14. Expiration and Revocation of Licenses

(A) All licenses issued by the Executive Council shall not exceed one (1) year.

(B) Licenses may be suspended or revoked by the Executive Council for a substantial violation by the licensee of any provision of this Ordinance or of any rules adopted by Executive Council pertaining to this ordinance. A license may also be denied or revoked if the licensee fails to meet minimum requirements to obtain such a license.

(C) The Executive Council shall give the licensee written notice of any proposed revocation and the grounds for revocation. The written notice shall be given at least 10 days prior to any revocation.

(D) The Executive Council may suspend a foster home license without prior written notification when it is deemed necessary.

6.15. Inspection and Visits

Foster home licensees are deemed to have consented to an inspection of the foster home at reasonable times upon reasonable advance notice. The Executive Council hereby designates the Indian Child Welfare Worker as its representative to visit and inspect each foster home. The Executive Council or the Indian Child Welfare Worker shall be given unrestricted access to the premises as described by the foster home application. The Indian Child Welfare Worker may also visit a foster home at various times without advance notice, but may not inspect the entire premises during such visits.

§ 7. Executive Council Decisions Final

Decisions by the Executive Council on matters of issuance, suspension and revocation of foster home licenses shall be final. However, foster parent applicants or licensed foster parents shall have the right to request and have a hearing before the Executive Council relative to any denial, suspension or revocation of a foster home license. The decision of the Executive Council shall be non-appealable.

§ 8. Penalties

Any person holding a Foster Home license or any other placement license issued by the Forest County Potawatomi Executive Council who violates any of the provisions of this ordinance or conditions of his or her license may have the license revoked and/or sanctioned by the Executive Council.

§ 9. Liberal Construction

This Foster Homes and Out-of-Home Placements Ordinance shall be liberally construed to effect the purposes stated in the "Indian Child Welfare Act of 1978", (P.L. 95-608), 25 U.S.C. ss. 1901 et seq. and other applicable laws.

Legislative History for Forest County Potawatomi Foster Homes and Out-of Home Placements Ordinance:

Approved by Executive Council 05/25/1992
Approved by General Council Resolution: (No. GC-006-93) 05/28/1993
Recommended by the Ordinance Department 03/12/1992

This Ordinance amends and supersedes the following Foster Homes Ordinance:

Approved ordinance pulled for amendments per Executive Council motion . 12/15/2010
Recommended by the Ordinance Department 05/05/2015
Approved by Executive Council 05/05/2015
Amended ordinance approved by General Council 05/09/2015

References in text:

Indian Child Welfare Act, (Section 1.3), see, 25 U.S.C. § 1901 et seq.