

**TOHONO O’ODHAM CODE TITLE 12 – ELECTIONS
CHAPTER 1 - ELECTIONS**

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TITLE 12 – ELECTIONS CHAPTER 1 – ELECTIONS

ARTICLE I - GENERAL PROVISIONS

Section 1101 Purpose

This chapter is enacted to regulate elections for public offices in accordance with the Constitution of the Tohono O’odham Nation and to establish qualifications of candidates, the registration requirements for voting, and uniform procedures for the election, removal and recall of public officers, for the filling of vacancies in public offices, and for the validation of referendum and initiative petitions and the conduct of referendum and initiative elections, which procedures afford due process of law to all persons eligible to vote in national elections. The decision of the Council in all election matters, including the eligibility and qualifications of candidates, shall be final.

ARTICLE II—DEFINITIONS

Section 1201 Definitions

In this chapter, unless otherwise stated:

- (A) “Board” means the Election Board as defined under Article III, Section 1301 of this chapter.
- (B) “Constitution” means the Constitution of the Tohono O’odham Nation adopted by the qualified voters of the Tohono O’odham Nation on January 18, 1986.
- (C) “Council” means the Legislative Council of the Tohono O’odham Nation as established and empowered under the Constitution.
- (D) “Criminal background investigation” includes all state and federal felony convictions.
- (E) “Day” unless otherwise specified, means a calendar day.
- (F) “District” means any of the recognized districts of the Tohono O’odham Nation established under Article IX of the Constitution, by ordinance, or by constitutional amendment.
- (G) “District council” means the governing body of any of the recognized districts of the Tohono O’odham Nation.
- (H) “District election board” means the election board appointed by the Board as provided in Article VIII of this chapter.
- (I) Elected “officer” means a person who holds office either by appointment or election as the chairperson or vice-chairperson of the Nation or a district council, or as a representative or alternate of the Legislative Council or district council.

(J) “Felony” means a criminal offense that is punishable by more than one year in custody whether a term of incarceration is imposed or not, or a criminal offense within a tribal jurisdiction that would be punishable by more than one year in custody if prosecuted in a state or federal jurisdiction. A felony conviction includes a guilty verdict or a plea of guilty or no contest to a felony. A felony does not include a juvenile offense unless the offense is prosecuted within an adult criminal justice system.

(K) “~~Inefficiency~~ **Incompetence**” means lacking in-ability; ~~incompentent~~, wasteful of time and energy or material; not causing the intended result.

(L) “Malfeasance” means committing an act that a person has no authority to do, and that is wrong and unlawful.

(M) “Misfeasance” means the improper performance of some act which a person may lawfully do.

(N) “Moral Turpitude” means conduct contrary to justice, honesty, modesty or good morals.

(O) “Nation” means the Tohono O’odham Nation.

(P) “Neglect of Duty” means failing to perform some work, duty, or act; or intentional refusal, indifference, or unwillingness to perform one’s duty.

(Q) “Nonfeasance” means nonperformance of some act which a person has a responsibility to perform, failure to perform a required duty at all, or total neglect of duty.

(R) “Tabulation” means a tally of votes produced by an electronic device designed for that purpose.

(S) “Tally” means the counting of votes.

Section 1202 Computation of Time

In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or a holiday recognized by the Nation in which event the period runs until the end of the next day which is not a Saturday, Sunday or tribally recognized holiday.

ARTICLE III - ELECTION BOARD

Section 1301 Members; Compensation; Quorum

(A) The Board shall be composed of five bilingual (Tohono O’odham and English) members of the Nation. A majority of the Board shall select from among its membership a chairperson, a vice-chairperson and secretary whom shall serve at the pleasure of the Board. No elected officer

shall be appointed to serve as a Board member and no Board member may be an elected officer while serving on the Board.

(B) Members of the Board shall be appointed by the Council for a term of five years or until their successors are appointed. Appointments to the Board shall be staggered so that the term of office of only one member will end in any single year.

(C) The Council may by resolution remove a Board member when it is in the Nation's best interest, including, without limitation, for inefficiency-incompetence, neglect of duty, malfeasance, misfeasance or nonfeasance of office; provided that there is no right to Board membership and a removal from the Board may not be appealed to the Judicial Court. The Board, upon majority vote, may recommend to the Council the removal of a Board member where the best interests of the Board would be served by such removal.

(D) Members of the Board shall be entitled to receive, upon presentation of proper documentation, mileage and per diem payments as authorized in a budget of the Board approved by the Council.

(E) A quorum shall consist of at least three Board members, and a majority of the quorum is required for any official action of the Board.

Section 1302 General Powers of Election Board

The Board has full power, jurisdiction and authority to take all actions reasonably necessary to ensure the orderly conduct of the Nation's elections consistent with this chapter, including, but not limited to:

- (A) Formulate, adopt, amend and rescind rules, regulations, guidelines and forms reasonably necessary to carry out the provisions of this chapter.
- (B) To prepare and maintain an Official List of Registered Voters.
- (C) To certify the number of members of the Nation residing in each district, and the number of votes each district is entitled to cast at the Council in accordance with the provisions of Article V, Section 2 of the Constitution and the provisions of this chapter.
- (D) To conduct elections of the Nation in accordance with Article X of the Constitution and the provisions of this chapter.
- (E) To hear and determine election contests in accordance with the provisions of this chapter.
- (F) To receive and process recall applications and petitions and to conduct recall elections in accordance with Article XIII of the Constitution and the provisions of this chapter.
- (G) To receive and process initiative and referendum applications and petitions and to conduct initiative and referendum elections in accordance with Articles XIV and XV of the Constitution and the provisions of this chapter.

(H) Conduct criminal background investigations and require proof of eligibility to determine whether a person seeking public office is eligible for election or appointment, to use a contractor to provide criminal background investigation reports, and to require all persons seeking office by election or appointment to **provide records required by this chapter, and** fully and accurately complete verifications and releases, disclosures, and forms for conducting a criminal background investigation within a timeframe set by the Board.

ARTICLE IV – VOTERS

Section 1401 Eligibility

All enrolled members of the Nation who have reached the age of 18 years prior to the election date shall be eligible to vote. An enrolled member who is otherwise eligible to vote shall not be disqualified from voting by a felony conviction.

Section 1402 Registration

(A) An eligible person wishing to vote must register to have his or her name added to the Official List of Registered Voters. Once a person is added to the Official List of Registered Voters, he or she is a registered voter.

(B) The names of persons appearing on the Official List of Registered Voters at the last general election shall be automatically included on the Official List of Registered Voters.

(C) Persons whose names do not appear on the Official List of Registered Voters may file a registration form with the Board at least 60 days prior to the primary, general, or special election.

(1) Registrations shall bear the name of the voter, date of birth, enrollment number, home address, mailing address, community, and the district in which the registrant chooses to vote. An incomplete registration shall be returned to the registrant.

(2) The Board shall determine whether the registrant is eligible to vote in accordance with Section 1401. If the Board determines that the registrant is eligible to vote, the Board shall add the name of the registrant to the Official List of Registered Voters and provide notice to the respective district of the addition.

(3) If the Board determines a registrant is not an eligible voter, the Election Board shall specify the ineligibility to the registrant based solely upon the following reasons:

- (a) the registrant is not an enrolled member of the Nation; or
- (b) the registrant will not have reached the age of 18 years prior to the election date.

The registrant may appeal the Board's determination to the Council as provided in Section 1403.

(D) A registered voter may transfer his or her registration from one district to another by filing an application with the Board. A voter is not required to obtain a district council's approval to transfer the voter's existing registration from that district before registering to vote in another district. When a voter's registration is transferred to another district, the Board shall correct the Official List of Registered Voters to reflect the transfer, and the Board shall notify both districts and the voter in writing of the transfer. A voter shall not be listed on the Official List of Registered Voters under more than one district.

~~(D)~~(E) The Official List of Registered Voters shall be used exclusively for the purposes authorized by this chapter and the Nation's laws, and shall not be used to determine eligibility for assistance or benefits or otherwise limit the rights of an enrolled Nation's member.

Section 1403 Appeals

Any member of the Nation whose name has been removed from the Official List of Registered Voters, whose name has been omitted in error, or whose name, for other reasons, has not been added to such list by action or inaction of the Board after registering in accordance with Section 1402 above, may appeal to the Council for listing at least 15 days prior to the primary, general, or special election. The Council shall, if necessary, call a special meeting to decide such appeals. If the Council should decide that the appellant is an eligible voter, it shall order that the appellant's name be placed on the List. The decision of the Council shall be final.

ARTICLE V – LEGISLATIVE BRANCH

Section 1501 Membership of the Tohono O'odham Legislative Council

Pursuant to Article V, Section 1, and Article VI, Section 1 of the Constitution, all legislative powers of the Nation are vested in the Council which shall consist of two representatives, or their alternates, elected from each of the districts of the Nation.

Section 1502 District Votes

(A) Pursuant to Article V, Section 2 of the Constitution, each district shall be entitled to as many votes on the Council (divided by ten) as there are members of the Nation residing in the district. Such votes may be cast by either or both of the two district representatives, or their alternates, who are present and voting.

(B) If the two representatives of a district, or their alternates, should divide their votes, each shall be entitled to vote one-half of the votes his or her particular district is entitled to cast. A majority of votes cast shall govern the actions of the Council.

Section 1503 Council Officers

After each election of representatives to the Council, and after such representatives have been certified and seated, the Council shall elect from among its own membership a chairperson and vice-chairperson. The chairperson, or in their absence, the vice-chairperson, shall preside at all

meetings of the Council, shall perform all duties of a chairperson and exercise any authority delegated by the Council. The chairperson and vice-chairperson shall be entitled to cast a vote as representative of their districts on any question before the Council. The chairperson and vice-chairperson shall serve until their successors have been certified and seated.

Section 1504 Other Officers

The Council shall elect from outside its membership a secretary and such other officers as may be necessary. They shall serve until replaced by the Council.

Section 1505 Legislative Council Representatives and Alternates

(A) Qualification of Candidates: The qualifications for candidacy as representative to the Council are:

- (1) Must not be a candidate for any other elective office in the same election.
- (2) Must be a member and registered voter of the Nation.
- (3) Must be at least 21 years of age at the time of the election.
- (4) Must be a registered voter of the district in which he or she is seeking election.
- (5) Must not have been convicted of a felony.
- (6) Must not have been removed from office within the two years preceding an election for which he or she is a candidate or an appointee.

(B) Terms of Office:

- (1) All representatives and their alternates shall hold their offices for a term of four years or until their successors have been elected, certified and seated. Their terms of office shall be staggered so that one-half of their seats shall be open for election every other year. In such elections, the candidate receiving the greatest number of votes shall be elected representative, and the candidate receiving the next greatest number of votes shall be elected his or her alternate to the Council. In the event a representative is unable to attend a meeting or meetings of the Council, his or her alternate shall attend in his or her place.
- (2) The Legislative Council may adopt rules governing representatives' attendance at Council sessions and committee meetings.
- (3) If a vacancy should occur in the office of representative to the Council, the alternate of that representative shall immediately succeed to the office of representative and the district council of the district from which he or she was elected shall adopt a resolution appointing an alternate who shall hold office for the unexpired term of his or her predecessor; provided that the alternate shall not be seated until the Board certifies in

writing that the alternate meets all the qualifications for that office.

(C) Number of Terms: There shall be no limit on the number of times a representative or alternate to the Legislative Council can be re-elected.

(D) Limitation in Offices: Candidates elected as representatives or alternates who hold another elective public office must resign such other office before being seated and shall hold no other elective public office during their term of office. A Council representative shall not be employed in another paid position during the representative's term of office, provided that a representative may receive per diem, mileage, or other reimbursement for serving on a board or committee.

(E) Candidacy for Election:

(1) Eligibility: In order to run for the office of Council representative, a person must, at least 120 days prior to the general election, hand-deliver to the Board a written, signed statement that the person seeking office has not been convicted of a felony as that term is defined in this chapter and a list of all tribal court criminal convictions, including each offense, date of conviction, case identifier, and jurisdiction, together with the complaint or other charging document, any plea agreement, and sentencing order. The person seeking office shall acknowledge on the same form that the failure to provide complete and accurate information may result in the imposition of penalties as described in this chapter and that a felony conviction will disqualify the person from becoming a candidate. The person seeking to become a candidate shall at the same time file with the Board a release or any other necessary document required by the Board to complete a criminal background investigation. The Board shall complete a criminal background investigation at least 60 days before the general election, report the results to the person seeking office, and shall not add the name of any person to an election ballot who has been convicted of a felony or who fails to submit all information and documents necessary to complete a criminal background investigation.

(2) Disqualification

(a) If the Board at any time verifies that a candidate or person seeking to become a candidate has been convicted of a felony, it shall declare the individual disqualified, promptly notify the individual in writing, and exclude or remove his or her name from the ballot. The Board shall promptly notify the Council in writing if a disqualified candidate's name appears or will appear on a ballot provided to any voter, and the Council may postpone an election to remove a disqualified candidate from the ballot.

(a)

(b) A person who has been disqualified by the Board under this Section 1505(E) for conviction of a felony may file a written appeal with the Council, with a copy to the Board, within two business days of receiving the Board's written disqualification notice. The Council chairperson shall call an emergency session to decide such appeals. If the Council decides that the appellant is not

disqualified, it shall order the Board to include the appellant's name on the ballot. The decision of the Council shall be final.

(1)(3) Nominations: The district councils shall call for a special meeting at least 120 days prior to the general election to take nominations for Council candidates. Nominations for candidacy as representative to the Council may be made by any eligible voter, including a person seeking such nomination, provided that the nominee is eligible, and provided that the nominee is present at the district council meeting where he or she is being nominated to give his or her written or oral consent to such candidacy. No person shall be entitled to make more than one nomination for candidates to the Council.

(2)(4) Certification of Candidates: Each district council shall have the duty of filing a certified list of nominees with the Board within ~~five~~ **three** days after such nominations, and to post such list at a conspicuous place in the district office.

Commented [A1]: Election Board written comment, approved by Rules Committee

(F) Candidate Photo; Submission: A nominee ~~selected pursuant to Section 1505(E)(2) herein~~ may submit a current passport photo of himself or herself to be included next to his or her name on the ballot. Photos must be submitted to the Elections Office at least 90 days prior to the general election. ~~Photos received after the deadline prescribed herein will not be accepted.~~ Submitted photos will become the property of the Elections Office. **No photos will be altered after submission.**

Commented [A2]: Election Board written comment, Rules Committee keeping photo submission discretionary instead of mandatory

ARTICLE VI – EXECUTIVE BRANCH

Section 1601 Chairperson and Vice-Chairperson of the Nation

Pursuant to Article VII, Section 1 of the Constitution, the executive power of the Nation is vested in the office of the chairperson of the Nation. The chairperson, together with the vice-chairperson, shall be elected at large by a majority of votes cast by all registered voters of the Nation.

Section 1602 Qualifications of Candidates

The qualifications for candidacy as chairperson and vice-chairperson of the Nation are:

- (A) Must not be a candidate for any other elective office in the same election.
- (B) Must be a member and registered voter of the Nation.
- (C) Must be at least 35 years of age at the time of the election.
- (D) Must not have been convicted of a felony.
- (E) Must not have been removed from office within the two years preceding an election for which he or she is a candidate or an appointee.

Section 1603 Terms of Office and Vacancies

(A) The chairperson and vice-chairperson of the Nation shall hold their offices for a term of four years or until their successors have been elected, certified and seated.

(B) If a vacancy should occur in the office of the chairperson of the Nation, the vice-chairperson shall immediately succeed to the office of the chairperson and the vice-chairperson's office shall be vacant.

(C) If a vacancy should occur in the offices of both the chairperson and the vice-chairperson of the Nation, the chairperson of the Council shall act as temporary chairperson of the Nation and shall, within ten days of the vacancy, call a special meeting of the Council to appoint a chairperson and vice-chairperson from within the Nation who shall hold their offices for the unexpired terms of their predecessors; provided that they shall not be seated until the Board certifies in writing that they meet all the qualifications for their respective offices.

(D) There shall be no limit on the number of times a chairperson or vice-chairperson of the Nation can be re-elected.

Section 1604 Limitations in Offices and Employment

Candidates elected as chairperson and vice-chairperson of the Nation who are employed or hold another elective public office must resign such office and/or employment before being seated and shall hold no other elective public office or other employment during their terms of office.

Section 1605 Election of Chairperson and Vice-Chairperson

(A) Eligibility.

(1) In order to run for the office of chairperson or vice-chairperson of the Nation, a person must, at least 120 days prior to the general election, hand-deliver to the Board a written, signed statement that the person seeking office has not been convicted of a felony as that term is defined in this chapter and a list of all tribal court criminal convictions, including each offense, date of conviction, case identifier, and jurisdiction, together with the complaint or other charging document, any plea agreement, and sentencing order. The person seeking office shall acknowledge on the same form that the failure to provide complete and accurate information may result in the imposition of penalties as described in this chapter and that a felony conviction will disqualify the person from becoming a candidate. The person seeking to become a candidate shall at the same time file with the Board a release or any other necessary document required by the Board to complete a criminal background investigation. The Board shall complete a criminal background investigation at least 60 days before the general election, report the results to the person seeking office, and shall not add the name of any person to an election ballot who has been convicted of a felony or who fails to submit all information and documents necessary to complete a criminal background investigation.

(2) Disqualification

(a) If the Board at any time verifies that a candidate or person seeking to become a candidate has been convicted of a felony, it shall declare the individual disqualified, promptly notify the individual in writing, and exclude or remove his or her name from the ballot. The Board shall promptly notify the Council in writing if a disqualified candidate's name appears or will appear on a ballot provided to any voter, and the Council may postpone an election to remove a disqualified candidate from the ballot.

(b) A person who has been disqualified by the Board under this Section 1605 for conviction of a felony may file a written appeal with the Council, with a copy to the Board, within two business days of receiving the Board's written disqualification notice. The Council chairperson shall call an emergency session to decide such appeals. If the Council decides that the appellant is not disqualified, it shall order the Board to include the appellant's name on the ballot. The decision of the Council shall be final.

(A)

(B) Declaration of Candidacy: A person seeking the office of chairperson of the Nation must, at least 120 days prior to the general election, hand-deliver and file a declaration of candidacy with the Board, on a form provided by the Board, which shall contain the name of the individual he or she has selected to run with him or her for the office of vice-chairperson. The declaration of candidacy shall bear the signatures of both persons and the signatures of 100 or more registered voters of the Nation, provided that such signatures must be collected by a registered voter of the Nation. The declaration shall list the district, if any, in which each person seeking office and each voter is registered. The person seeking candidacy and his or her running mate may submit with the Declaration a current passport photo of each to be included next to their names on the ballot. ~~Photos received after a Declaration is submitted will not be accepted.~~ Submitted photos will become the property of the Elections Office. No photos will be altered after submission.

Commented [A3]: Election Board comment, Committee agreed to keep photo requirement discretionary

(C) Certification and Disposition of Declaration: Within 20 days after submission of a declaration of candidacy, the Board shall determine from the Official List of Registered Voters the number of registered voters who have signed the declaration, and shall so certify, and:

(1) If the number equals or exceeds 100 and the Board determines neither person seeking office has been convicted of a felony, the Board shall so notify the candidates and shall enter the names of both candidates for the office of the chairperson and vice chairperson in the election.

(2) If the number is less than 100 or the Board determines a person seeking office has been convicted of a felony, the Board shall so notify the persons and shall return the declaration of candidacy.

(D) Certification Challenge: The person seeking office may challenge the number of signatures certified by the Board by commencing an action, within three business days after being so notified, in the Tohono O'odham Judicial Court for a determination thereon. The action shall be advanced on the calendar and heard and decided by the court as soon as possible. The judgment of the trial court shall be final.

(E) Primary Elections: A primary election shall be held for the offices of chairperson and

vice- chairperson of the Nation on the fourth Saturday before each general election in which the seats for such offices become open for election.

(1) The two sets of candidates in a primary election receiving the highest number of votes for the offices of chairperson and vice-chairperson shall have their names entered in the general election.

(2) If there are no more than two sets of competing candidates for offices of chairperson and vice-chairperson, no primary election shall be held and all the candidates shall have their names entered in the general election.

(F) Run-Off Primary Election: In the event the abstract of votes cast for the offices of chairperson and vice-chairperson in a primary election shows that the vote cast for two or more sets of candidates for such offices is tied in such a way that it is impossible to determine which two sets of candidates have received the two highest number of votes, the general election shall be postponed for two weeks and there shall be a run-off election for such offices between the candidates whose votes were tied on the second Saturday following such primary election. The run-off primary election and the postponed general election shall be governed by the same rules and procedures to be followed generally in primary and general elections. Subsequent run-off elections may be held in the same manner and with the same effect, if necessary.

~~(G)~~ Certification of Candidates: The Board shall certify to the Council the names of the candidates entered in the general election for the offices of chairperson and vice-chairperson of the Nation. Such certification shall be made within five days following the primary election or the final run-off primary election or, if there are no more than two sets of candidates for the offices of chairperson and vice-chairperson, such certification shall be made within 30 days following the time set in subsection 1605(B) above for the filing of a declaration of candidacy for the offices of chairperson and vice-chairperson.

ARTICLE VII – DISTRICT COUNCILS

Section 1701 District Councils; Memberships

Each of the districts of the Nation shall have a governing body known as the district council which shall consist of at least five representatives, or their alternates, elected either from the district at large or from communities consisting of villages or groups of villages within the district and recognized or established as separate voting constituencies pursuant to subsection 1703(B) below, and of a chairperson and vice-chairperson elected from the district at large. The two district representatives to the Council, or their alternates, shall be non-voting ex-officio members of the district council of the district they represent.

Section 1702 District Chairperson and Vice-Chairperson

(A) Office of chairperson and vice-chairperson: The chairperson, or in his or her absence, the vice- chairperson, shall preside at all meetings of the district council, shall perform all duties of a chairperson and exercise any authority delegated by the district council. The chairperson shall be entitled to cast his or her vote on any question before the district council where his or her vote

would change the result.

(B) Qualifications: The qualifications for candidacy of chairperson and vice-chairperson of a district council are:

- (1) Must not be a candidate for any other elective office in the same election.
- (2) Must be an enrolled member of the Nation and a registered voter of that district.
- (3) Must be 21 years of age or older at the time of the election.
- (4) Must be a resident of, or traditional member from, the district in which the candidate is seeking election.
- (5) Must not have been convicted of a felony.
- (6) Must not have been removed from office within the two years preceding an election for which he or she is a candidate or an appointee.

(C) Terms of Office:

- (1) The chairperson and vice-chairperson of a district council shall hold their offices for a term of four years or until their successors have been elected, certified and seated.
- (2) If a vacancy should occur in the office of the chairperson of the district council, the vice-chairperson shall immediately succeed to the office of chairperson and the vice-chairperson's office shall be vacant.
- (3) If a vacancy should occur in the offices of both the chairperson and vice-chairperson of the district council, the secretary of the district council shall act as temporary chairperson and shall, within ten days of the vacancy, call a special meeting of the district council to appoint a chairperson and vice-chairperson from within the district who shall hold their offices for the unexpired terms of their predecessors; provided that the chairperson and vice-chairperson shall not be seated until the Board certifies in writing that they meet all the qualifications for their respective offices.

(D) Number of Terms: There shall be no limit on the number of times a chairperson or vice-chairperson of the district council can be re-elected.

(E) Limitation in Offices: Candidates elected as chairperson and vice-chairperson of the district council who hold another elective public office must resign such other office before being seated and shall hold no other elective public office during their term of office.

(F) Elections:

- (1) Eligibility: In order to run for the office of chairperson or vice-chairperson of the district council, a person must, at least 120 days prior to the general election, hand-deliver

to the Board a written, signed statement that the person seeking office has not been convicted of a felony as that term is defined in this chapter and a list of all tribal court criminal convictions, including each offense, date of conviction, case identifier, and jurisdiction, together with the complaint or other charging document, any plea agreement, and sentencing order. The person seeking office shall acknowledge on the same form that the failure to provide complete and accurate information may result in the imposition of penalties as described in this chapter and that a felony conviction will disqualify the person from becoming a candidate. The person seeking to become a candidate shall at the same time file with the Board a release or any other necessary document required by the Board to complete a criminal background investigation. The Board shall complete a criminal background investigation at least 60 days before the general election, report the results to the person seeking office, and shall not add the name of any person to an election ballot who has been convicted of a felony or who fails to submit all information and documents necessary to complete a criminal background investigation.

(2) Disqualification

(a) If the Board at any time verifies that a candidate or person seeking to become a candidate has been convicted of a felony, it shall declare the individual disqualified, promptly notify the individual in writing, and exclude or remove his or her name from the ballot. The Board shall promptly notify the Council in writing if a disqualified candidate's name appears or will appear on a ballot provided to any voter, and the Council may postpone an election to remove a disqualified candidate from the ballot.

(+) (b) A person who has been disqualified by the Board under this Section 1705 for conviction of a felony may file a written appeal with the Council, with a copy to the Board, within two business days of receiving the Board's written disqualification notice. The Council chairperson shall call an emergency session to decide such appeals. If the Council decides that the appellant is not disqualified, it shall order the Board to include the appellant's name on the ballot. The decision of the Council shall be final.

(2) (3) Declaration of Candidacy: A person seeking the office of chairperson of the district council must, at least 120 days prior to the general election, hand-deliver and file a declaration of candidacy with the Board, on a form provided by the Board, which shall contain the name of the individual he or she has selected to run with him or her for the office of vice-chairperson. The declaration of candidacy shall bear the signature of both persons and the original signatures of 25 or more registered voters of the district, provided that such signatures must be collected by a registered voter of the Nation. The person seeking candidacy and his or her running mate may submit with the Declaration a current passport photo of each to be included next to their names on the ballot. ~~Photos received after a Declaration is submitted will not be accepted.~~ Submitted photos will become the property of the Elections Office. ~~No photos will be altered after submission.~~

Commented [A4]: Election Board comment, Rules Committee agreed to keep photo requirement discretionary

(3)(2) Certification and Disposition of Declaration: Within 20 days after submission of a declaration of candidacy, the Board shall determine whether the persons seeking office have been convicted of a felony and shall determine from the Official List of Registered

Voters the number of registered voters who have signed the declaration, and shall so certify and:

- (a) If the number equals or exceeds 25 and neither person seeking office has been convicted of a felony, the Board shall so notify the candidates and shall enter the names of both candidates for the office of chairperson and vice chairperson of a district council in the election.
- (b) If the number is less than 25 or the Board determines a person seeking office has been convicted of a felony, the Board shall so notify the persons and shall return the declaration of candidacy.

~~(4)~~(3) Certification Challenge: The person seeking office may challenge the number of signatures certified by the Board by commencing an action, within three business days, after being so notified, in the Tohono O’odham Judicial Court for a determination thereon. The action shall be advanced on the calendar and heard and decided by the court as soon as possible. The judgment of the trial court shall be final.

~~(5)~~(4) Primary Elections: A primary election shall be held for the offices of chairperson and vice-chairperson of the district council on the fourth Saturday before each general election in which seats for such offices become open for election.

- (a) The two sets of candidates in a primary election receiving the highest number of votes for the offices of chairperson and vice-chairperson of the district council shall have their names entered in the general election.
- (b) If there are no more than two sets of competing candidates for offices of chairperson and vice-chairperson, no primary election shall be held and all the candidates shall have their names entered in the general election.

~~(6)~~(5) District Council Run-Off Primary Elections: In the event the abstract of votes cast for the offices of chairperson and vice-chairperson in a primary election shows that the vote cast for two or more sets of candidates for such offices is tied, the general election shall be postponed for two weeks and there shall be a run-off election for such offices between the candidates whose votes were tied on the second Saturday following such primary election. The run-off primary election and the postponed general election shall be governed by the same rules and procedures to be followed generally in primary and general elections. Subsequent run-off elections may be held in the same manner and with the same effect, if necessary.

~~(7)~~(6) Certification of Candidates: The Board shall certify to the district council the names of the candidates entered in the general election for the offices of chairperson and vice- chairperson of the district council. Such certification shall be made within five days following the primary election or the final run-off primary election or, if there are no more than two sets of candidates for the offices of chairperson and vice-chairperson, such

certification shall be made within 30 days following the time set in subsection 1702(F)(2) above for the filing of declarations of candidacy for the offices of chairperson and vice-chairperson.

Section 1703 District Representatives and Alternates

(A) Qualifications of Candidates: The qualifications for candidacy as representatives to a district council are:

- (1) Must not be a candidate for any other elective office in the same election.
- (2) Must be an enrolled member of the Nation and a registered voter of that district.
- (3) Must be at least 21 years of age at the time of the election.
- (4) Must be a resident of, or traditional member from, the district or the community from which the candidate is seeking election.
- (5) Must not have been removed from office within the two years preceding an election for which he or she is a candidate or an appointee.

(B) Number of Representatives: Each district council shall consist of at least five representatives, or their alternates, who shall be elected either from the district at large, or from communities consisting of villages or groups of villages within the district and recognized or established as separate voting constituencies. If district representatives are not elected at large from the district, but are elected from communities consisting of villages or groups of villages, they and their alternates shall be elected according to a schedule of recognized voting constituencies which will afford all members of the Nation who reside in the district equal representation on the Council. Until a formal census of village and district residents can be established, the voting constituencies and the number of representatives and their alternates shall be in accordance with the "Schedule of Representatives to the District Councils." If a district council decides to adjust the schedule in order to change the size of the council, to change the voting constituencies, or to afford all members of the Nation who reside in the various voting constituencies equal representation on the council, it shall certify the adjusted schedule to the Board at least ~~90~~¹⁶⁰ days before the general election. Any village or community constituting a separate voting constituency in a district, or any member of the Nation residing or registered to vote in a district, may appeal such district's schedule to the Council at least ~~60~~⁹⁰ days prior to the election. The Council shall, if necessary, call a special meeting to decide such appeals and its decision shall be final.

Commented [A5]: Rules Committee new amendment

(C) Terms of Office:

- (1) All representatives and their alternates shall hold their offices for a term of four years or until their successors have been elected, certified or seated. Their terms of office shall be staggered so that there shall be open for election every other year one-half (or approximately one-half, in case of an uneven number) of the seats which the district (if elected at large) or which each community (if elected from separate voting

constituencies) is entitled to under provisions of subsection (B) above. In such elections, the candidate or candidates for such open seats receiving the greatest number of votes shall be elected district representative(s), and the candidate or candidates receiving the next greatest number of votes shall be elected their alternate(s). In the event a representative should be unable to attend a meeting or meetings of the district council, his or her alternate shall attend in his or her place.

(2) If a vacancy should occur in the office of a representative to the district council, the alternate of that representative shall immediately succeed to the office of the representative and the district council or the community from which they were elected shall appoint an alternate who shall hold office for the unexpired term of his or her predecessor.

(D) Number of Terms: There shall be no limit on the number of times a representative to the district council or an alternate can be re-elected.

(E) Limitation on Offices: Candidates elected as representatives and alternates to a district council who hold another elective public office of the Nation must resign such other office before being seated and shall hold no other elective public office during their term of office.

(F) Candidacy for Election:

(1) Nominations: The district council, for district council representatives elected at large, or community council, for district council representatives elected from separate voting constituencies within the district, shall call for a special meeting at least 120 days prior to the general election to take nominations. Nominations for candidacy as representatives to the district council may be made by any eligible voter, including a person seeking such nomination, provided the nominee is eligible and is present at the meeting(s) where he or she is being nominated to give his or her oral consent to such candidacy. No person shall be entitled to make more than one nomination for candidates to the district council.

(2) Certification of Candidates: The council of each district or community shall have the duty of filing a certified list of nominees with the Board and with the district council within **five** days after such nominations, and to post such list at a conspicuous place in the district office and in the office or usual place of business of the village or community.

(G) Candidate Photo; Submission: The nominee **selected pursuant to Section 1703(F)(2) herein** may submit a current passport photo of himself or herself to be included next to his or her name on the ballot. Photos must be submitted at least 90 days prior to the general election. **Photos received after the deadline prescribed herein will not be accepted.** Submitted photos will become the property of the Elections Office. **No photos will be altered after submission.**

Commented [A6]: Election Board comment, Committee agreed

Commented [A7]: Election Board comment, Rules Committee agreed to keep photo requirement discretionary

Section 1704 Other District Officers

After each election of representatives to the district council, and after such representatives have

been certified and seated, each district council shall select from either within or without its own elected membership a secretary and treasurer who shall serve until replaced by the district council.

ARTICLE VIII – PRIMARY AND GENERAL ELECTIONS

Section 1801 Duties of the Election Board

It shall be the duty of the Board to conduct all elections in compliance with this chapter and to decide disputes arising in connection with such elections.

(A) List of Registered Voters: It shall be the duty of the Board to prepare and maintain an up-to-date Official List of Registered Voters. The Board shall review the List of Registered Voters and remove the names of persons known to be deceased or persons who have relinquished their membership or had their membership revoked, correct the names of persons whose names have been misspelled or whose names have been legally changed, correct district registration information, and add the names of persons who have registered to vote or the names of persons whose names have been omitted by error. The corrected list shall be posted at all polling places 20 days prior to any primary, general, or special election.

(B) Certification of District Residents: It shall be the duty of the Board to certify from the official Membership Roll of the Nation, the number of members of the Nation residing in each district, and the number of votes each district is entitled to cast at the Council in accordance with Article V, Section 2 of the Constitution. This certificate shall be posted together with the Certificate of Election Results provided for herein at the offices of the Council and of the district council of each district within four days following the general election.

Any district, or any member of the Nation residing in a district, may appeal the number of votes given to each district by the Board to the Council provided they do so within five days after the certificate has been posted in that district. The Council shall, if necessary, call a special meeting to decide such appeals and the decision shall be final.

(C) Public Notices: It shall be the duty of the Board to give public notice of forthcoming elections and of the need for members to register for and vote at such elections. At least ~~four~~ **five** months prior to the general election, the Board shall prepare and provide to the district councils for posting in district and village centers and other public places, and shall send to the various urban Indian centers where members of the Nation are known to reside, official posters notifying members of the Nation of the need to register to vote, and of the dates and places to register and to vote. The Board shall use its best efforts to give such other public notice of elections as it may find at its disposal, such as publication on the Internet, by email or other electronic means, in the local newspaper, radio, or television news release.

(D) Primary and General Election Ballots:

(1) There shall be two sets of ballots for the primary and general elections.

(a) One set for the primary election for the offices of chairperson and vice-

chairperson of the Nation and for the primary election for the offices of chairperson and vice-chairperson of the district council; and

(b) One set for the general election for the offices of chairperson and vice-chairperson of the Nation, offices of representatives to the Council, offices of representatives to the district council, and offices of chairperson and vice-chairperson of the district council.

(2) Ballots and posters

(a) shall bear the name of the district, village or community from which the candidates are seeking election, when applicable;

(b) shall show the number of candidates each voter is permitted to vote for upon such ballot;

(c) shall identify each candidate or team of candidates by name;

(d) shall list candidates or teams of candidates in alphabetical order by last name, under the designated offices candidates are seeking; and

(e) shall permit a voter to indicate his or her choice of candidate(s) by completing an arrow on the ballot beside each of the candidate's or team of candidates' name(s).

(3) It shall be the duty of the Board to print the ballots and posters.

(4) An adequate supply of ballots plainly marked "SAMPLE BALLOTS" and printed on paper of a different color from that of the ballots prepared for voting purposes shall be widely distributed and shall be posted in public places in the various election places and communities in order to acquaint the voters with the ballots and the candidates.

(5) If the official ballots at an election polling place at which a voting machine is to be used are not available at the time required or if they are lost, destroyed, stolen or if they are all used and none remain, the District Board Chairperson shall immediately notify the Election Board Chairperson or other authority under whose direction shall cause additional ballots to be prepared, printed or written in substantially the form of the official ballot and such ballots shall be used in place of the official ballot.

(E) District Election Boards: The Board shall appoint and supervise a district election board for each of the districts of the Nation; provided that the Board shall give preference to O'odham speakers. Each district election board shall consist of a chairperson, two clerks, and two marshals who the Board shall appoint at least 20 days before a primary, general or special election and who shall hold such offices until all elections from that district have been certified. No candidate for office is eligible for appointment to the district election board.

(1) Compensation: The members of the district election boards shall be compensated

at a rate prescribed by the Council.

(2) Duties:

- (a) It shall be the duty of the district election boards to post election posters in such a way that each voter can make easy reference to such posters.
- (b) Each district election board shall conduct the voting at the polling place in its district, and its members shall have the responsibility of permitting only persons whose names appear on the Official List of Registered Voters to vote, ensuring that no person votes more than once and ensuring that each voter is permitted to mark his or her ballot in privacy.
- (c) The chairperson of the district election board shall, prior to an election, review election records and ballots received from the Board to ensure accuracy. The district election board chairperson will maintain order at the poll and enforce election laws, and shall be responsible for the safekeeping of the ballots and ballot box, for their receipt from the Board prior to the election, and for the delivery of the locked ballot transfer case to the Board for canvass after the tabulation.
- (d) The marshals shall assist the chairperson to maintain order at the polling place, monitor the ballot box, and assist voters and lead them to the right section of the polling place.
- (e) The clerks shall post the posters, check off the voters on the Official Lists of Registered Voters and shall, when asked, explain the ballots and voting procedures to the voters. Each shall keep a separate record of the members voting.

Section 1802 General Elections

General elections for the purpose of choosing the chairperson and vice-chairperson of the Nation and of the district councils and the representatives and their alternates to the Council and to the district councils shall be held on the fourth Saturday of May, 1987, and on the same day in every second year thereafter (except that a general election may be postponed for up to one month when such postponement is necessary in the opinion of the Council, and except that a general election may be postponed by the Board if required to conduct run-off primary elections as provided in this chapter).

Section 1803 Primary Elections

Primary elections for the purpose of choosing two sets of candidates for offices of chairperson and vice-chairperson of the Nation and of the district councils shall be held on the fourth Saturday before each general election, starting in 1987, and on the same day in every fourth year thereafter.

Section 1804 Polling Places

There shall be one polling place in each of the districts of the Nation in the village in each district in which the district council normally meets, as determined by that council. No meetings or other events will be held at the polling place on Election Day. Special election and run-off elections will be held in the affected community or district.

Section 1805 Hours of Voting

The polls shall be open at each polling place from 6:00 AM to 6:00 PM. Any voter in line at the polling place but unable to cast his or her ballot before 6:00 PM shall be allowed to finish voting.

Section 1806 Conduct of Election

(A) Primary Election: Each prospective voter, upon being identified as being on the Official List of Registered Voters, shall be handed one unused ballot by the chairperson of the Board, and shall sign his or her name or make his or her mark on a form kept for that purpose to acknowledge that he or she has received this ballot.

(B) General Election: Each prospective voter, upon being identified as being on the Official List of Registered Voters, shall be handed one unused ballot by the chairperson of the Board. The voter shall sign his or her name or make his or her mark on a form kept for that purpose to acknowledge that he or she has received the ballot.

(C) Voting: The voter shall vote in privacy by completing an arrow on the ballot beside the name of each candidate or team of candidates, or the measure the voter is voting for, and shall personally deposit his or her ballot in the electronic tabulator or ballot box. A person may vote for fewer but may not vote for more candidates than he or she is entitled to cast votes for without having his or her ballot cancelled. In addition, a voter may cast a vote against an initiative measure or referendum. Votes may not be cast "against" any candidate, provided that eligible voters may participate in a recall election in accordance with the provisions of Article XI of this chapter.

(D) Spoiled Ballots: If a voter spoils a ballot, he or she may obtain another, and the spoiled ballot shall be placed in an envelope marked "SPOILED." Each member of the district election board shall sign his or her name on the envelope. All spoiled ballot envelopes shall be fastened together and shall be returned to the Board at the end of the tabulation.

(E) Unused Ballots: Ballots unused at the end of the voting shall be fastened together, marked "UNUSED," and returned to the Board at the end of the tabulation.

(F) Absentee Ballots:

(1) An eligible voter on the Official List of Registered Voters shall be entitled to vote by absentee ballot. Requests for such ballots must be made in writing by the eligible voter on a form approved by the Board and must indicate which district or community a ballot is sought and must be filed with the Board at least 2835 days before the election. The Board ~~shall, upon determining confirm that~~ the person requesting a ballot absentee voter is registered to vote, and shall mail an absentee ballot to the voter within five working

~~days of receiving the request form-; provided that if a request is made before the ballot is available, the Board shall mail the ballot within five business days after receiving the ballot. in sufficient time to permit the voter to execute and return it on or before the date of the election or within the time allowed by the Board.~~ No ballot received by the Board after the date fixed by the Board or received at a polling place after the poll closes shall be counted.

(a) The Board shall establish a list of registered voters requesting to automatically receive absentee ballots for every election. A registered voter may request to be added to this list by providing written notice on a form approved by the Board. The voter's request must be made **2835** days before an election. Thereafter, the voter shall automatically receive absentee ballots. If a registered voter no longer wants to automatically receive absentee ballots, the registered voter shall provide written notice to the Board at least **2835** days prior to an election in which the registered voter wants to vote in person. Thereafter, absentee ballots will not be sent to the voter. It is the duty of the voter to maintain a current address with the Board and if necessary, submit a change of address to the Board at least **2835** days prior to an election in order to receive automatic absentee ballots.

(2) Together with the ballot there shall be an inner envelope bearing the words "Absentee Ballot", a pre-addressed outer envelope, and a certificate in form as follows:

I, _____, hereby certify that I am a member of the Tohono O'odham Nation from or residing in the _____ village or community in the _____ district of the Tohono O'odham Nation, that I am an eligible voter on the Official List of Registered Voters and therefore entitled to vote in the election to be held on (date of election).

"I further certify that I marked the enclosed ballot in secret"

Signed, _____
Voter

(3) The voter shall in the presence of two witnesses of adult age, and of no other person, mark such ballot but in such manner that such witnesses cannot know how the ballot was marked, and the ballot shall then in the presence of such witnesses be folded so as to conceal this marking, and be, in the presence of such witnesses, placed in the envelope marked "Absentee Ballot" and the envelope sealed. The voter shall then execute and subscribe the certificate before such witnesses. He or she shall then place the sealed envelope marked "Absentee Ballot," together with the certificate, in the outer envelope, and mail it or have it delivered. The pre-addressed outer envelope shall be directed to the Election Board, at Sells, Arizona.

(4) The Board shall keep a record of ballots mailed, to who mailed, the date of mailing, the address on the envelope, the date of the return of such ballot, and from whom received, and shall count and register such votes and include them in the results of

the election.

(G) Rejected Ballots: If the members of the district election board are unable to determine from a ballot the choice of the voter, the vote for the candidate or for or against a measure shall be rejected. A rejected vote shall be placed in an envelope marked "REJECTED" and each member of the district election board shall sign his or her name on the envelope. All envelopes containing a rejected ballot shall be fastened together and shall be placed in the ballot transfer case at the end of the tabulation.

(H) The Tabulation: At the close of the voting, the chairperson of the district election board shall tabulate the votes in the presence of the district election board; provided that if a tabulation is not possible, the Board shall conduct a hand tally. The tabulation of the vote shall be open for public observation but the public must remain at a distance from the chairperson of the district election board, the clerks, and the ballot box. The public shall remain quiet and in no way interfere with the orderly tabulation. If order cannot be kept, the chairperson of the district election board shall halt the tabulation until such time as order has been restored. The chairperson shall read off to the clerks the results for each office or measure. At the end of the tabulation, the chairperson of the district election board shall secure the tabulation sheet, the spoiled, rejected, and unused ballots, the clerks' records, absentee ballots, and tabulated ballots in a locked ballot transfer case and deliver them to the Board in Sells, Arizona.

(I) The Abstract: The Board, assembled in open meeting the night of the election, shall receive from the chairperson of each district election board the ballot transfer case, the spoiled ballots, the unused ballots, the ballots containing rejected votes, the absentee ballots, and the tabulation sheets. All tabulations of votes shall be added together, including absentee ballot votes, and the Board shall produce an abstract reflecting the votes cast for each candidate or for or against each measure.

(J) Certifying Election Returns: After producing the abstract, the Election Board shall issue its Certificates of Election Results for each elective office. The Board shall provide all abstracts and Certificates of Election Results to the Nation's radio station, distribute the results in a public service announcement by email to the Nation's districts, employees, and others identified by the Board, and within 48 hours of issuing its Certificates of Election Results shall post the results

- (1) at the Election Office;
- (2) in the administrative offices of the Council;
- (3) at each district office; and
- (4) on at least one ~~publically~~publicly accessible website.

(K) Recounts: If an abstract shows that the vote cast for or against a measure or for two or more candidates for an office with the highest vote is tied, or if the highest vote for a candidate or for or against a measure is larger than the next highest vote by less than one percent of the total vote cast for that office or measure, there shall be an automatic recount. The Board shall recount

Commented [A8]: Election Board comment:

Consider eliminating the need for recounts. All voting on the Nation is done electronically and it is accurate. On Election night, rather than finishing the count earlier in the evening, the Board is running numerous recounts that do not change the result of the Election but are mandated by law to occur. This is the reason for the late returns far into the night.

Commented [A9R8]: Committee obtaining more information from the Election Board

the vote for that office or measure on all unspoiled, unrejected ballots, rejecting any on which it is unable to determine the choice of the voter. A new abstract shall then be prepared and read aloud to the public.

Section 1807 Run-Off Election

A candidate or measure must receive the highest number of votes cast for the office or measure in order to be declared elected. If the abstract shows the vote cast for two or more candidates for an office (with the highest vote), or for or against a measure is tied, a run-off election shall be held not more than 30 days after the election. The Board shall supervise the run-off election following the same rules and procedures followed in the first election. Subsequent run-off elections may be held if necessary.

Section 1808 Certificates of Elections

(A) Council and district council seats: The Council and the district council of each district shall meet within 20 days after the Board has posted its Certificate of Election Results and each shall respectively issue a Certificate of Election to the person who received the highest number of votes for each office on the Council and district council; provided, however, that if an election contest statement is filed within the time period allowed, then no Certificate of Election shall be issued for the contested office or seat until after such election contest.

The Council and the district council shall seat all persons as soon as Certificates of Election have been issued to them, provided, however, that any person elected to public office who holds another elective public office must resign from such office before being seated. They shall thereafter hold the office or seat to which they were elected for the term of such office or seat. Except as otherwise provided in this chapter, if a district council does not issue a Certificate of Election and seat the candidate who received the highest number of votes for a district office within 20 days after the Board posts its Certificate of Election Results or within five days after an election contest is decided in accordance with this chapter, the Board shall issue the Certificate of Election and the successful candidate will be deemed seated.

(B) Nation's chairperson and vice-chairperson: The Council shall meet within 20 days after the Board has posted its Certificate of Election Results for the offices of chairperson and vice-chairperson of the Nation and shall issue a Certificate of Election to the persons who received the highest number of votes for such offices; provided, however, that if an election contest statement is filed within the time period allowed, then no Certificate of Election shall be issued for the contested offices until after such election contest.

The chairperson and vice-chairperson of the Nation shall be seated as soon as the Certificate of Election has been issued to them; provided, however, that they shall first resign any employment or other elective public office held by them before being seated.

Section 1809 Political Signs and Materials; Distribution

Political signs or printed materials may be posted or distributed only within 70 days before a special, primary or general election. No sign shall be placed in a location that obstructs the view

of existing, posted road signs. If a candidate for whom signs have been posted or materials distributed loses the primary election, such signs and materials for that candidate must be removed within ten days after the primary election. All other signs and printed materials must be removed within ten days after the special or general election. If a candidate fails to remove their signs on a timely basis, the Board may authorize removal of the signs by a contracting party and send the invoice for removal to the candidate who must reimburse the Board within 20 days of receipt of the invoice. The Nation's Court is authorized to grant a judgment in favor of the Board in the event the candidate fails to pay.

ARTICLE IX – CONTEST OF ELECTION RESULTS

Section 1901 Grounds for Contest

Any eligible voter of the Nation may contest an election only upon any of the following grounds:

- (A) For misconduct on the part of any district election board or of the Board, or any member thereof, or on the part of any official making or participating in a canvass of returns for an election.
- (B) That the person whose right to the office is contested was not at the time of the election eligible or qualified for the office.
- (C) That the person whose right to the office is contested or any person acting for him, or any person proposing or opposing a measure, has given to an elector, inspector, member of the Board or a member of a district election board a bribe or reward, or has offered such bribe or reward for the purpose of procuring or defeating an election, or has committed any other offense against the people's right to vote.
- (D) Upon discovery of illegal votes.
- (E) That by reason of erroneous count of votes or erroneous rejection of votes the candidate or measure declared elected did not in fact receive the highest number of votes.

Section 1902 Contest Statement

(A) The voter contesting an election shall, by 5:00 p.m. on the within two second business days after completion of the canvass of the election and the issuance and posting of the Certificate of Election Results at the Election Office by the Board, file with the Board a contest statement in writing setting forth:

- (1) The name, phone number, email address, and residence of the party contesting the election and that he or she is an eligible voter of the Nation.
- (2) The name of the person whose right to the office is contested as it appeared upon the official ballot.
- (3) The elective office or measure which is contested.

(4) The particular ground(s) of the contest.

(B) The contest statement shall be verified by an notarized affidavit of the contestor which states that he or she believes the matters and things contained in the contest statement are true.

~~(B)(C)~~ A contest statement alleging misconduct on the part of the Election Board or any member thereof shall be filed with the secretary of the Council. All other contest statements shall be filed with the Election Board.

~~(C)(D)~~ Contest. Within two business days of receipt, the Election Board shall issue a written determination that the contest statement filed with the Board is valid or invalid. A contest statements that does not cite grounds for the election contest from Section 1901(A)-(E), is not filed timely, is not filed by the eligible voter contesting the election, or that does not satisfy the other requirements of this Article will not be accepted as valid by the Election Board. An invalid contest statement will be returned to the contestor within two business days with a written explanation of the contest statement deficiencies.

Section 1903 Contest Procedure

(A) Within two business days of receiving the contest statement, the Board shall provide notice to the contestee or to the person proposing or opposing a measure, requiring him or her to file an answer to the contest statement within five days of receipt.

(B) Either party may have the ballots inspected by a member of the Board in his or her presence before preparing to go to hearing, by filing a statement that he or she cannot properly prepare for hearing without such an inspection.

(1) The contestor must file such request with his or her contest statement or the inspection will not be granted.

(2) The contestee must file his or her request with his or her answer or the inspection will not be granted.

(C) The Board shall set a time for the hearing of the contest. The hearing of the contest shall be held not later than 20 days after the date on which the contest statement of contest was filed, which may be continued for not to exceed five days for good cause shown.

(D) At the contest hearing, the Board shall hear only the issues raised in the contest statement and responses to the statement. The contestor and contestee shall have an opportunity to provide evidence in support of their position. Within two business days after the hearing has adjourned, the Board shall pronounce judgment, either confirming or annulling and setting aside the election results which are being contested.

(E) If in an election contest it appears that a person other than the contestee has the highest number of legal votes, the Board shall declare that person elected and amend the Certificate of Election Results accordingly.

Section 1904 Board to Hear; Exception

~~In the event that~~ if a contest statement is filed with the ~~Board Council secretary~~ alleging misconduct on the part of the Board or any member thereof, such contest statement shall be brought before the Council pursuant to Section 1905 of this Article.

Section 1905 Alternative Contest Procedure

~~(A)~~ If a contest statement is filed ~~with the Board~~ alleging misconduct on the part of the Board or any member thereof, the ~~Board shall submit such statement to the~~ secretary of the Council. ~~The secretary shall immediately provide the statement to the Legislative Rules Committee. Within 48 hours of receipt, the Rules Committee shall issue a written determination that the contest statement is valid or invalid. A contest statement that does not provide grounds for the election contest under Section 1901(A), is not filed timely, is not filed by the eligible voter contesting the election, or that does not satisfy the other requirements of this Article will not be accepted as valid. An invalid contest statement will be returned to the contestor within two business days with a written explanation of the contest statement deficiencies.~~

~~(A)(B)~~ The Rules Committee shall provide a valid contest statement to the Board ~~give notice to the contestee,~~ with a copy to the secretary and requiring that the Board file an answer to the contest statement ~~be filed~~ with the secretary within four days of receipt and provide a copy to the contestor(s) at the same time ~~within five days of receipt.~~

~~(B)(C)~~ The Council will meet within 15 days after the receipt of the answer for the sole purpose of hearing the contest on the grounds of misconduct on the part of the Board or any member thereof and shall decide the issue(s) raised in the contest statement on those grounds only. The Council chairperson shall preside over the ~~Election-election Contest-contest.~~

A party may have the ballots inspected by the Board in his or her presence and witnessed by the Council ~~S~~secretary before the hearing, by filing a statement that he or she cannot properly prepare for hearing without such an inspection; provided that all parties shall be given advance, written notice of the inspection and may be present.

- (1) The contestor must file such request with his or her contest statement or the inspection will not be granted.
- (2) The contestee must file his or her request with his or her answer or the inspection will not be granted.

~~(D)~~ The contestor and contestee shall have an opportunity to appear, testify, call and question witnesses, present relevant evidence, make opening statements and closing arguments, and participate in the Council hearing in accordance with rules adopted by the Council.

~~(E)~~ If the contestor does not appear for the scheduled election contest hearing, the Council shall dismiss that contestor's specific election contest.

After the hearing has adjourned, the chairperson shall order a vote without a motion or second on

the matter of whether or not the election results contested should be certified or set aside by reason of the proof or lack of proof of misconduct on the part of the Board or any member thereof. Thereafter, the chairperson shall announce the judgment.

~~(D)~~(F) If in an election it appears that a person other than the contestee has the highest number of legal votes, the Council shall declare that person elected and shall issue him or her a Certificate of Election.

Section 1906 Finality

The declaration of election results which is uncontested or the declaration of the election results following an election contest provided for herein shall be final.

ARTICLE X – REMOVAL FROM OFFICE

Section 11001 Automatic Removal

Any elected officer or judge of the Nation who, during the term for which he or she is elected or appointed, is convicted of any felony or crime involving dishonesty, in any court of competent jurisdiction, shall automatically forfeit his or her office effective on the date of his or her initial conviction in court.

Section 11002 Removal Upon Accusation

(A) Any elected officer or judge of the Nation found guilty of a misdemeanor involving moral turpitude, gross neglect of duty, malfeasance in office, or misconduct reflecting on the dignity and integrity of the government shall be removed from office by majority vote of the Council. “Misdemeanor” means a wrongful act or failure to act but is not required to be a criminal offense. A court conviction is not required in order to conduct a removal under this section.

(B) Proceedings under this section shall be commenced by the filing with the chairperson of the Legislative Council Judiciary Committee a written, notarized statement stating the offense(s) charged against the accused in ordinary and concise language and signed by a registered voter or voters of the Nation. This notarized statement shall be known as the “accusation.”

(C) Upon the filing of the accusation, the chairperson shall call for a meeting of the Judiciary Committee and shall invite for examination the accuser(s) and the accused and such witnesses as the accuser(s) and the accused may request or as the chairperson may deem necessary. If a majority of the members of the committee determines from the accusation, any evidence or affidavits filed, and any testimony taken, that there is reasonable cause to believe that the accused has committed a removable offense as charged in the accusation, the committee shall file the accusation with the Council secretary, together with a copy of the resolution(s) supporting its determination; if not, the committee shall dismiss the accusation.

(D) Upon the filing of the accusation and committee resolution as provided in paragraph (C), the secretary of the Council shall cause a copy of the accusation and any removal hearing

procedures to be served on the accused with copies to the accuser(s), and require by written notice of not less than ten days that the accused appear before the Council and answer the accusation. The accused shall be ~~served personally~~ ~~served or, if the accused cannot upon diligent inquiry be found within the Nation, service shall be made~~ ~~or~~ by certified mail with return receipt, alternate mailing service that provides documentation of delivery at the accused's address, ~~email to the accused's verified address~~, or publication.

(E) The accused shall appear at the time appointed in the notice and may object in writing to the sufficiency of the accusation or answer the accusation, unless the Council assigns another day for that purpose. If the accused does not appear, after notice has been provided, the Council may hear and determine the accusation in his or her absence.

(1) Objection. If there is a written answer of objection to the sufficiency of the accusation and the objection is not sustained by a majority vote of the members of the Council who heard the argument, the accused shall be directed to answer the accusation with a plea of guilty or not guilty.

(2) Not Guilty. If there is an answer of not guilty, the not guilty plea shall be recorded in the Council minutes. If the accused refuses to plea or fails to appear after having been given notice of the hearing, a not guilty plea will be recorded in the Council minutes.

The Council shall immediately try the accusation and the accused shall be given an opportunity to answer any and all charges, to confront the witnesses against him, and to present witnesses and evidence on his or her behalf. No elected officer shall preside over the meeting of the Council at which his or her removal is being considered.

If the accused is found guilty by a majority vote of the representatives of the Council present at the hearing, the Council shall pronounce judgment and enter such judgment upon the minutes of the Council. The judgment of conviction shall be final and shall provide that the accused is removed from office effective immediately upon the Council's vote.

(3) Guilty or Refusal to Answer. If there is an answer of guilty, the Council shall by a majority vote of the representatives of the Council present at the hearing render judgment of conviction against him. Council shall pronounce the judgment and enter such judgment upon the minutes of the Council. The judgment of conviction shall be final and shall provide that the accused be removed from office.

(F) Unless provided otherwise by law, an elected officer or judge who is accused of a removable offense shall continue to perform the duties of his or her office until removed.

(G) Once removed pursuant to Section 11001 or this section, the former elected officer will be disqualified from election or appointment to office for two years from the date of the former elected officer's removal. The Council secretary shall provide notice of a removal pursuant to this section and the date it occurred to the Board within twenty days of such removal.

ARTICLE XI – RECALL FROM OFFICE

Section 11101 Officers Subject to Recall; Number of Petitioners

An elected officer is subject to recall from office upon demand contained in a recall petition signed by a number of eligible voters equaling at least 30% of the eligible voters registered to vote for such office.

Section 11102 Recall Petition; Limitations; Subsequent Petition

(A) A recall petition shall not be circulated against any elected officer until at least six months after the elected officer has been certified and seated.

(B) After one recall petition and election, no further recall petition shall be filed against the same person during the term for which he or she was elected or appointed unless the petitioner signing the petition first pays into the treasury all expenses of the preceding election.

Section 11103 Application for Recall Petition

(A) A person or organization intending to file a recall petition shall, before causing the petition to be printed and circulated, file in the office of the Board an application on a form provided by the Board setting forth his or her name or, if an organization, its name and the names, addresses and titles of its officers, his or her intention to circulate and file a petition, and the text of a general statement of not more than 200 words stating the ground(s) of the demand for the recall.

(B) The chairperson of the Board shall assign a number to the application, within five days of receipt, and issue that number to the applicant. The assigned number shall appear on the face of each copy of the petition and on both sides of the signature sheets of the petition.

Section 11104 Form of Recall Petition

A petition for the recall of an elected officer shall be substantially in the following form, provided that the district will be designated at the beginning of the recall petition for an office elected by the voters of a single district:

Petition for Recall

TO: Election Board
Tohono O’odham Nation
P.O. Box 837
Sells, Arizona 85634

We, the undersigned registered voters of the _____(District or Tohono O’odham Nation) from which _____(Name and title of office) was elected, demand his/her recall. The ground(s) for the demand of the recall of said _____are as follows:

(state in not more than 200 words the ground(s) for the demand.)

Printed Name	Signature	Date of Birth	District	Address	Date of Signing
_____	_____	_____	_____	_____	_____

(20 lines for signatures which shall be numbered)

The validity of signatures on this sheet must be sworn to by the circulator before a notary public on the form appearing on the reverse side.

Section 11105 Signatures and Verification:

(A) Every registered voter signing a petition for recall election shall do so in the presence of the person circulating the petition and who is to execute the Affidavit of Verification on the reverse side of the signature sheet. At the time of signing, the registered voter shall print and sign his or her full name as it appears on the voter registration list and the voter so signing, or the person circulating the petition, shall write in the appropriate spaces following the signature, the signer's date of birth, his or her residence address giving street and number, if any, or his or her post office address, the name of the district in which he or she is registered to vote (if any), and the date on which he or she signed the petition. Signed petitions shall not be ~~publically~~publicly disclosed.

(B) The person before whom the signatures were written on the signature sheet shall write legibly or type on the reverse side of the signature sheet, in the Affidavit of Verification form prescribed in this section, the names of the signers of the sheet and, in an affidavit subscribed and sworn to by him or her before a notary public, shall verify that he or she circulated the petition, that he or she knows the contents thereof, that each of the names on the sheet was signed in his or her presence on the date indicated, and that in his or her belief each signer was a registered voter of the district stated (if applicable).

(C) The Affidavit of Verification shall be in the following form printed on the reverse side of each signature sheet:

Affidavit of Circulator

STATE OF ARIZONA)
) ss.
COUNTY OF)

I, _____, a voter registered to vote in the recall election herein petitioned for, being first duly sworn say: (Here shall be legibly written or typed the names of the signers of the sheet.)

(20 lines for names)

Under penalty of law punishable by a fine of not to exceed \$600, or by imprisonment in jail of not to exceed 12 months, or both, I do depose and say that I circulated the foregoing petition and

know the contents thereof, that each signed this sheet of the foregoing petition in my presence on the date indicated, and I believe that each signer's name, date of birth, residence address or post office address and voting district are correctly stated, and that each signer is a registered voter of the ___ District (if applicable) and in the district in which such recall election will be conducted.

Signature of Affiant

Post Office Address of Affiant

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

Section 11106 Submission of Petition for Verification, Non-Acceptance, Certification, and Disposition

(A) The recall petition shall be submitted to the office of the Board for verification that at least 30 percent of the voters registered to vote for such office have signed the petition.

(B) A recall petition shall not be accepted for such verification if more than 90 days have passed since the date that an application number was issued by the chairperson of the Board.

(C) Within 30 days after submission of a recall petition for verification, the Board shall determine from the records of registration the number of registered voters who have signed the recall petition, and shall so certify, and:

(1) If the number equals at least 30 percent of the voters registered to vote for the office that is the subject of the recall petition the Board shall:

- (a) Provide written notice to the petitioner(s);
- (b) Provide written notice to the person named in the recall petition pursuant to Section 11110; and
- (c) Provide written notice to the Council by providing the petition to the secretary of the Council. It shall be the duty of Council to call a special election within 40 days of receipt of the written notice to the Council from the Board.

(2) If the number is insufficient to qualify for calling a special election, the Board shall so notify the person or organization submitting the petition and shall return the petition to the person or organization.

Section 11107 Prohibition on Circulating of Petitions by Certain Persons

No member of the Board, or of any district election board, and no person other than a registered voter, shall circulate a recall petition; all signatures verified by any such unqualified person shall be void and shall not be counted in determining the legal sufficiency of the petition.

Section 11108 Unlawful Acts

(A) It is unlawful for any person to give or receive money or any other thing of value for signing a recall petition, excluding payments made to a person for circulating such petition.

(B) It is unlawful for a person to sign any name other than his or her own to a recall petition, except in a circumstance where he or she signs for a person in the presence of and at the specific request of such person who is incapable of signing his or her own name because of physical infirmity.

(C) It is unlawful for a person to knowingly sign his or her name more than once for the same recall issue at one election.

(D) It is unlawful for a person to sign his or her name knowing he or she is not at the time of signing a registered voter.

(E) It is unlawful for a person to knowingly coerce any other person by threat, or to threaten any other person with injury in his or her business, or discharge from employment, or that he or she will not be employed, to sign or subscribe, or to refrain from signing or subscribing his or her name to a recall petition, or, after signing or subscribing his or her name, to have his or her name removed.

(F) Any person, who violates any provisions of this section shall be deemed guilty of an offense against the Nation and upon conviction thereof shall be subject to a fine of not more than \$600 or by imprisonment in jail of not more than 12 months, or both.

Section 11109 Judicial Review

(A) If the Board fails to comply with the provisions of Section 11106, any registered voter may petition within ten days of such refusal to the Tohono O’odham Judicial Court to compel the Board to do so. If the court finds that the Board has not complied with the provisions of Section 11106, the court shall issue an order for the Board to comply.

(B) If a registered voter wishes to challenge the number of signatures certified by the Board under the provisions of Section 11106, he or she shall, within ten days after the Board has provided written notice to the Council or petitioner, commence an action in the Tohono O’odham Judicial Court for a determination thereon. The action shall be advanced on the calendar and heard and decided by the court as soon as possible. Either party may appeal to the court of appeals within ten days after final judgment.

Section 11110 Notice to Officer; Statement of Defense

Upon providing written notice to the Council as provided in Section 11106, the Board shall

forthwith give written notice to the person the petition names for recall. The notice shall state that a recall petition has been filed, shall set forth the grounds thereof, and shall notify the person to whom it is addressed that he or she has the right to prepare and have printed on the ballot a statement containing not more than 200 words defending his or her official conduct. If the person fails to deliver the defensive statement to the Board within ten days after the mailing of the notice, his or her statement shall not be printed on the ballot and shall be considered waived.

Section 11111 Resignation

If a person named in a recall petition desires to tender his or her resignation, he or she may do so by filing a written notice with the Board and the official or body entitled to receive notice of resignation under Section 11203. His or her resignation shall be effective upon delivery and without formal acceptance thereof. The vacancy shall be filled as provided pursuant to Article XII, Section 11206.

Section 11112 Form and Content of Ballot

On the ballot for the election shall be printed the reasons as set forth in the petition for demanding the person’s recall, and, in not more than 200 words, the person’s justification of his or her conduct in office, if such justification was provided in a timely manner in accordance with Section 11110. The form of the ballot shall conform as nearly as practicable to ballots prescribed for general elections; provided that a voter will complete an arrow on the ballot beside one of the following statements:

A “for” vote shall be for recall.

An “against” vote shall be against the recall.

Section 11113 General Election Laws Applicable

The Board shall conduct the special election in accordance with the provisions of this article and with the relevant provisions of this chapter governing general elections.

Section 11114 Election Results

(A) If at least 30 percent of the eligible voters registered to vote for office voted in the recall election and a majority of the eligible voters vote for the recall, the person named in the recall petition shall be deemed removed from office.

(B) If less than 30% of the eligible voters registered to vote for the office voted in the recall election, or if a majority of the eligible voters vote against the recall, the person named in the recall petition shall continue in office for the remainder of his or her term.

(C) The Board shall issue its Certificate of Election Results and shall post it as required by Article VIII, Section 1806(J) of this chapter.

ARTICLE XII – VACANCY IN OFFICE

Section 11201 Vacancy Defined

An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office:

- (A) Death of a person holding the office.
- (B) Insanity of the person holding the office, when judicially determined.
- (C) Resignation of the person holding the office. With the exception of the resignation of a person named in a recall petition, if a resignation is unconditional, it shall be effective upon the delivery and without formal acceptance thereof.
- (D) Conviction of the person holding office of a felony or crime involving dishonesty in any court of competent jurisdiction, upon initial conviction in court.
- (E) Removal from office of the person holding the office.
- (F) Recall from office of the person holding the office.

Section 11202 Notice of Vacancy in Office

When an office is vacated, as is defined in Section 11201, or when his or her election or appointment is declared void, the body, judge or officer before whom the proceedings were held shall give notice thereof to the officer or body empowered to fill the vacancy and to the Board within five days.

Section 11203 Resignation

- (A) Resignation shall be in writing and made as follows:
 - (1) By a representative to the Council, to the chairperson of the Council, who shall immediately provide written notice to his or her alternate of his or her resignation.
 - (2) By an alternate to the Council, to the chairperson of the Council, who shall immediately provide written notice to the alternate's district council of the resignation.
 - (3) By the chairperson of the Nation, to the vice-chairperson of the Nation, who shall immediately transmit the resignation to the chairperson of the Council.
 - (4) By the vice-chairperson of the Nation, to the chairperson of the Nation, who shall immediately transmit the resignation to the chairperson of the Council.
 - (5) By a representative to a district council to the chairperson of the district council who shall immediately provide written notice to his or her alternate of the resignation.

(6) By an alternate to a district council to the chairperson of the district council, who shall immediately provide written notice to the district council or of the community from which he or she was elected of the resignation.

(7) By the chairperson of a district council, to the vice-chairperson of the district council, who shall immediately transmit the resignation to the secretary of the district council.

(8) By the vice-chairperson of a district council, to the chairperson of the district council who shall immediately transmit the resignation to the secretary of the district council.

(9) By appointive officers, to the body or officer which appointed them, unless otherwise provided.

(10) By a judge to the Legislative Council chairperson; provided that a full-time judge who fails to appear for five consecutive working days without written notice to the chief judge shall be deemed to have resigned unconditionally if the chief judge delivers written notice of the resignation to the Legislative Council chairperson, at which time the resigning judge's office will be vacant.

(B) The officer, person or body receiving a resignation, as is outlined in subsection (A), shall provide written notice of a resignation to the Board within five days of receipt of the resignation.

(C) Unless otherwise stated in this chapter, a resignation shall be effective at the time specified therein, or if no time is specified, on the date it is received. The acceptance of such resignation shall not be required to make it effective.

Section 11204 Term of Office: Holdover

(A) Every officer whose term is not fixed by law shall hold office at the pleasure of the appointing power.

(B) **Holdover.** Every officer shall continue to discharge the duties of office, although the term expired, until a successor is certified and seated except as otherwise stated in this chapter.

(C) Vacancies occurring in an office shall be filled only for the unexpired term of the officer or member.

Section 11205 Limitation in Offices

No person holding an elective public office of the Nation shall hold any other elective office of the Nation. A person holding one elective office shall resign such office before being certified and seated to another elective office.

Section 11206 Filling of Vacancies

When an office is vacated it shall be filled as follows:

(A) If the vacancy is in the office of the chairperson of the Nation, the vice-chairperson shall immediately succeed to the office of the chairperson and the vice-chairperson's office shall be vacant.

(B) If the vacancy is in the office of both the chairperson and the vice-chairperson of the Nation, the chairperson of the Council shall act as temporary chairperson of the Nation and shall, within ten days of the vacancy, call a special meeting of the Council to appoint a chairperson and vice-chairperson from within the Nation who shall hold their offices for the unexpired term of their predecessors; provided that they shall not be seated until the Board certifies in writing that they meet all the qualifications for their respective offices.

(C) If the vacancy is in the office of a representative to the Council or the district council, the alternate of that representative shall immediately succeed to the office of the representative and the council of the district or of the community from which they are elected shall appoint a qualified alternate who shall hold office for the unexpired term of his or her predecessor; provided that an appointee shall not be seated until the Board certifies in writing that the alternate meets all the qualifications for that office. If both the offices of Legislative Council or district council representative and alternate are vacant as defined in this chapter, the district council or the community from which they are elected may adopt a resolution appointing a representative and alternate; provided that the representative and alternate shall not be seated until the Board certifies in writing that the representative and alternate meet all the qualifications for their respective offices.

(D) If the vacancy is in the office of the chairperson of the district council, the vice-chairperson shall immediately succeed to the office of the chairperson and the vice-chairperson's office shall be vacant

(E) If the vacancy is in the offices of both the chairperson and vice-chairperson of the district council, the Secretary of the district council shall act as temporary chairperson and shall, within ten days of the vacancy, call a special meeting of the district council to appoint a chairperson and vice-chairperson from within the district who shall hold their offices for the unexpired terms of their predecessors; provided that they shall not be seated until the Board certifies in writing that the chairperson and vice-chairperson meet all the qualifications for their respective offices.

(F) If the vacancy is in the office of a judge of the Tohono O'odham Judicial Court, the Council shall appoint a successor who shall hold office for the unexpired term of his or her predecessor.

(G) If the vacancy is in the office of an appointive official, the body or official who appointed him or her shall, unless otherwise provided, appoint his or her successor who shall hold office for the unexpired term of his or her predecessor.

ARTICLE XIII – INITIATIVE AND REFERENDUM

Section 11301 Application for Petition

(A) A person or organization intending to propose an ordinance, resolution or other legislation affecting the Nation by initiative petition or to file a referendum petition for or against any enacted or proposed ordinance, resolution or other national legislation of the Council shall, before causing the petition to be printed or circulated, file in the office of the Board an application on a form provided by the Board, setting forth his or her name and address or, if an organization, its name and the names, addresses and titles of its officers, his or her intention to circulate and file a petition, and the text of the proposed ordinance, resolution or other legislation or enacted or proposed national legislation to be initiated or referred.

(B) The chairperson of the Board shall assign a number to the application, within five days of receipt, and issue that number to the applicant. The assigned number shall appear on the face of each copy of the petition and on both sides of the signature sheets of the petition.

(C) When the Council submits legislation to a referendum of the registered voters upon its own direction, Council shall complete the application, but no referendum petition is required.

Section 11302 Form of a Referendum Petition

(A) A petition for referring to the registered voters of the Nation any enacted or proposed ordinance, resolution or other national legislation of the Council shall be substantially in the following form:

Petition for Referendum

TO: Election Board
Tohono O’odham Nation
P.O. Box 837
Sells, Arizona 85634

We, the undersigned registered voters of the Tohono O’odham Nation, respectfully demand that the (enacted or proposed) (ordinance, resolution or other national legislation) of the Council, entitled (title of ordinance, resolution and other national legislation) and on file with the Board, shall be referred to a vote of the registered voters of the Nation, for their approval or rejection, as required by law, and each for himself or herself says:

I have personally signed this petition with my first and last names. I have not signed any other petition for the same measure. I am a registered voter of the Tohono O’odham Nation.

Name	Date of Birth	Date of Signing	District	Address
_____	_____	_____	_____	_____

(20 lines for signatures which shall be numbered)

The validity of signatures on this sheet must be sworn to by the circulator before a notary public on the form appearing on reverse side.

(B) The text of the referendum petition shall indicate existing material proposed to be deleted in strikethrough text and new material proposed to be added in underlined text.

Section 11303 Form of an Initiative Petition

The form of a petition for an ordinance, resolution or other legislation affecting the Tohono O’odham Nation proposed by the initiative to be submitted directly to the registered voters shall be substantially in the form prescribed in Section 11302, except the title and body thereof shall read:

Initiative Measure

We, the undersigned registered voters of the Tohono O’odham Nation respectfully demand that the proposed (ordinance, resolution or other legislation) affecting the Tohono O’odham Nation, entitled (title of ordinance, resolution or other legislation) and on file with the Board, shall be submitted for a vote of the registered voters of the Nation for their approval or rejection, as required by law, and each for himself or herself says: [The remainder of the initiative petition form shall be substantially in the form prescribed in Section 11302.]

Section 11304 Signatures and Verification

(A) Every registered voter signing a petition shall do so in the presence of the person circulating the petition and who is to execute the Affidavit of Verification on the reverse side of the signature sheet. At the time of signing, the registered voter shall print and sign his or her full name as it appears on the Official List of Registered Voters and the voter so signing, or the person circulating the petition, shall write in the appropriate spaces following the signature, the signer’s date of birth, his or her residence address giving street and number, if any, or his or her post office address, the name of the district in which he or she is registered to vote, if applicable, and the date on which he or she signed the petition. Signed petitions shall not be publicly disclosed.

(B) The person before whom the signatures were written on the signature sheet shall write legibly or type on the reverse side of the signature sheet, in the Affidavit of Verification form hereafter prescribed in this section, the names of the signers of the sheet and, in an affidavit subscribed and sworn to by him or her before a notary public, shall verify that he or she circulated the petition, that he or she knows the contents thereof, that each of the names on the sheet was signed in his or her presence on the date indicated, and that in his or her belief, each signer was a registered voter of the district stated (if applicable).

(C) The Affidavit of Verification shall be in the following form printed on the reverse side of each signature sheet:

Affidavit of Circulator

STATE OF ARIZONA)
) ss.

COUNTY OF _____)

I, _____, a registered voter of the Tohono O’odham Nation, being first duly sworn say: (here shall be legibly written or typed the names of the signers of the sheet.)

(20 lines for names)

Under penalty of a law punishable by a fine of not to exceed \$600, or by imprisonment in jail of not to exceed 12 months, or both, I do depose and say that I circulated the foregoing petition and know the contents thereof, that each signed this sheet of the foregoing petition in my presence on the date indicated, and I believe that each signer’s name, date of birth, residence address or post office address and voting district are correctly stated, and that each signer is a registered voter of the _____ District (if applicable) and of the Tohono O’odham Nation.

Signature of Affiant

Post Office Address of Affiant Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

Section 11305 Submission of Petition for Verification, Non-Acceptance, Certification and Disposition

- (A) The initiative or referendum petition shall be submitted to the office of the Board for verification that a minimum of 300 registered voters of the Nation have signed the petition.
- (B) An initiative or referendum petition shall not be accepted for such verification if more than 120 days have passed since the date that an application number was issued by the chairperson of the Board.
- (C) Within ten days after submission of a petition for verification, the Board shall cause to be counted the number of signatures thereon and,
 - (1) If the number equals or exceeds 300, shall so notify the person or organization submitting the petition; or
 - (2) If the number does not equal 300, shall so notify the person or organization submitting the petition and shall return the petition to the person or organization.
- (D) Within 30 days after submission of the petition, the Board shall determine from the records of registration the number of registered voters who have signed the petition and shall so certify, and:
 - (1) If the number equals or exceeds 300 registered voters, the Board shall so notify

the Council by providing the petition to the secretary of the Council. The Council shall set a special election in accordance with Section 11309.

(2) If the number is insufficient to qualify for calling a special election, the Board shall so notify the person or organization submitting the petition and shall return the petition to the person or organization.

(E) Following verification, signed petitions shall not be ~~publically~~publicly disclosed.

Section 11306 Prohibition on Circulating of Petitions by Certain Persons

No member of the Board, or of any district election board, and no person other than a registered voter shall circulate an initiative or referendum petition; all signatures verified by any such unqualified person shall be void and shall not be counted in determining the legal sufficiency of the petition.

Section 11307 Unlawful Acts

(A) It is unlawful for any person to give or receive money or any other thing of value for signing an initiative or referendum petition or measure, excluding payments made to a person for circulating such petition.

(B) It is unlawful for a person to sign any name other than his or her own to a petition, except in a circumstance where he or she signs for a person in the presence of and at the specific request of such person who is incapable of signing his or her own name because of physical infirmity.

(C) It is unlawful for a person to knowingly sign his or her name more than once for the same measure, at one election.

(D) It is unlawful for a person to sign his or her name knowing he or she is not at the time of signing a registered voter.

(E) It is unlawful for a person to knowingly coerce any other person by menace or threat, or to threaten any other person with injury in his or her business, or discharge from employment, or that he or she will not be employed, to sign or subscribe, or to refrain from signing or subscribing his or her name to an initiative or referendum petition, or, after signing or subscribing his or her name, to have his or her name removed.

(F) Any person who violates any provisions of this section shall be deemed guilty of an offense against the Nation and upon conviction thereof, shall be subject to a fine of not more than \$600, or by imprisonment in jail of not more than 12 months, or both.

Section 11308 Judicial Review

(A) If the Board fails to comply with the provisions of Section 11305, any registered voter may petition within ten days of such refusal to the Tohono O’odham Courts to compel the Board to do so. If the court finds that the Board has not complied with the provisions of Section 11305,

the court shall issue an order for the Board to comply.

(B) If a registered voter wishes to challenge the number of signatures certified by the Board under the provisions of Section 11305, he or she shall, within ten days after the Board has provided written notice to the Council or petitioner, commence an action in the Tohono O’odham Courts for a determination thereon. The action shall be advanced on the calendar and heard and decided by the court as soon as possible. Either party may appeal to the court of appeals within ten days after final judgment.

Section 11309 Call for Special Election

(A) Upon the Board’s notice to Council of an initiative petition, as provided in Section 11305, the Council shall either adopt the initiative measure by a majority vote without alteration or shall call for a special election to be held not later than 90 days after the notice was provided to the Council, provided that, if a general election shall occur within such 90 day period, the initiative measure may be submitted to the voters at the general election.

(B) Upon the Board’s notice to Council of a referendum petition, as provided in Section 11305, the Council shall call for a special election to be held not later than 90 days after the notice was provided to the Council, provided that, if a general election should occur within such 90 day period, the referendum may be submitted to the voters at the general election.

Section 11310 Publicity Pamphlet; Distribution

(A) When the Board is ordered by the Council, or by petition under the initiative or referendum provisions of the Constitution, to submit a measure to the registered voters of the Nation, it shall cause to be printed or copied, at the expense of the Nation, except as otherwise provided in this article, a publicity pamphlet, which shall contain:

- (1) A true copy of the title and text of the measure. If applicable, such text shall indicate existing material proposed to be deleted in strikethrough text and new material proposed to be added in underlined text.
- (2) The form in which the measure will appear on the ballot, the official title and the descriptive title prepared by the Board.
- (3) Arguments for and against the measure.
- (4) An analysis of the ballot proposal submitted by the Council pursuant to Section 11311(B).

(B) Not later than the tenth day before the election, the Board shall publish on a public website and cause to be delivered to the district office of each district a quantity of the publicity pamphlets equal to ~~30~~10% of the registered voters in each district, according to the most recent Official List of Registered Voters, and with the election supplies required to be furnished to the district election boards in each district.

Commented [A10]: Election Board comment to reduce the percentage of required pamphlets

Rules Committee agreed to reduce the percentage from 30% of registered voters to 10%

(C) At the election the district election board shall offer one copy of the publicity pamphlet to each voter who applies to vote. The district office shall offer one copy to each person who requests a copy prior to the election.

Section 11311 Arguments on Measures

(A) The person filing an initiative petition may at the time file with the Board an argument advocating the measure proposed in the petition. Not later than 45 days preceding the election, a person may file with the Board an argument advocating or opposing the measure proposed in the petition, or any measure with respect to which the referendum has been invoked, or any measure referred by the Council. Each argument shall be signed by the person sponsoring it, or if it is sponsored by an organization, it shall be signed by the officers thereof. The person or persons signing the argument shall identify themselves by giving their residence or post office address.

(B) Not later than 45 days preceding the election, the Council, after providing reasonable opportunity for comments by all representatives, shall prepare and file with the Board an analysis of the provisions of each ballot proposal of a measure together with a list of popular arguments favoring and opposing such proposal or measure. Each argument shall not exceed 300 words in length.

(C) The analyses and arguments shall be included in the publicity pamphlet immediately following the measure to which they refer. Arguments in the affirmative shall be placed first in order before the negative arguments. The arguments filed by the person or organization who filed the initiative or referendum petition shall be listed first among the affirmative or negative arguments.

Section 11312 Form of Ballot

On the ballot shall be printed, below the official title of each measure, a descriptive title containing a summary of the principal provisions of the measure, not to exceed 50 words, which shall be prepared by the Board. Immediately following the descriptive title of each measure shall be printed the phrases:

A “yes” shall have the effect of _____.

A “no” shall have the effect of _____.

The blank spaces shall be filled with a brief phrase, approved by the Attorney General, stating the essential change in existing law should the measure receive a majority of the votes cast in that particular manner. Opposite each phrase there shall be printed the corresponding words “yes” and “no” beside an arrow indicating the voter’s preference. The voter shall complete the arrow to make his or her selection.

Section 11313 General Election Laws Applicable

The Board shall conduct the special election in accordance with the provisions of this article and with the relevant provisions of this chapter governing general elections.

Section 11314 Election Results

(A) If the initiative or referendum petition or measure receives a majority of the votes cast, it shall be deemed passed and shall be binding on the Council.

(B) The Board shall issue its Certificate of Election Results and shall post it as required by Article VIII, Section 1806(J) of this chapter.

ARTICLE XIV – PENAL PROVISIONS

Section 11401 Public Dances

There shall be no dances held in a district on the night before any primary, general or special election in that district.

Section 11402 Sale of Alcohol

There shall be no alcohol or alcoholic beverages sold in a district where such sales are permitted on the night before any primary, general or special election in that district unless the enterprise or entity selling alcoholic beverages is exempt under the Nation’s liquor laws.

Section 11403 Bribery of Electors

It is unlawful to give or promise any money or other things of value to any person for the purpose of influencing said person to vote or refrain from voting at any election or to vote for any particular candidate or measure at such election; or to give, cause to be given, or promise to be given, any money or other thing of value to any person with the intent that any part of said money or thing of value shall be used for bribery in connection with any election; or to knowingly give or cause to be given or promise to be given, any money to any person as reimbursement for money or other thing of value expended by such person in whole or in part for bribery at any election. It shall not be unlawful for any candidate or person proposing or opposing a measure personally or by agent to provide transportation to the polls to any voter.

Section 11404 Intimidation of Employees by Employer

(A) It is unlawful for any employer to threaten an employee with dismissal from employment, reduction of pay, loss of seniority, transfer, or less favorable working conditions, for the purpose of influencing such employee to vote or to refrain from voting, or to vote for any particular person or measure in any election.

(B) It is unlawful for any employer to attempt by any means whatever upon his or her place of business to influence the vote of any employee in any national election.

(C) It is unlawful for any employer to attempt to prohibit, limit or restrict the political activities of any employee beyond the employer’s personnel policies.

(D) As used in this section, the term “employer” means any natural person, association of natural persons, Nation’s enterprise, independent contractor, corporation, or other entity, employing one or more members of the Nation or engaging their services under contract, any person acting as agent for such person, association of persons, Nation’s enterprise, corporation, or other entity.

Section 11405 Interference with or Corruption of Election Officer

It is unlawful for any person knowingly to interfere in any manner with an election officer in the discharge of his or her duty, or to induce or attempt to induce such officer to violate or refuse to comply with his or her duty or any law regulating the election.

Section 11406 Violation of Duty by Election Officers

It is unlawful for any member of the Board, or of any district election board, to knowingly and willfully fail or neglect any duty under any part of this chapter in the manner prescribed by this chapter or to accept any money or other thing of value from any candidate or person proposing or opposing a measure or from anyone acting or claiming to act on behalf of any candidate or person proposing or opposing a measure.

Section 11407 Illegal Representation; Illegal Votes

(A) It is unlawful for any person knowing he or she is not eligible to vote in an election to register or attempt to register to vote in such election.

(B) It is unlawful for any person who is not registered as a voter to vote or attempt to vote in any election.

(C) It is unlawful for any person to vote more than once in any election.

(D) It is unlawful for a registered voter to vote in a district or community except the one with which he or she is registered.

Section 11408 Coercion or Intimidation of Elector

(A) It is unlawful for a person to directly or indirectly to make use of force, violence or restraint, or to inflict or threaten to inflict, by himself or herself or through any other person, any injury, damage, loss, or harm, or in any manner to practice intimidation upon or against any person:

- (1) To influence any person’s vote in the election;
- (2) To prevent any person from voting in an election;
- (3) To induce or compel a person to vote or refrain from voting for a particular person or measure in any election; or

(4) Because a person voted or refrained from voting at an election.

(B) It is unlawful for a person to knowingly by abduction, duress or any forcible or fraudulent device, to impede, prevent or otherwise interfere with the free exercise of the elective franchise of any voter or to compel, induce or to prevail upon a voter either to cast or refrain from casting his or her vote at an election, or to cast or refrain from casting his or her vote for any particular person or measure at an election.

Section 11409 Additional Unlawful Acts

It is unlawful for any person to:

(A) Knowingly offer food or other items for sale, or to provide anything of value, in support of or opposing a candidate or ballot measure on Election Day within 150 feet of a polling place.

(B) Intentionally disable or remove from the polling place or custody of an election officer, electronic tabulator, an official ballot box, ballot transfer case, or voting record.

(C) Knowingly solicit a voter to show his or her ballot or to receive from a voter a ballot prepared for voting unless he or she is an election official.

(D) After having received a ballot as a voter, knowingly fail to return the ballot to the election officer before leaving the polling place or going outside the voting area.

(E) Knowingly provide false, misleading, or incomplete information for that person's criminal background investigation.

Section 11410 Penalties

Any person or persons who violate any provision of this article shall be deemed guilty of an offense against the Nation, and upon conviction thereof, shall be subject to a fine of not more than \$600, or by imprisonment in jail of not more than one year, or both, except that an offense committed by a non-Indian shall be a civil offense punishable by a fine of not more than \$5000. A non-Indian who commits an offense under this chapter also is subject to exclusion in accordance with the laws of the Nation.

Section 11411 Jurisdiction

The Tohono O'odham Judicial Court shall have jurisdiction over all violations of this chapter not herein specifically reserved by the Council and may, in addition to the penalties prescribed herein, grant such other relief as is necessary and proper for the enforcement of this chapter, including but not limited to declaratory or injunctive relief; provided that the Nation's sovereign immunity is not waived with regard to the award of any damages, costs of suit, including attorney's fees, or other monetary relief. In all such cases the immunity of the Nation is expressly preserved.

ARTICLE XV – MISCELLANEOUS

Section 11501 Repeal of Prior Conflicting Ordinance and Resolutions Unaffected; Amendment

The amendment of this chapter shall not affect the provisions of Ordinance No. 03-86, Article XIX, Section 1, which repealed Ordinance No. 05-82 and the resolutions and ordinances of the Nation conflicting with Ordinance No. 03-86 prior to December 4, 1986. All resolutions and ordinances of the Nation enacted prior to December 4, 1986 and relating to elections, including but not limited to Ordinance No. 05-82, which conflicted with Ordinance No. 03-86 on the date of its enactment remain repealed. Amendments to this chapter enacted by the Upholding Integrity in Tribal Leadership: Felony Disqualification Referendum shall not apply to candidacies in the May 23, 2015 general election, including any run-off election.

Section 11502 Civil Rights

Nothing in this chapter shall be interpreted to prevent a person from seeking redress of his grievances in the Nation's Judicial Court under the Constitution and laws of the Tohono O'odham Nation or the Indian Civil Rights Act, 25 U.S.C. § 1302, when such relief is available.